

File Ref: C135-E01

Ask For: Mr Porter

21 August 2009

Notice of Committee Meeting - Thursday, 27 August 2009

A meeting of the Environment Committee will be held in the Council Chambers, District Council Administration Building, Seymour Street, Blenheim on **Thursday, 27 August 2009 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 AUGUST 2009 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
Clr P Jerram
Ms T Williams
Mr C Bowron

Departmental Head

Mr H Versteegh (Manager, Regulatory Department)

Staff

Kathy Payne (Committee Secretary)

IN PUBLIC

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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:

- **R W & L J Avery - 271 Port Underwood Road, Picton - exemption to install a Coverstar automatic “Swim Roll” pool cover in lieu of a fence (exemption pursuant to section 6 of the Fencing of Swimming Pools Act 1987).**
- **A C & K M Gill - 71 Murphys Road, Blenheim - exemption to install a Coverstar automatic pool cover in lieu of a fence (exemption pursuant to section 6 of the Fencing of Swimming Pools Act 1987).**
- **B & M Dunford - 138 Hardings Road, Blenheim - exemption for doors opening into pool area (exemption pursuant to section 6 of the Fencing of Swimming Pools Act 1987).**

2. New Zealand Dryland Forests Initiative (C180-05)

(Report prepared by Lyne Johnson)

Purpose

1. The purpose of this report is for Council to consider a report from the New Zealand Dryland Forest Initiative and make a decision on committing a further two years' funding of \$10,000 per annum.

Background

2. The New Zealand Dryland Forest Initiative (NZDFI) is a collaborative cross sector research and development project to investigate and promote the establishment of genetically improved naturally durable eucalypts in plantations and woodlots on drought prone and erodible pastoral land within New Zealand.
3. There are a number of members as part of the NZDFI project, including the Marlborough Research Centre Trust, New Zealand School of Forestry, Proseed NZ Limited, Vineyard Timbers Limited, Marlborough Lines, along with supporters including landowners Andrew and Ngaire Lawson, AGMARDT, Neil Barr Farm Forestry Foundation, Marlborough Tree Growers Association, NZ Farm Forestry Association, Eucalypt Action Group and Organic Wine Growers New Zealand.
4. The organisation made a submission to Council's annual plan process for the 2008/2009 financial year. Council agreed to commit funding for a three year period at \$10,000 per annum, which was conditional on a successful review being carried out at the end of the first year before funding could be confirmed for the further two years for 2009/2010 and 2010/2011.
5. **Attached** for Council information is the first annual report from NZDFI, submitted by Shaf van Ballekom, Chairperson, and Paul Millen, Project Manager.
6. The report outlines progress on the project, including a funding update. It is noted that the ongoing support of Marlborough District Council with an annual grant of \$10,000 for the balance of the next two years is needed to ensure that this first stage of the NZDFI project is successfully completed.
7. **Mr Paul Millen will be in attendance at the meeting to provide further information on the project.**

RECOMMENDED

That funding for the New Zealand Dryland Forests Initiative be confirmed for the 2009/2010 and 2010/2011 financial years at \$10,000 per annum.

3. Irrigation Trials on Grapevines in the Lower Awatere Valley - Marlborough (G045-01)

(Report prepared by Peter Davidson)

Purpose

1. The aim of the report entitled: "Irrigation trials on grapevines in the Lower Awatere Valley - Marlborough" (**attached**) was to determine if the irrigation water requirements of grape plants grown in the Lower Awatere River Valley were significantly different to the guideline value of 2.2 mm/day specified in the Wairau/Awatere Resource Management Plan for the Wairau Plain.

Background

2. Consented freshwater use is approaching full allocation in most catchments in the Marlborough District in 2009. On the dry eastern seaboard, freshwater resources are either fully allocated or those still available are of a lower reliability.
3. In the case of the Awatere River Valley, which represents the second most important wine region after the Wairau Plain in New Zealand, water use efficiency is vital to spreading the resource as widely as possible, for the benefit of as many users.
4. The Marlborough District Council as a water regulator has long recognised the benefits of optimising irrigation water use by making small changes in application rates over the large vineyard areas that now exist.
5. Together with its science provider, Plant and Food Research, and industry representatives, in particular Pernod Ricard Limited, the Council has since 1994 funded research to refine the water use requirements of grape plants locally.
6. Up until 2006 this work was restricted to working vineyards located on the Wairau Plain at Rapaura (Squire Estate) and Brancott Valley (Brancott Estate). With continued land use conversion to vineyard in the Lower Awatere River Valley, increased planting density and questions over the validity of the current irrigation guidelines, there was a need to extend this experimental work to other areas of the district.

Comments

7. To demonstrate the seasonal pattern of irrigation water for grape plants in the Awatere River Valley, a trial was established in 2006 by Plant and Food scientists along with a full climate station to confirm the relative potential evapotranspiration rates between the two major growing areas.
8. This trial, which concluded in 2008, represents the final field experiment in the current 15 year investigation programme. The next step is to apply the results of this research in a series of decision support tools to assist water users to improve vineyard irrigation operations.
9. To date the application of the lessons learnt through these field trials to vineyard practice has been slow. The Council plans to focus on technical transfer workshops in the near future to address this issue, but it is also symptomatic of the free nature of freshwater and the lack of incentives to maximise water use efficiency.

Key Findings

10. While Blenheim receives more rain and is sunnier, the Lower Awatere River Valley is windier. The net result is that potential evapotranspiration rates are similar.

11. The crop factor, which represents the rate at which grape plants transpire as a proportion of the natural potential evapotranspiration rate; peaked at 0.45, similar to that of vines grown on the Wairau Plain.
12. The average irrigation water requirement at the peak of summer is around 2 mm/day which is of the same order as the current Wairau/Awatere Resource Management Plan guideline.
13. Differences in irrigation water requirements between the two floodplains reflect variations in soil properties and climate.
14. A separate guideline value for grape plant irrigation is not warranted for the Lower Awatere River Valley based on this research, and assuming accepted levels of water availability explicit in the Wairau/Awatere Resource Management Plan.

Summary

15. There is little difference in the evaporation rates of the two locations, thus similar sized vines at Seaview are expected to require the same amount of summer irrigation water as those growing near Blenheim, all other factors being equal.

Future Work

16. The results of this work, along with previous research, will be summarised in a fact-sheet made available to grape growers. In addition, the SPASMO model, calibrated using the Seaview results, is being used to assess alternative methods for allocating water based on the differences in climate and soil water holding ability. This is part of the review of the freshwater components of the Wairau/Awatere Resource Management Plan and the Regional Policy Statement.

17. **Dr Steve Green, a soil physicist based at the Plant and Food Research establishment at Massey University Campus in Palmerston North, will present the key findings of the trial and be available to answer questions.**

RECOMMENDED

That the report “Irrigation trials on grapevines in the Lower Awatere Valley - Marlborough” be accepted.

4. Wairau Plain Geological Review (G045-01)

(Report prepared by Peter Davidson)

Purpose

1. The aim of the report entitled “Geological Model of Wairau Plain, Marlborough” (attached for members’ information only) is to review and update understanding of the Wairau Plain sedimentary geology.

Background

2. Virtually all water used on the Wairau Plain comes from underground. These aquifers are hosted by an estimated 300 metre thick sequence of gravels. Groundwater is arguably the most valuable natural resource for the Blenheim hinterland. Its sustainable management relies on a sound understanding of the local hydrologic cycle and geology. The first mapping of the sedimentary sequence was completed in 1981 by the then Geological Survey of the DSIR. Since that time several thousand new wells have been drilled. The information associated with these recent wells provides an opportunity to review the earlier stratigraphic descriptions. Unfortunately while many more wells now exist than in the early 1980s, most are of a similar depth and do not improve understanding of deeper rock types or their distribution. For instance, 99% of current wells only penetrate the top 5% of the gravel sequence underlying the plain.

Comments

3. In 2007 the Marlborough District Council commissioned GNS Science to reassess the lithologic classification of the Wairau Plain gravels using a newly developed computer package. The software called EARTHVISION can automatically correlate thousands of well records at one time and build three dimensional images from any angle. This allows scientists to visualise the gravel formations from above or below and draw cross-sections that used to take months to otherwise complete.

Key Findings

4. The 2009 3D model of the sedimentary sequence corresponds well with the existing regional classification for formations at a regional scale, and confirms its accuracy.
5. The confining layer near the Cloudy Bay coast which creates an impermeable ceiling to the Wairau Aquifer and is responsible for generating artesian pressures at the surface, contains gravel tubes. These allow groundwater flow and may have implications for the management of seawater intrusion.
6. Several previously unidentified pre-historic channels of the Wairau River are identified which are likely to provide more permeable, preferred pathways for groundwater flow. One occurs west of Renwick while the other appears to truncate the Fairhall or Doctors Creek alluvial fans.
7. Several deeper wells appear to intercept an unidentified, earlier marine incursion corresponding with the Kaihinu interglacial period of approximately 100,000 years before present. This may explain poorer groundwater quality in the Riverlands area.
8. Subsurface gravels in the Rarangi area are a mix of marine shells and stones deposited by the Wairau River. This confirms the river flowed through this estuary area during the last 14,000 years.
9. The explanation for the missing strata that exist for the sister aquifer sequence beneath Christchurch, but not locally; may relate to tectonic changes. These formations may occur offshore today and not be intercepted by water wells.

10. The Wairau Fault does not appear to have affected sediments. This is important given the increasingly common link between arsenic in groundwater and fault fluids.
11. The 3D model represents a unique tool for reinterpreting geological structures and patterns at a regional scale. Its interactive nature makes it ideal for refining our understanding of physical systems and conceptualising their dynamics.

Summary

12. A review of the 1981 stratigraphic classification of the Wairau Plain sedimentary sequence based on recent information confirmed its validity.
13. The project emphasised the importance of keeping good records. The project relied on the accuracy of several thousand well records stored in a community database and maintained over many decades by the Marlborough District Council for the benefit of all.

Future Work

14. Staff plan to investigate a joint student project with Canterbury University to investigate the prospects of locating deeper groundwater beneath the Wairau Plain and the existence of the missing confining layers using seismic surveys.
15. It is likely that the 3D model will be applied to future regional scale groundwater issues and to improve numerical flow models.
16. **Paul White, a geophysicist based at the GNS Science Wairakei Research Centre near Taupo, will present images of the 3D model and be available to answer questions.**

RECOMMENDED

That the report “Geological Model of Wairau Plain, Marlborough” be accepted.

5. Beach Surveys Marlborough Sounds (E225-02-B02)

(Report prepared by Neil Morris)

Purpose

1. The purpose of this report is to update Councillors about the long term programme of measuring beach profiles at various locations in the Sounds.

Background

2. Under the Local Government Act 2002 (the Act) Council has the authority to give effect to the decisions it makes under the Act, subject to sufficient consideration of all options.
3. It is considered that continuation of the monitoring programme has been clearly flagged as part of the Annual Plan process and should not require adherence to the formal decision making process contemplated under the Act.
4. It is not seen that a decision to continue the monitoring programme is at variance in any way to activities identified in the Long Term Council Community Plan.
5. The Act clearly leaves it for the Council to exercise a discretion about compliance with the decision making process. In making any judgement there are various aspects to be assessed, one of which is the principles in section 14 of the Act. One such principle is the need for Council to undertake commercial transactions in accordance with sound business practices.
6. That is the approach officers have taken in considering that the Beach Monitoring Programme should continue.

Report

Introduction

7. The Tory Channel / Queen Charlotte Sound Beach Survey Programme (BSP) is an outcome of legal proceedings in respect of fast ferry operations in 1995, the programme commencing in 1997. The work consists of taking cross-sectional levels in April and November of each year. The individual results are furnished as and when and a summary report has been provided triennially.
8. On the basis of complaints arising from the operation of the catamaran fast ferries and effects being recorded in the Grove Arm a supplementary set of cross-sections were commenced in 2000. This set is subsequent to the curtailing of high speed operations and the objective was to see if there was any consequential change of beach form indicative of recovery.

2009 Triennial Report (BSP)

9. Dr Kevin Parnell has now provided his summary of the last three years' work, and notes that with limited exception there has not been significant trends at the sites. His summary is **attached** below and his full report with the accompanying photographs is posted on Council's website.
10. The most significant result is for Bobs Bay where a consistent retreat of about 400 millimetres per year has been occurring since records began.
11. It should be noted that the information provided is not necessarily able to be extrapolated for the coastline local to the section but information "in the round" is considered able to be interpreted in general way.
12. The current triennial report being the basis of this item is posted in its entirety on Council's webpage under –

<http://www.marlborough.govt.nz/enviromonitoring/marine.cfm> **Parnell Triennial Report 2009**

The Report is about 100 pages long (4.3 Mb), has colour graphs and a comprehensive set of comparative photographs in an appendix to the report of some 40 pages (4.7 Mb), and it is best viewed in a digital format (the photos being of more email quality).

ABSTRACT from Dr Parnell's report

5. Summary of beach changes and the effects of vessel wakes

This summary is divided into three sections, comprising those sites that are conceivably influenced by vessels travelling in Tory Channel and Inner Queen Charlotte Sound (on the ferry sailing route), those sites in the outer Queen Charlotte Sound, and the Picton foreshore site, which is possibly influenced by vessels moving within the port area.

a) Picton foreshore

There is no indication that this site is affected by vessel operation, with the beach being relatively stable despite being highly modified. However, I do not have data on the timing and extent of any re-nourishment programmes.

b) Sites in outer Queen Charlotte Sound

There are five profiles located at sites in the outer Queen Charlotte Sound: Double Bay, Long Island, Clark Point, Patten's Passage and Blumine Island. The sites in outer Queen Charlotte Sound are not influenced by ferry traffic, although some are on the sailing line of larger vessels using Shakespeare Bay. All five sites have remained generally stable over the survey period since April 1997. Long Island has demonstrated a trend of slow erosion since surveys began. Clark Point has been very stable. The other three sites may be showing signs of an erosion trend since about 2003/4. The reason for this is not known.

c) Sites in Tory Channel and inner Queen Charlotte Sound

Many of the sites on the ferry route have exhibited change. However, trends or seasonality consistency between sites is not generally apparent. It is possible to make tentative links between the changing beach shape and vessel operational regimes at individual sites. Sites seem to be primarily influenced by local factors, particularly with respect to sediment supply.

Two sites have demonstrated consistent erosion. Blackmore's at Waikawa has been stripped to bedrock, and therefore no further erosion is likely. Bob's Bay is located on the ferry route, but at a position where ferries are likely to be operating relatively slowly as they arrive in, or leave, Picton. There has been a consistent erosion trend across the whole profile. The particular circumstances that lead to erosion at this site are not understood, although the high number of boats of all types passing this point may be a factor.

Four profiles exhibit no significant change or trend. These are Te Awaiti, Te Weka Bay and Tipi Bay in Tory Channel, and Dieffenbach West on the inner Queen Charlotte Sound.

The Curious Monkey site showed a change from minor accretion to minor erosion coinciding with fast ferry operation ceasing, although overall changes are small. Ngaionui Point, a site very close to the vessel travel line, particularly on the Wellington to Picton journey, shows a change from accretion to erosion in 2002, perhaps indicating a slow return to pre fast ferry morphology.

Profile 2, The Snout at Picton Point, shows accretion at the top of the profile and significant erosion at the bottom, and therefore a steepening of the beach profile. The deep water channel is clearly cutting into the shoreline at this point. The reason may be related to vessel traffic, or may be entirely natural. Ngaionui Bay and Slip Beach show a trend of beach building, although in both cases, the rate of accumulation has slowed or perhaps ceased since about 2003. In the case of Ngaionui Bay, issues of

sediment supply and human interventions complicate the interpretation. Slip Beach demonstrates the most variability of any of the profiles. And there now appears to be a distinct seasonal pattern developing. McMillan's Bay and McMillan's Side, were relatively stable with a small amount of accretion until an event in 1999/2000 when a large amount of sediment accumulated on both profiles. Significant rates of accretion continued until the beginning of 2001, after which time the rate has reduced on the McMillan's Bay profile and erosion has been evident on the McMillan's Side profile. It is probable that the patterns relate to a mass movement event towards Arrowsmith Point, and significant sediment transport capability due primarily to fast ferry operation, although I have no direct evidence for this.

Moioio Island is an unusual case, being a beach adjacent to a major landslide, and being towards the back of the island, not directly facing the vessel track. Seasonality was evident when the fast ferries were operating seasonally. Both profiles show that the beach is extending into the deep water channel over time (a process that takes a lot of sediment), and generally accreting. Both profiles reached their maximum accreted extent in 2006, and have cut back a little since that time. These profiles are almost certainly influenced by changes in ferry operations, being almost completely sheltered from natural wind generated waves. However, the sediment supply from the landslide (which may be affected by vessel wakes) is likely to dominate the beach behaviour.

At the time of the summary report in 2002 it was concluded that with the exception of Bob's Bay near Picton, the beaches on the ferry route were accreting (or are stable) as opposed to eroding, although it was equally clear that local circumstances (particularly sediment supply) play a very significant role. It is now becoming clear that on some profiles a change from accretion to relative stability (McMillan's Bay, Slip Beach, Ngaionui Bay), or accretion to erosion (Ngaionui Point, McMillan's Side, Curious Monkey) occurred at about, or soon after, the time fast ferry operation was restricted to 18 knots in December 2000. Although a definitive conclusion may never be possible, the results support the understanding that the fast ferry wakes resulted in rapid sediment build-up at the top of the beach on most beaches along the ferry route.

However, it is now becoming clear that under the current vessel operational regimes, either stability (with the newly inherited morphology remaining) or a return to pre fast ferry morphology is occurring.

Dr Parnell's Recommendations

13. Dr Parnell makes the following recommendations -

1. Reducing the frequency of survey of the profiles in outer Queen Charlotte Sound,
The disadvantage of reducing the frequency is that if profile markers are lost, they will be harder to reinstate in the future.
2. Abandoning the Blackmore's site at Waikawa.
3. Reconsidering the purpose and value of the Picton Foreshore site.
3. Establish a second profile towards the other end of the beach at Bob's Bay, should the continued erosion be of particular concern.
4. Establish quality vertical control for profile benchmarks.

The survey lines have never had very good vertical control. The zero datum level used has been established independently for each profile, sometimes from water level measurements and assumed tidal curves, and sometimes for consistency with data sets collected by other groups (such as Kirk and Single). It would be very useful if the profiles were able to be tied together. RTK-GPS technology is now available to enable this to be done, although the topography of the area will make the task difficult. Undertaking such a survey would have the additional benefit of enabling survey lines to be accurately reconstructed should permanent marks be lost.

Grove Arm Programme

Introduction

14. In the latter part of the 1990s, large fast catamaran services commenced between Picton and Wellington with the “Topcat” then the matching “Lynx”. These introduced effects initially little understood in terms of low energy wave environments previously prevailing in both “near” field and “far” field contexts. Near field effects were plainly obvious through a rapid change to inshore beach forms and composition. These effects were captured in the work of Parnell reported above.
15. Complaints were received about wash effects well up the Grove Arm that were counter-intuitive to the understanding of the time. Preliminary visual observations did not reveal any mechanisms that might support the general complaint but two locations indicated there was sediment loss during the unrestricted operational period of the two catamarans.
16. The high speed operations were curtailed with the introduction of the Navigation 2000 Bylaw. At the time, there was no long term information about “Sounds” beach behaviour in a low energy environment. It was decided to institute a series of cross-sections to determine what might be the seasonal behaviour and whether there were any long term trends indicating some response to the cessation of high speed movements.

Cross-section Data

17. Measurements are made bi-annually commencing August 2000 and coinciding with the Tory Channel Programme - a location plan is appended. The programme has been curtailed for the reason that over an eight year period there appears to have been little change at five sections other than that which is most probably minor seasonal fluctuation.
18. It is intended to keep the three eastern most sections going to see what, if any influence, might be attributable to the operation of the *Kaitaki* at the recently consented 19.5 knot speed. This locality is the most exposed of the Grove Arm set to wave action propagating from inbound vessels.
19. In Figure 1 below the results for the Grove Wharf vicinity show the first and last measurements taken and a fitted line for the intervening measurements. The change at the beach head resulted from rock protection work being carried out to protect the road in this vicinity. The slow erosion that was taking place was most probably normal wave action on the high tide, there being no evidence of significant sediment transport elsewhere in the profile.
20. Figure 2 shows the easternmost profile and the profile that showed the most change. No other section showed anywhere near the movement of sediment shown here. At the time of the first survey there was what is now clearly an accumulation of transportable sediments at the bottom end of the profile. Anecdotally, there was an indication that sediments were lost from the beach during fast vessel operations. The initial profile measured is, arguably, sediments derived from that process albeit the accepted view is that the wave action derived from fast vessels is of an aggrading nature; which view does not appear to be strongly substantiated in various sites in the Sounds.

The line “RL” was the initial profile.

The full Grove Arm Programme report can also be viewed on Council’s website –

<http://www.marlborough.govt.nz/enviromonitoring/marine.cfm> Discontinued Cross Sections - Grove Arm

Figure 1 - Cross Section at Bobs Bay

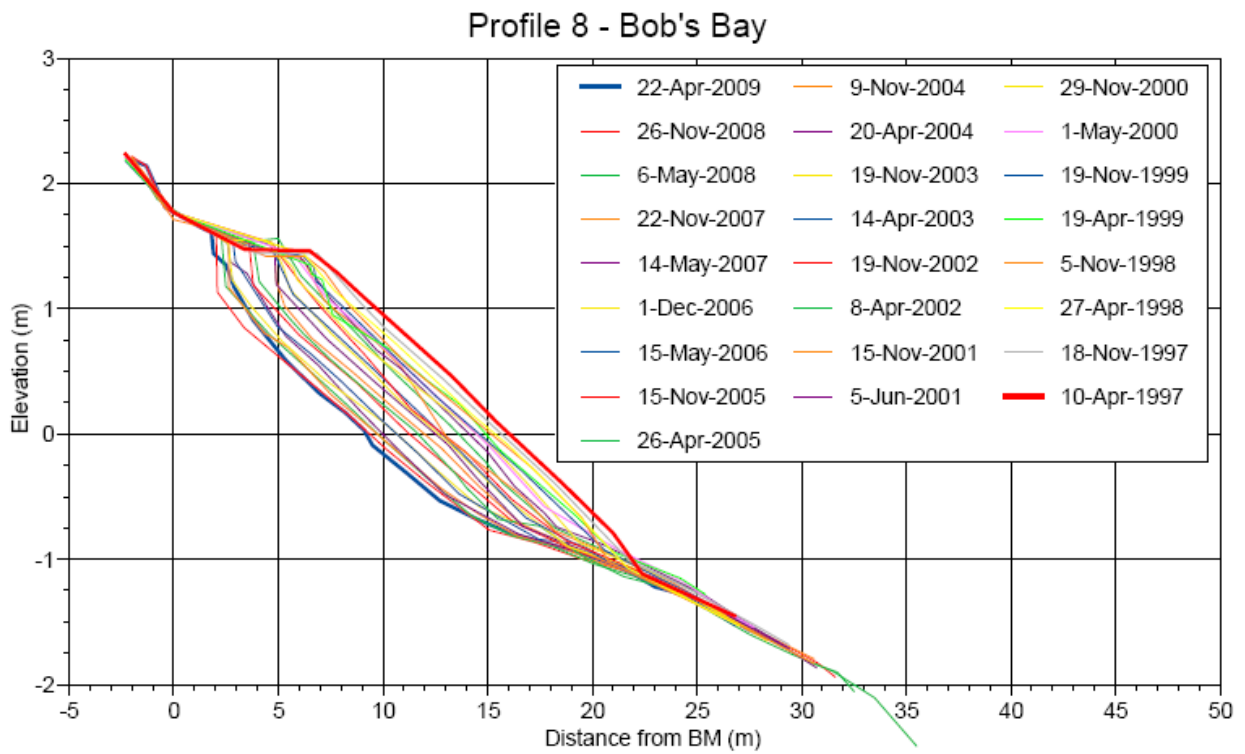


Figure 2 - Cross-section results Grove Wharf

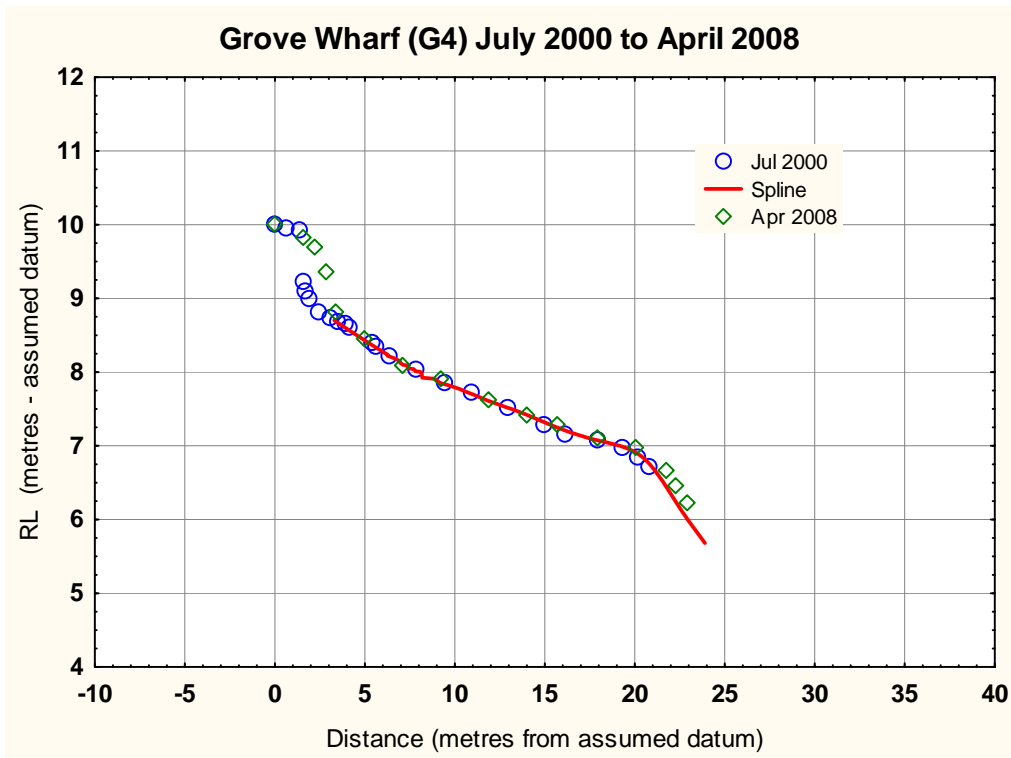


Figure 3 - Cross-section results Long Beach (east end)

The original cross-section is “RL”

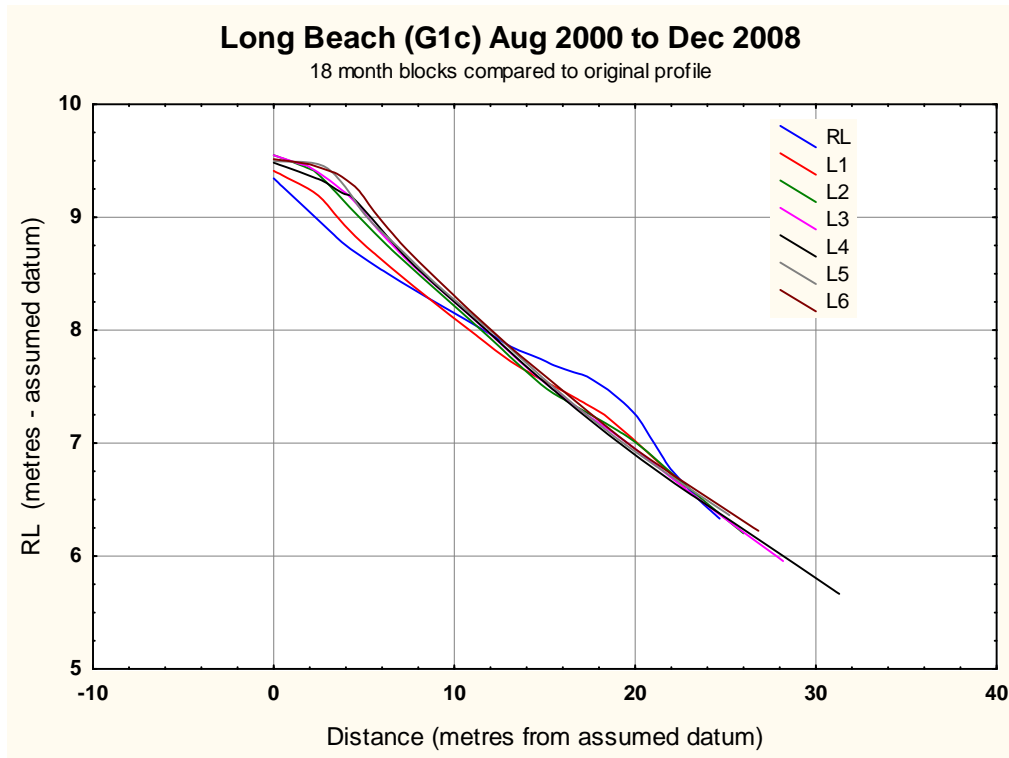


Figure 4 - Location Map Beach Survey Programme

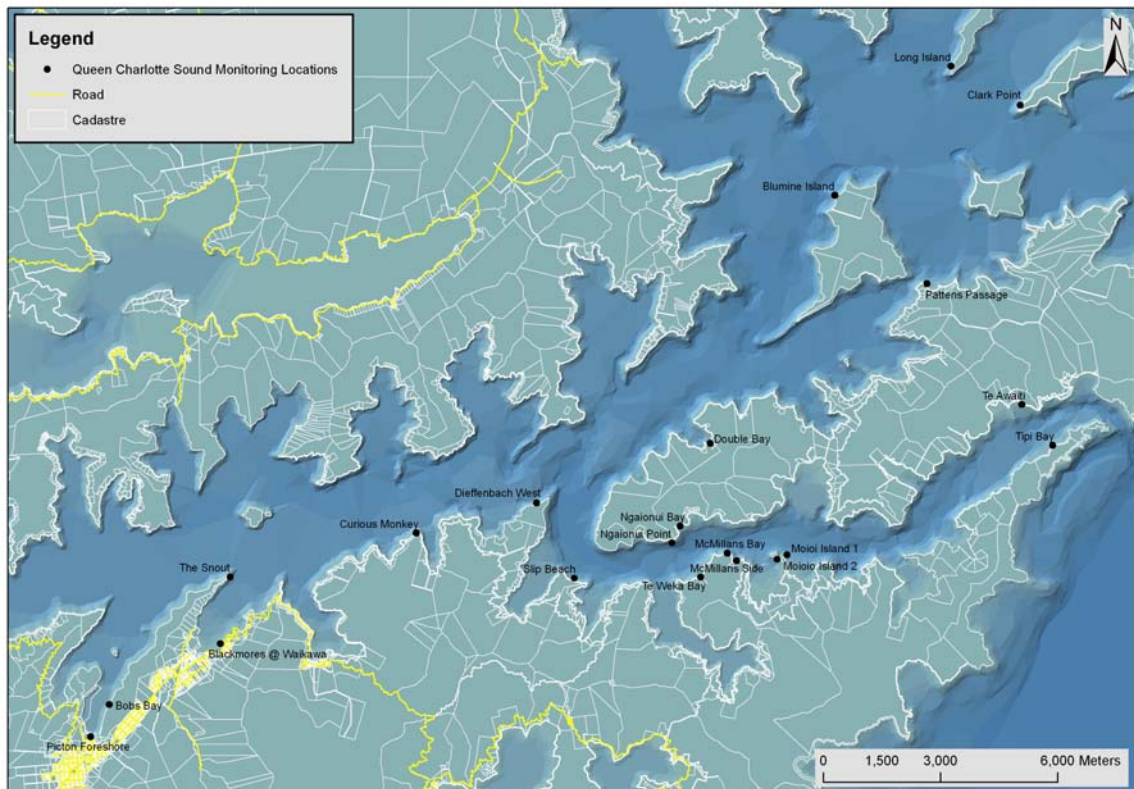
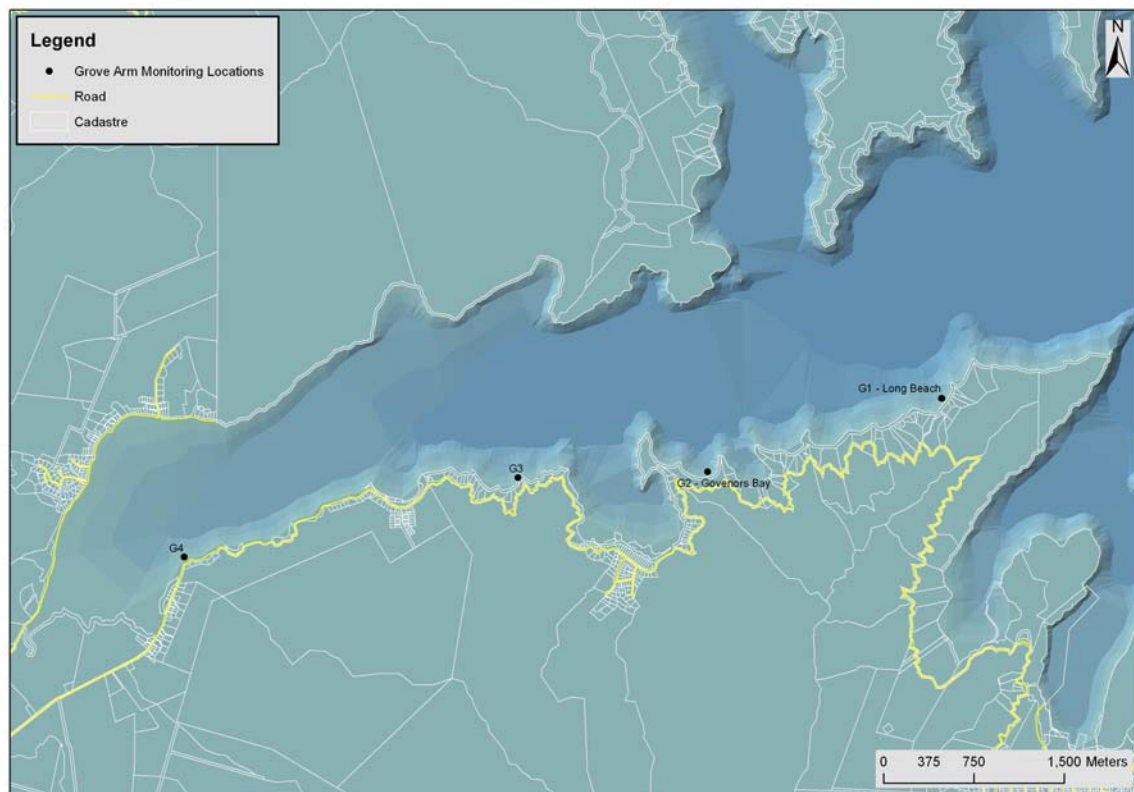


Figure 5 - Location Map Grove Arm Survey



Summary

21. The recent consent for the Kaitaki to operate at 19.5 knots is taken as a fundamental reason to continue with the programme overseen by Dr Parnell and to retain the Long Beach site overseen by the writer. The indicative trend signalled by Dr Parnell needs to continue to be observed to endeavour to identify natural process from induced process, continued monitoring is the only way to provide any information in that regard. Further consideration of the sites monitored will be made to keep the programme focussed but mindful of the need to contain costs.
22. In respect of the Long Beach location this is seen to be an indicator site for any effects transmitted from the in-bound Kaitaki given its permitted operating speed. The dataset now held will be a good base for any considerations in that regard.
23. The process at Bobs Bay is physically evident and progressive but to lay the source at the feet of large vessels would be to ignore the probable contributions of frequent smaller vessel traffic. The present facility at the beach has to be considered to be at long term risk. The value of adding a cross-section has to be weighed against the apparent inevitable loss of the amenity. The relevant section of Council has been made aware, and this is an aspect they will need to plan for.

RECOMMENDED

1. **That the report of Dr Parnell be received.**
2. **That the report in respect of the Grove Arm sites be received.**
3. **That the action of ceasing the inner Grove Arm monitoring be ratified.**

6. Marlborough Regional Animal Health Committee Representation (C135-R01)

(Report prepared by Alan Johnson)

Purpose

1. The purpose of this report is to recommend an appointment of an elected member to the Regional Animal Health Committee.

Background

2. The Animal Health Board is responsible as the Management Agency for the National Bovine Tb Pest Management Strategy. The Marlborough District Council's role with the Strategy is now predominantly as a stakeholder and funding provider.
3. At a regional level the Animal Health Board has a number of Regional Animal Health Committees which provide an effective communication link to the local farming community and stakeholders.
4. The local committee, the Marlborough Regional Animal Health Committee, is made up of core members being local stakeholders, including Council, along with industry representatives, which are consistent with the Animal Health Board's member organisations. Council Rural Representative, Mr Chris Bowron, is the current chairman of the committee.
5. The Council is currently not represented on the Marlborough Regional Animal Health Committee and is formally required to appoint an elected core member to that committee on an annual basis.
6. It is recommended that Councillor Peter Jerram is appointed as the Council representative to the Marlborough Regional Animal Health Committee for 2009/10.

RECOMMENDED

1. **That the information be received.**
2. **That Councillor Peter Jerram is appointed as the Council representative to the Marlborough Regional Animal Health Committee for 2009/10.**

7. 2008/2009 Budget Carryovers (F045-07)

(Report prepared by Christine Leslie)

1. The purpose of this report is to request that the **attached** carryovers for the Regulatory Department be incorporated into the 2009/2010 budget.
2. A number of works scheduled for completion in 2008/2009 did not proceed (or were not completed) for a variety of reasons.
3. Details of these works are recorded on the schedule **attached**.
4. There is no rating impact arising from the “Carryover” action.

RECOMMENDED

That the 2009/2010 budget be amended to incorporate the Regulatory Department 2008/2009 carryovers.

Request for 2008-2009 Budget Regulatory Carryovers

Harbours

Marico - Risk Review	5,000
Safe Boating Advertising and Signage	5,000
Navigation Aid repairs	5,800
Navigation Aid Replacement not completed 2008-2009	130,000
	<u>145,800</u>

Compliance

Hydrotel web server available on internet for disbursement of hydrological information	30,000
Good practice guidelines for earthworks to assist with education	15,000
Env Comm 23/11/ 00. Proposed action of illegal moorings	64,000
	<u>109,000</u>

Building

Building Accreditation Reg 17 & STG II of Building Consent Authority Accreditation	156,000
	<u>156,000</u>

Biosecurity

Bovine Tb work contributions deferred in 2007-08	54,253
Revenue from Biosecurity NZ for field trials with Flupropanate	86,700
	<u>140,953</u>

Epoli - Operations

Biodiversity fund revenue for SNA projects	48,000
Marine report preparation and Wetland Inventory	60,000
RPS Review Erosion risk	15,000
	<u>123,000</u>

Epoli - Policy

Regional Policy Statement Review - Contracts Aqualinc Ltd & PDP	52,500
Worker Accommodation Contracts	11,600
Plan Change - wind machines	105,000
Legal fees - Appeals OysterBay, Variation 42 & Coastal Occupancy	120,000
	<u>289,100</u>

Dogs

To meet contracted commitments to 2009/2010	28,000
	<u>28,000</u>

991,853

8. Road Naming - Riverlands Subdivision, State Highway 1 (U081147)

(Report prepared by Lynn Mullens)

Proposal

1. A subdivision was granted to David Wagner Holdings Limited under consent U081147. Included in the subdivision is a road to vest, for which a name is required as per the **attached** map. The applicant seeks Council approval for the name *Roadhouse Drive*. No other road names have been submitted for consideration.

Background

2. One of the lots created by the subdivision is to be developed with a truck stop, fuel facility, diner and bar, workers' accommodation and associated facilities. The property on which the development will take place is owned by a company called Riverlands Roadhouse Limited.
3. The applicant considers that the name *Roadhouse Drive* provides a physical connection to the proposed development on the site and may help to reduce advertising signage on the State Highway. The applicant is of the opinion that should the activity on the site cease in future, the road name will provide a historical record of former activities undertaken on the site.

Consultation

4. The proposed road name was widely circulated to iwi, historical groups and Marlborough Roads. No comments were received in response to notification of the proposal.

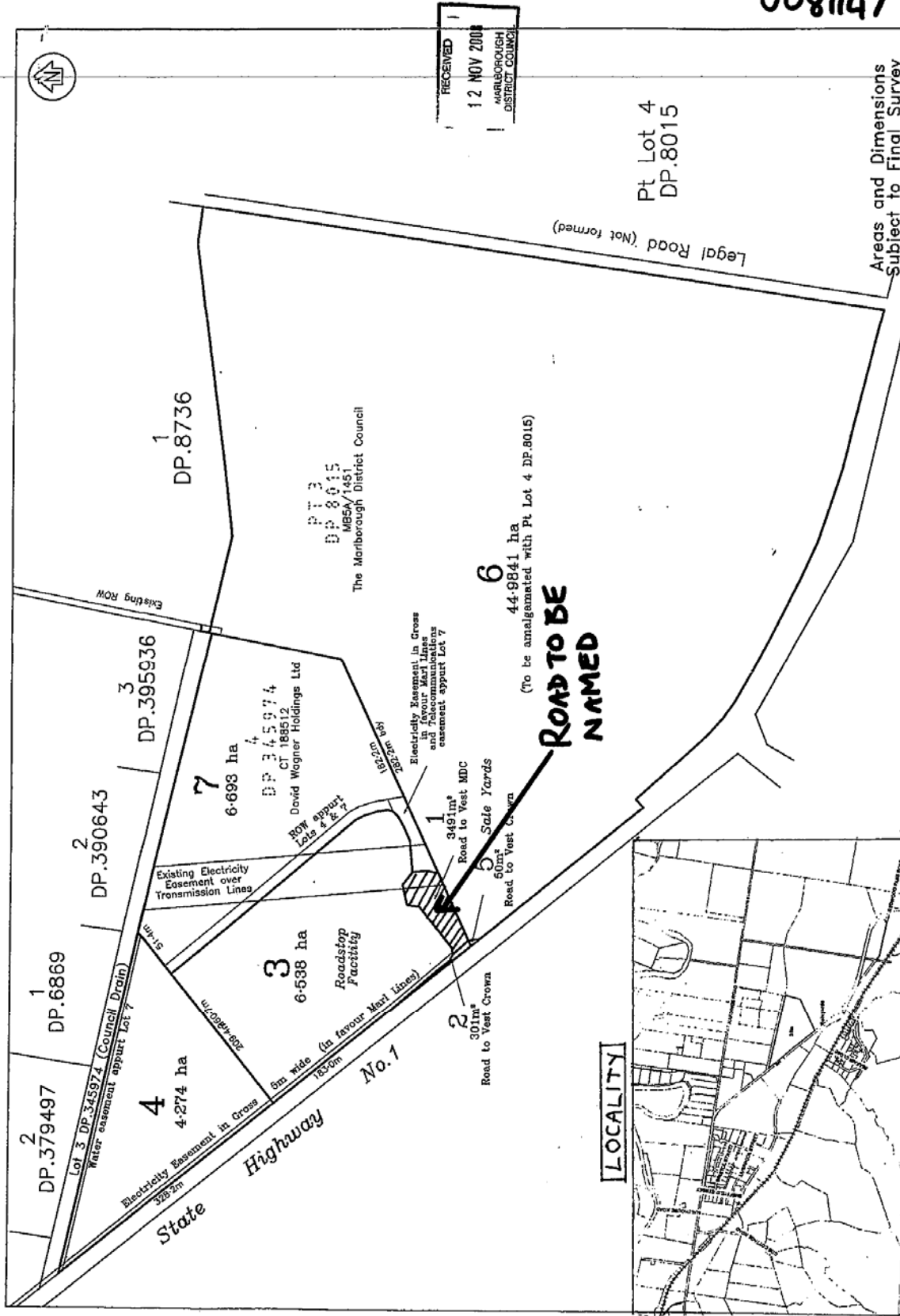
Policy

5. Part of the road naming policy requires that there be no duplication of names in the Marlborough District. There are no other similar road names in Marlborough that would cause confusion.
6. The policy also requires that the appropriate road type terms such as 'road', 'street', 'lane' etc be used when a new road is named. The definition of "Drive" in the policy is as follows:
 - *Drive: A main connecting route in a suburb. A road with scenic attraction - a scenic road.*
7. The proposed road does not meet this requirement. The following road types are considered more appropriate in this instance:
 - *Close: A no exit road, short in length serving a small number of properties, similar to a Place.*
 - *Place: A no exit road, longer than a Close with a tuning circle at its blind end.*
8. The proposed road is approximately 110 metres long with a turning circle at the blind end and will serve four properties. With these characteristics, either "Close" or "Place" is considered appropriate.
9. The policy requires further that at least two road names be submitted for consideration. The application does not meet this requirement but given the wide consultation undertaken and the fact that no comments were received, this non-compliance is not seen as an impediment to consideration of this application.

RECOMMENDED

That either "Roadhouse Close" or "Roadhouse Place" be approved as the new road name for subdivision U081147.

U081147



ENSURY
Survey & Engineering Solutions Ltd
181 High Street, Elm
Row, 11th, Richmond, Surrey, Surrey, Surrey
Ph: (03) 575-5500
Fax: (03) 575-5500

Job Ref: 934
Proposed Sbdn Lot 4 DP.345974 & Pt 3 DP.8015
David Wagner Holdings Ltd - MDC

Scale: 1:4000 at A3 Plan #1
Date: 5 Nov 2007

Areas and Dimensions
Subject to Final Survey

9. Underwood Farm Limited (U081139)

(Report prepared by Ian Sutherland)

Purpose

1. The purpose of this report is to consider naming a new cul-de-sac to be created in Opihi Bay, Port Underwood, as part of a new subdivision. A copy of the subdivision scheme plan is **appended**.
2. Underwood Farm Limited is creating 25 new Sounds residential lots of which all will gain access through this new cul-de-sac shown as Lot 27 to vest as road, and thus it requires a road name.

Proposal

3. The applicant has presented two preferred options for naming the road. These are:
 - Daken Drive
 - Opihi Bay Road
4. Daken Drive is the applicant's preferred option, and is derived from the original European family to reside in the Bay and maintain a connection with the property via a grave site located just to the west of the proposed new road. Information has been provided to Council from a Great Great Granddaughter of the original family in relation to the history of the Daken family to the property. A copy this information is **appended**. (Please note that the protection measures referred to at the end of the letter are not relevant to this road naming application, but will be considered as part of the subdivision application).
5. The second option of Opihi Bay Road is directly related to the name of the bay fronting the proposed subdivision.

Evaluation against Road Naming Policy

6. The following are relevant matters from the policy to consider in this instance:
7. *Duplication*: The closest sounding name to Daken is Dawkins Place in Blenheim. It is unlikely that these two names could be confused with each other.
8. There is no other existing road name similar to Opihi Bay Road that could cause confusion either.
9. *Length of Names*: The policy requires names to be short (as a guide - 15 characters or less), single words, and proportional to the length of the road. Daken Drive meets the policy perfectly. Opihi Bay Road includes several words which conflicts with the policy, however these words are relatively short and may not cause a problem fitting on maps or road signs.
10. *Road Type*: The policy gives a guide to the road type best suited to the physical circumstances. There are several types in the policy that could be used, these being:
 - (a) *Drive* - A main connecting route in a suburb, or a road with a scenic attraction.
 - (b) *Place* - A no exit road with a turning circle at its blind end.
 - (c) *Close* - A no exit road, short in length, serving a small number of properties.
 - (d) *Road* - Route or way between places.
 - (e) *Street* - Any road.

11. The type "Drive" is normally for a main connecting route, however it can also be linked to a scenic attraction. Proposed Lot 28 contains an impressive wetland that is to be vested as reserve, and a public walkway constructed through it to the beach. This wetland and beach access could be considered a scenic attraction.
12. The policy indicates that any of the above would be acceptable types, including the preferred "Drive" option.

Consultation

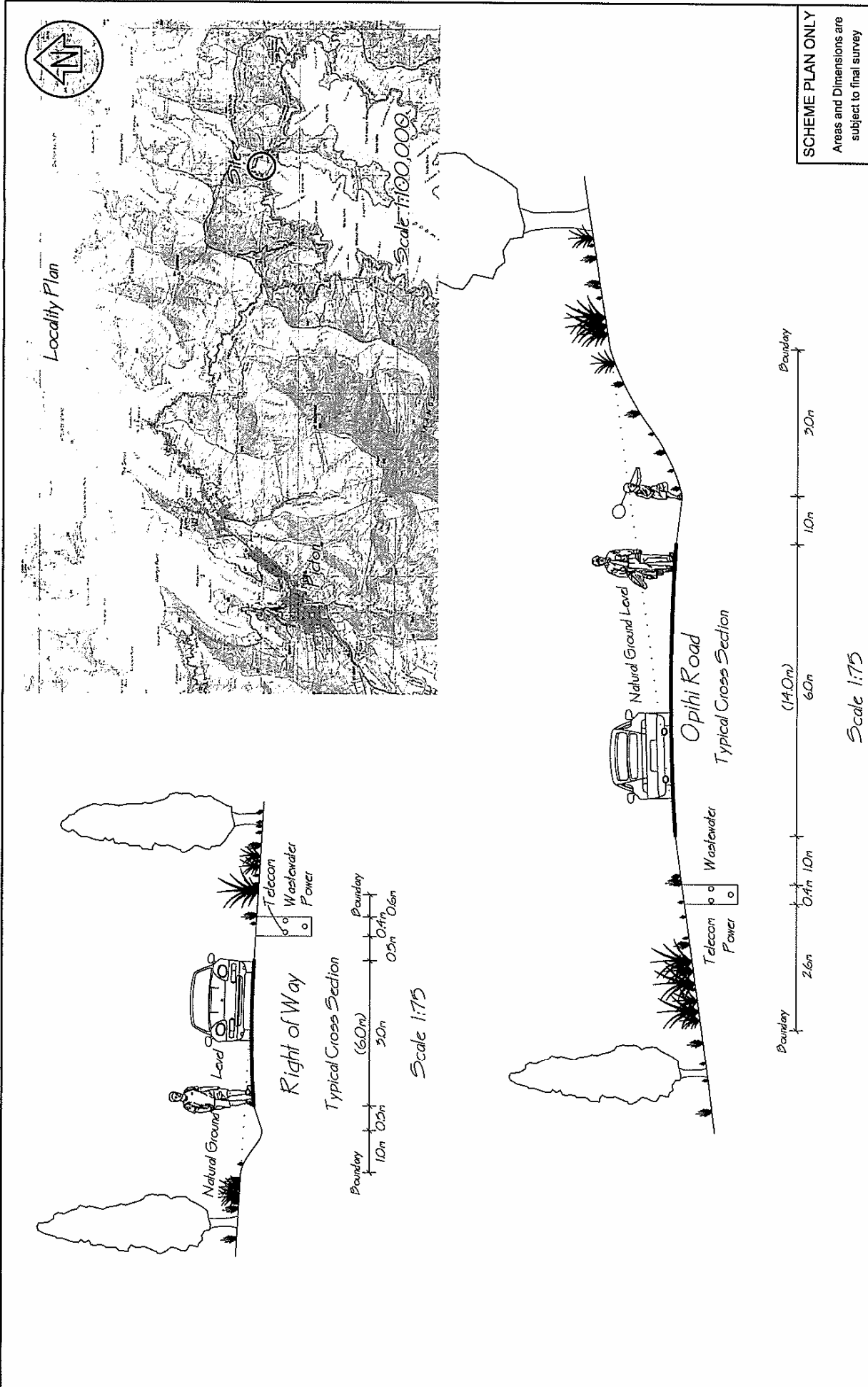
13. The proposed names have been circulated by Council to all iwi, the Maori Advisory Committee, Marlborough Historic Society, and Marlborough Historic Places Trust for comment. The only comment received was from John Orchard from the Marlborough Historic Places Trust who fully approved of the two options.
14. The applicant has also consulted with the Daken family who have indicated that they would be delighted if the Daken name was chosen.

Summary

15. No concerns have been identified for either option proposed.

RECOMMENDED

That the proposed new road as shown on proposed subdivision U081139, once vested in Council, be named "Daken Drive".



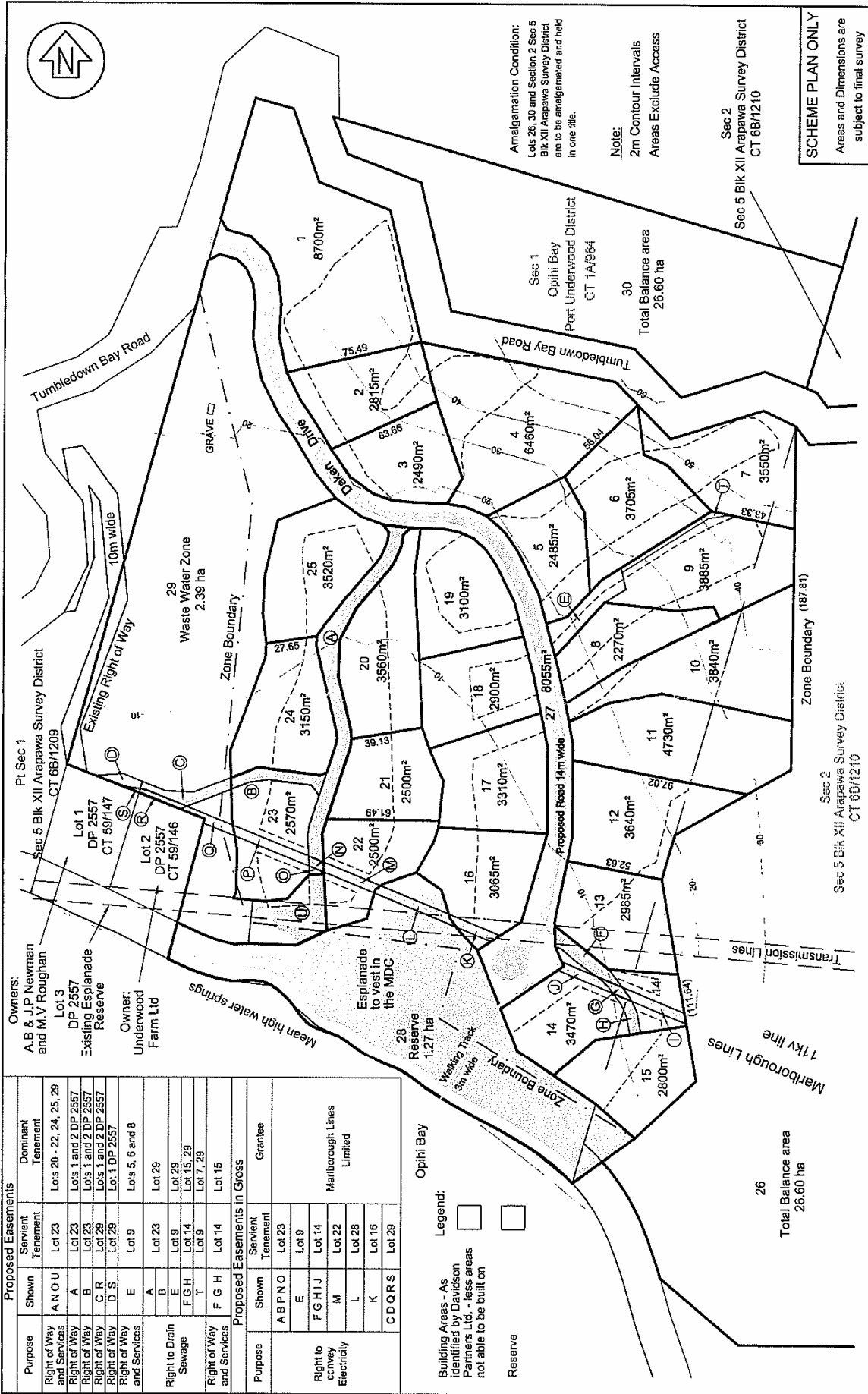
SCHEME PLAN ONLY	
Areas and Dimensions are subject to final survey	
SCALES	JOB NUMBER
As Shown	11702
DATE	SHEET
March 2008	3
LB	CHECK
DC	A

RECEIVED
 3 JUL 2008
 MARLBOROUGH
 DISTRICT COUNCIL

Cross Section of Roads and Locality Plan
 Underwood Farm Opihi Bay Subdivision
 COMPRISED IN : CT 1A/984 and CT 6B/1210
 APPLICANTS : Underwood Farm Limited

Ayson and Partners Ltd
 REGISTERED PROFESSIONAL SURVEYORS
 Consultants in Surveying, Resource Management, Subdivision and Land Development

Davidson Ayson House
 4 Nelson Street, P.O. Box 258
 Blenheim, New Zealand
 PH 03 579 2099, Fax 03 576 7028
 Email: office@aysonpartners.com.nz



SCHEME PLAN ONLY
Areas and Dimensions are subject to final survey

SCALES: 1:2000
JOB NUMBER: 11702

DATE: 2 July 2009
SHEET: 1
LB: []
CW: []
CHECK: []
ISSUE: E

RECEIVED
3 JUL 2009
MARLBOROUGH DISTRICT COUNCIL

LOTS 1 TO 30 BEING PROPOSED SUBDIVISION OF SECTION 1 OPIHI BAY PORT UNDERWOOD DISTRICT & SECTION 5 BLK XII ARAPAWA S. D. OPIHI BAY, PORT UNDERWOOD COMPRISED IN: CT 1A/984 AND 6B/1210 APPLICANTS: UNDERWOOD FARM LIMITED

Davidson Ayson House
4 Nelson Street, P.O. Box 256
Blenheim, New Zealand
PH 03 579 2009, Fax 03 575 7028
Email: office@aysonpartners.co.nz

Ayson and Partners Ltd
REGISTERED PROFESSIONAL SURVEYORS
Consultants in Surveying, Resource Management, Subdivision and Land Development

SCANNED

FILE No.:	U081139
OFFICER:	
DATE RECV'D	24 APR 2009
MARLBOROUGH DISTRICT COUNCIL	

6 Hakahaka Bay
 Port Underwood
 P.O.Box 198
 Picton.
 03 5799179
macfluff2@yahoo.co.nz

Mr. Alan Sutherland,
 Marlborough District Council,
 P.O. Box 443
 Blenheim.

Dear Ian,

The Daken Family are concerned about the Sub Division application for resource consent that is with the Marlborough District Council. The application is for No U081139 Underwood Farm Ltd at Opihi Bay, Port Underwood.

Lot 29 has our Daken Family Graves situated in this zone, it states in the information with the consent that there is only one body in our family cemetery, when in fact there are the following bodies.

Thomas Daken
 Died 8.11. 1888 aged 47 years.

Esther Daken (nee Jackson daughter of James Hayter Jackson, Whaler of Jackson's Bay Tory Channel)
 Died 11.12. 1929 aged 79 years.

Clara Daken
 Died 16.11 1908 aged 22 years daughter of Thomas and Esther Daken.

Arthur Thomas Daken known as Tim Daken
 Died 14.7.1945 aged 75 years.
 Son of Thomas and Esther Daken

Maggie Daken
 Died 20.8. 1988 aged 78 years.
 Wife of Tim Daken.

2 of Tim and Maggie Daken's babies.

Eric Daken
Died in 1919 aged 13 years
Son of Tim and Maggie Daken.

The ashes of the following Daken Family.

Daphne Johnston
(nee Daken)
Died 8.3.1988 aged 78 years.
Daughter of Tim and Maggie Daken.

John Johnston
Died 13.9.1989 aged 86 years.
Husband of Daphne Daken

Zoe Grant
(nee Daken)
Died 2.10. 1996 aged 85 years.
Daughter of Tim and Maggie Daken.

Arthur Cyrus Daken
Died 24.4.1986 aged 87 years.
Son of Tim and Maggie Daken.

James Eyles O.B.E.
Died 12.11. 2004
Grandson of Tim and Maggie Daken.

Memorial to
Clarice Barnett
Died 20.5.1980 aged 79 years
Daughter of Tim and Maggie Daken.

2 of the Graves are situated outside the white picket fence and are marked with 2 white crosses.

A brief history of the Daken Family
Thomas Daken was the eldest son of William Deakin and Maryann Baldick,
William Deakin was a American Whaler that jumped ship in Port

Underwood in 1840 and he married Maryann Baldick, they were married by Rev Samuel Ironside at Kakapo Bay, Port Underwood. William Deakin and Maryann had 2 sons Thomas and Matthew Daken.

The name Deakin changed to Daken as William had a very broad Birmingham accent. When he deserted Maryann and returned to America, she then married Robert Register, when he died she then married Jerome Flood.

Maryann is one of Marlborough's pioneering women.

William Deakin was present at the signing of the Treaty of Waitangi at Horohora Kakoha Island in Port Underwood in 1840

I am Thomas and Esther Daken's Great Great Granddaughter.

In the year 2000 the Daken Family funded to have the graves updated and with the permission of the Perry Family this was carried out by my husband Ross Simonsen, he built the white picket fence and repaired as much of the old original iron fencing that was there and cleaned up between the graves.

The headstones were placed in the cemetery by Mr. Bob Flood in 1984.

Mr. Flood wanted the pioneer family graves of Port Underwood area to be remembered and not lost for ever.

Ross Simonsen and Doris Holdaway both check the graves regularly to spray the weeds, paint the picket fence, repair and maintain the general appearance of the cemetery.

The Daken Family is scattered world wide and when they come home, they come to the graves they are in the area and it is important to them to see their family members being well looked after.

The Daken Family history is mentioned in the following Books.

Jackson's of Te Awaiti By Carol Dawber.

Pages 116 - 137

Memories to good to be forgotten By Bob Flood.

Staveley Chronicles By Merle Jurgens

Pages 30 - 120

Starmount to Trevally By James R Eyles O.B.E

Of one Blood The Story of a N.Z Moriori Family By H. Knight.
Pages 8 and 13

Guards of the Sea By Don Grady.
Pages 79 - 146.

Place names of Port Underwood By James R Eyles O.B.E
Pages 8 - 70

I have enclosed some photos of our Daken Ancestors.

After consulting the Daken Family we would suggest the following measures to protect our family heritage.

(1) We have concerns about the proposed water zone that the cemetery would be situated in. We require prevention measures to avoid infiltration of our ancestors graves of waste and grey water, we also do not want our graves surrounded with waste water or grey water.

(2) We would want access to tend to the graves in the future.
Access via a walkway preferably some type of boardwalk.

(3) Protection from domestic and wild animals with another stock proof fence out side our picket fence and access for family through the stock fence.

(4) When the pine trees are felled we want them felled away from the grave site as they are very close to the graves and we would be very upset if any damage was done to our family cemetery and surrounding area. If any damage occurs we want the contractors to repair the graves and the site back to its original condition.

(5) We want the residents that are going to settle in Opihi Bay to contribute to the upkeep of the Daken Cemetery.

Yours faithfully
Ruth Simonsen





CLARA " KATHIE " VERNON
LINA
JACKSON



ARTHUR THOMAS (TIM) DAKEN



MAGGIE DAKEN

10. Moorings - Double Cove, Queen Charlotte Sound (M180-Q01)

(Report prepared by Alex van Wijngaarden)

Purpose

1. The purpose of this report is to update the Committee on the issue relating to mooring use in Double Cove, Queen Charlotte Sound.

Background

2. The Committee will recall that at the previous meeting, the matter of poisoned wilding pines in eastern arm of Double Cove was brought to its attention.
3. The eastern arm of Double Cove has been used as a safe anchorage for many years as little wind usually reaches inside the Cove. However, during storm events, effects are felt inside the Cove. There are 27 moorings along the western shore, where it is deep to the edge of the bank.
4. Since the western face of the bay is relatively steep, it is likely that poisoned trees will fall towards the lower slope and end up in the water. It is also likely that any vessels on moorings may sustain damage.
5. Within Double Cove there is now the potential that boat owners will be reluctant to use their moorings since there is a likelihood that poisoned trees may fall onto their craft - concerns of this nature have been received at the Harbour office. Although this is may not happen in the immediate future, the risk nonetheless exists.
6. The landowner has been in discussions with the Harbourmaster regarding the removal of the poisoned trees. The principal issue was the fact that in the process of being felled, trees might end up in the 'tide' and that special permission was required.
7. Provided the landowner immediately removed any trees that did fall into the Bay, there is no impediment, from a navigation safety perspective, for this work to be done. The landowner will liaise with the Harbour office as part of the tree removal process.
8. The area will be monitored on an *ad hoc* basis by the harbour patrol, although no regular patrols are undertaken during winter months.

Conclusion

9. Trees within Double Cove have been poisoned and, as a result, pose a potential hazard to moorings located in the area.
10. The landowner has been in discussions with the Harbourmaster with respect to removal of the poisoned trees.
11. Any trees that may fall into the bay during felling operations will be retrieved in order that they do not create a hazard to navigation.
12. The area will be monitored on an *ad hoc* basis by harbour patrols.

RECOMMENDED

That the information be received.

11. Bylaw Review (L225-01)

(Report prepared by Mike Porter)

Purpose

1. The purpose of this report is for Council to consider a review of its bylaws as required under the Local Government Act 2002.

Background

2. Members will be aware that Council, under the Local Government Act 2002 (the Act) must review any of its bylaws made prior to 1 July 2003 with bylaws made after 1 July 2003 to be reviewed five years from the date the bylaw came into force.
3. There is a considerable amount of material which may seem daunting. It should be seen however as a mechanical process in that in 2002 Council conducted a major exercise in reviewing its bylaws. Over 70 bylaws from the various amalgamated entities were condensed into the current Marlborough District Council Bylaw 2002 Chapters 1 to 12 covering such bylaws as public places, facilities, traffic, nuisances, dog control, etc.
4. It is acknowledged that considerable further effort could continue to go into assessing the content as now submitted. The difficulty is that at some point a call must be made to stop that assessment and ensure the bylaw chapters are put out for public consultation. Following that, public consultation submissions would be considered by Council and it will be possible for Council to assess what is seen by the community as adjustments to be considered. It would also be possible during the consultation phase for internal Council submissions to be submitted as part of the process.
5. There are a number of statutory provisions that confer bylaw making powers on Council. These include sections 591A and 684 of the Local Government Act 1974, sections 145, 146 and 147 of the Local Government Act 2002, 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.
6. Council now has the following bylaws:
 - Marlborough District Council Bylaw 2002 (Chapters 1 - 12), made on 1 November 2002;
 - Chapter 1 - Introductory
 - Chapter 2 - Public Places
 - Chapter 3 - Facilities
 - Chapter 4 - Traffic
 - Chapter 5 - Nuisances
 - Chapter 6 - Dog Control
 - Chapter 7 - Keeping of Animals, Poultry and Bees
 - Chapter 8 - Cemeteries
 - Chapter 9 - Coat of Arms
 - Chapter 10 - Water Supply
 - Chapter 11 - Fire Prevention
 - Chapter 12 - Revocation and Saving
 - Navigation Bylaw 2000, made 15 December 2000;
 - Tradewaste Bylaw 2001, made 1 July 2001;
 - Navigation Bylaw 2002, made 1 October 2002; and
 - Liquor Ban Bylaw 2004, made 20 December 2004.

7. This report addresses a review of the Marlborough District Council Bylaw 2002 and all chapters, except Chapter 10 - Water Supply. It also does not extend to the Navigation Bylaws which are going through a separate process. It also does not extend to the Trade Waste or the Liquor Ban Bylaws. The Liquor Ban Bylaw was enacted on 20 December 2004 and therefore the review trigger has not been reached. The Water and Trade Waste Bylaws are still with the Assets & Services Department for assessment. They will need to be referred through very soon as otherwise they expire if a review is not completed by 30 June 2010.
8. It is important the review process commence as soon as possible since there is a timeframe involved under the Act. Should the Bylaws not be reviewed by 30 June 2010 then the bylaws will be deemed to expire on that date.
9. The process to review bylaws is set out in ss158 and 160 of the Act and requires that Council make the determinations in s155 and then assess whether the bylaw is to be continued without amendment, amended or revoked, or revoked and replaced. The Act sets out the procedural requirements for making, amending or revoking bylaws (ss 155 and 156). In each case, the Special Consultative Procedure must be used.
10. At its meeting on 13 December 2007 Council delegated to the Environment Committee the role of reviewing the bylaws, including the hearing of any submissions following the public consultation phase and formulating a recommendation to Council on the final bylaws.
11. 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, final decisions on the making of bylaws must be made at a full Council meeting.
12. This report addresses the review of the Marlborough District Council Bylaw 2002, Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12 but not 10 (water supply).

Process

13. The Act requires Council to review its bylaws in order to determine that they that are still necessary, appropriate and meet the purpose for which they were designed.
14. An analysis of the current existing clauses of the bylaws under review has been undertaken to determine what clauses should be retained and what should be revoked. This report outlines the options for dealing with the various problems for which the bylaws are designed to address.
15. 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.
16. The report asks the question whether Council considers a bylaw is the most appropriate way of addressing the perceived problem, and if the answer is yes, then is the proposed bylaw the most appropriate form of bylaw.
17. The existing 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.
18. The individual Chapters are addressed separately.

MDC Bylaw 2002 - Chapter 1 - Introductory

19. This chapter, made under the Local Government Act 1974 is a general-type bylaw covering interpretations of terms, various delegations, serving of orders and notices, licences, offences, breaches and penalties, and various repeals of old bylaws.
20. The provisions of the general-type bylaws provide a framework within which those bylaws may be administered and enforced within the parameters of the statutory provisions pursuant to which they were made. There are also certain provisions in the Act which supplement that statutory framework. Relevant to this bylaw chapter are sections 151 and 163 of the Act.
21. In undertaking the 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 is 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))).
22. The nature of the perceived problem is, generally speaking, that of ensuring the Marlborough District Council Bylaw 2002 are administered efficiently, effectively, consistently, fairly and in a transparent manner.
23. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
24. Staff identified four options:
 - Option 1: Do nothing - this is not considered to be acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - this is not seen as appropriate since adjustments in other bylaw chapters mean additional and amended definitions and provisions are required..
 - Option 3: Amending the existing bylaw - this is considered to be the best option, given the need to have an introductory bylaw chapter that takes account of changes to the other chapters and allows for new and amended definitions and requirements..
 - Option 4: Revoking the existing bylaw - is again not seen as acceptable as the Introductory Chapter is required for the Marlborough District Council Bylaw 2002 as a whole.
25. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process, that the draft bylaw does not give rise to any implications under the New Zealand bill of Rights Act 1990.
26. 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.
 - (d) the bylaw must be reasonable.
27. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.

28. To summarise the conclusions reached:

- An Introductory Chapter is considered to be the best way of dealing with the problem of ensuring that the Council's bylaws are administered efficiently, effectively, consistently, fairly and in a transparent manner
- The current Introductory Chapter amended to allow for adjustments to the other bylaw chapters is considered to be the most appropriate form of bylaw
- The Introductory Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Introductory Chapter could be said to be inconsistent with that Act
- The Introductory Chapter is authorised by the statutory provisions referred to above
- The Introductory Chapter is not considered to be repugnant to the general laws of New Zealand
- The Introductory Chapter is certain
- The Introductory Chapter is reasonable.

RECOMMENDED

That Council agree the attached Introductory Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way of addressing the perceived problem of ensuring that the Council's bylaws are administered in an efficient, effective, consistent, fair and transparent manner; 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.**

MDC Bylaw 2002 - Chapter 2 - Public Places

29. This chapter is a bylaw about controls on and within public places and specifically the use of motor vehicles, playing of games, camping grounds, prohibitions, wharves, and the control and licensing of traders.
30. Section 145 of the Act provides general bylaw-making powers for Council for the purposes of:
 - (a) *protecting the public from nuisance;*
 - (b) *protecting, promoting, and maintaining public health and safety;*
 - (c) *minimising the potential for offensive behaviour in public places.*
31. Section 146(a)(vi) of the Act provides for specific bylaw-making powers for *trading in public places*.
32. The control of public places should not deal with matters that unnecessarily restrict individual freedoms or are insignificant in effect. Nor should controls apply to matters covered by national legislation. There should be provisions, however, that manage the use of public spaces in such a way as to balance the various different, and sometimes competing, uses for which they may be used. To this end, the bylaw should make provision to enable Council, as the body controlling the public place on behalf of the community, to control such activities, subject to conditions appropriate to each case or class of cases.
33. The review of the existing coverage of the Public Places chapter has not revealed any major issues that would need to be added. It has identified however an adjustment to the provisions:
 - In Section 2, being control and licensing aspects it introduces a mechanism of Council policy underpinned by the bylaw provisions.
 - For street performers. Provision has been made for some controls to be defined by policies as set by Council from time to time. These relate to policies on banners; use of footpath for outdoor dining; hawkers, itinerant traders and mobile shops; street stalls.
 - Dealing with the general issue of 'freedom camping'.
34. In each case the policies as drafted by the Compliance Unit has been supplied with this package. These take account of the issues faced in actual compliance over the years.
35. Freedom Camping is an issue that has generated considerable interest. Chapter 2 addresses this within Clause 205.1 which prohibits use of any vehicle for the purposes of living accommodation where it is situated on any public place. It is acknowledged the broader issue might need to be addressed, but this could be better covered by way of public submission to the review, coupled with a fuller investigation taking into account work taking place at the national level on the freedom camping issue.
36. The Bylaw Chapter also makes it an offence to camp in any public place other than an area designated as a camping ground by the Council, (cl 203.2).
37. The legal advice received is that the above two provisions should be sufficient for Council to be able to prevent anyone from freedom camping in any public place not designated as a camping ground. Obviously the discretion is still there for Council to enforce or not enforce a prohibition, when necessary. In specific areas where freedom camping is creating a problem Council could erect signage to emphasise that camping is prohibited.

38. An issue which may alleviate the situation of freedom camping is an ability to charge infringement fees for freedom camping in areas not allowed. Unfortunately however, infringement fees can only be charged for infringement offences. Under s259 LGA 2002 Infringement Offences and Fees can be prescribed, if the Governor General makes regulation for that purpose. There are no such regulations, but that is an issue being addressed as part of the national review.
39. In undertaking the 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 is 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))).
40. The nature of the perceived problem is, generally speaking, that of ensuring public places are managed to allow a balance between the various different, and sometimes competing, uses for which public places may be used, are the regulation of commercial activities in public places, and the prevention or management of obstructions in public places.
41. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
42. Staff identified four options:
- Option 1: Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is not considered the best option as in reviewing the Public Places Chapter, staff considered there were some changes needed to the wording of the chapter.
 - Option 3: Amending the existing bylaw - is considered the best option.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering Public Places.
43. It is the view of staff that a Public Places bylaw chapter is the most appropriate way to deal with those issues that have some significance and which Council is empowered to legislate for under the Act. Such a bylaw is required to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.
44. The proposed bylaw chapter allows the management of public places in such a way as to balance the various different, and sometimes competing, uses for which public places may be used.
45. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

46. 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.
 - (d) the bylaw must be reasonable.
47. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.
48. To summarise the conclusions reached:
- The Public Places Chapter is considered to be the appropriate way to address problems in public places
 - The current Public Places Chapter, with some amendments, is considered to be the most appropriate form of bylaw
 - The Public Places Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Introductory Chapter could be said to be inconsistent with that Act
 - The Public Places Chapter is authorised by the statutory provisions referred to above
 - The Public Places Chapter is not considered to be repugnant to the general laws of New Zealand
 - The Public Places Chapter is certain
 - The Public Places Chapter is reasonable.

RECOMMENDED

That Council agree the attached Public Places Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address problems in public places; 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.**

MDC Bylaw 2002 - Chapter 3 - Facilities

49. This chapter, made under the Local Government Act 1974 is a bylaw covering rules for the use of public facilities (libraries and swimming pools).
50. Staff consider there is no need to re-enact the bylaws or make new bylaws with the same provisions because the harm the bylaws were originally introduced to deal with can be addressed in other ways.
51. In undertaking the 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 is 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))).
52. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.
53. To summarise the conclusions reached:
- The Facilities Chapter is not considered to be the appropriate way to address problems in Council facilities as the bylaws are redundant in that the governing Act has been repealed, and any problems are covered by other legislation.

RECOMMENDED

That Council agree the existing Facilities Chapter 3 of the Marlborough District Council Bylaw 2002, in terms of section 156 of the Local Government Act 2002, be revoked.

MDC Bylaw 2002 - Chapter 4 - Traffic

54. This chapter, made under the Local Government Act 1974 is a bylaw that covers controls related to vehicles, stands on streets, road restrictions, parking in carparks and on roads.
55. Section 591A of the Local Government Act 1974 contains specific bylaw making powers in relation to parking places and transport stations. Section 684(1)(13) of the Local Government Act 1974 authorises the Council to make bylaws generally concerning roads, cycle tracks, and the construction of anything upon or over a road or cycle track.
56. This review of the existing coverage of the Traffic Chapter has not revealed any major issues that need to be added to the existing bylaw chapter.
57. In undertaking the 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 is 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))).
58. Sections 591A and 684(1)(13) of the Local Government Act 1974 authorise Council to make bylaws for the purpose of imposing any parking, stopping or standing restrictions. This allows Council to restrict or limit the time vehicles may use parking spaces and also prohibit stopping in certain places where capacity is limited or safety is required. One of the main parking issues is the conflict between commuter parking and parking for visitors/shoppers to a particular area. Imposing parking restrictions is seen as the best way to achieve a balance between the competing demands.
59. Bylaws relating to one way streets and prohibitions on u-turns, left or right turns are created for safety and capacity reasons. Special vehicle lanes on roads or traffic lanes or any turning movement to be made only by specified classes or vehicles carrying specified classes of loads or not less than a specified number of occupants allows Council the authority, if they wish to promote or allow a certain class of vehicle priority.
60. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
61. Staff identified four options:
- Option 1: Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is not considered the best option as in reviewing the Traffic Chapter, staff considered that there were some minor changes to the wording of the bylaw required.
 - Option 3: Amending the existing bylaw - is considered the best option the amendments were in the main seen as drafting improvements, clarifying the matter of stock droving and covering use of taxi stands by other than taxi cabs.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering Traffic issues.
62. It is the view of staff that a traffic bylaw is the most appropriate way to deal with those issues that have some significance and which Council is empowered to legislate for under the Act. Such a

bylaw is required to provide for reasonable controls to protect health and safety and to protect the public from nuisance.

63. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process, that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Traffic Chapter is inconsistent with that Act. In this respect, particular regard was given to the clause relating to prohibited times on roads.
64. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.
65. To summarise the conclusions reached:
 - The Traffic Chapter is considered the appropriate way to address problems relating to traffic, parking, and movement of livestock in the District
 - The current Traffic Chapter, with amendment, is considered the most appropriate form of bylaw
 - The Traffic Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Traffic Chapter could be said to be inconsistent with that Act
 - The Traffic Chapter is authorised by the statutory provisions referred to above
 - The Traffic Chapter is not considered repugnant to the general laws of New Zealand
 - The Traffic Chapter is certain
 - The Traffic Chapter is reasonable.

RECOMMENDED

That Council agree the attached Traffic Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems relating to traffic, parking, and movement of livestock in the District; 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.**

MDC Bylaw 2002 - Chapter 5 - Nuisances

66. This chapter is a bylaw that sets controls related to sewerage and refuse, removal of refuse, landfill controls and nuisances in general including those generated by burning.
67. In undertaking the 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 is 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))).
68. The nature of the perceived problem is generally speaking that there is a benefit in setting out nuisances to be addressed for the benefit of public health and safety in a format that is more readily understood than reference to provisions within different statutes.
69. Staff identified four options:
- Option 1 - Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of Section 158 of the Act.
 - Option 2 - Retain any existing bylaw - this is not considered the best option as in reviewing the nuisances chapter, staff considered there were changes to the wording of the bylaw required.
 - Option 3 - Amending the existing bylaw - this is considered the best option.
 - Option 4 - Revoking the existing bylaw - this is again unacceptable as there is a demonstrated requirement for a bylaw covering nuisances.
70. It is the view of staff that a Nuisances Bylaw Chapter is the most appropriate way to deal with those issues that have some significance and for which Council is empowered to legislate. Such a bylaw provides reasonable controls to protect health and safety.
71. The view of staff confirmed by Buddle Findlay, Solicitors who were appointed to act for Council in the review process, is that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
72. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.

73. To summarise, the conclusion:

- The Nuisances Chapter is considered the most appropriate way to address problems related to nuisances in the district.
- The current Nuisances Chapter with amendments is considered the most appropriate form of bylaw.
- The Nuisances Chapter does not give rise to any implications under the NZ Bill of Rights Act 1990.
- The Nuisances Chapter is authorised by the statutory provisions.
- The Nuisances Chapter is not considered repugnant to the general laws in New Zealand.
- The Nuisances Chapter is certain.
- The Nuisances Chapter is reasonable.

RECOMMENDED

That Council agree the attached Nuisances Chapter of the Marlborough District Council Bylaw 2002 in terms of Section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems related to nuisances in the district; 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.**

MDC Bylaw 2002 - Chapter 6 - Dog Control

74. This chapter made under the Dog Control Act 1996 is a bylaw that sets controls for dogs including leashing, exercising, licensing and other controls when on public places.
75. The Dog Control Act 1996 is the national legal instrument controlling dogs in New Zealand and has the objectives of requiring the registration of dogs; making provisions in relation to dangerous dogs; imposing obligations on owners to ensure dogs do not create a nuisance or injure or endanger any person; and do not endanger or injure any stock, other animals or wildlife. Council has a duty under the Dog Control Act 1996 to adopt a policy on dogs, which may specify the nature and application of any dog control bylaw.
76. The policy may also specify other non bylaw matters such as fees; education programmes; classification of owners; and matters to do with infringement notices.
77. Section 10(4) of the Dog Control Act 1996 states that Council, in adopting a policy under s10 must have regard to:
- (a) the need to minimise danger, distress, and nuisance to the community generally; and
 - (b) the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and
 - (c) the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs; and
 - (d) the exercise and recreational needs of dogs and their owners.
78. Section 20 of the Dog Control Act 1996 provides for the making of dog control bylaws. Any territorial authority may, in accordance with the Local Government Act 2002, make bylaws (within specified guidelines) for the purposes of complying with the adopted policy.
79. In undertaking the 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 is 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))).
80. It is critical to ensure both dog owners/dogs and non dog owners' requirements are satisfactorily catered for across the district, however this needs to be aligned with park and reserve area management practices and the collation of supporting the knowledge and information which has enabled the identification of specific areas that have values and resources that need protecting from dogs. It is through a bylaw that these areas can receive the necessary protection, by imposing partial or full dog control mechanisms to control dog access e.g. prohibit access or specify restraint required.

81. There has been an increase in the reported number of vicious attacks by dogs on people nationally and these have all received high profile media coverage. Although the number of reported attacks on people in Marlborough is low, the potential still exists for this to increase. There is strong evidence for the need for education (of both dog owners and the general public) and enforcement to ensure this attack risk stays low.
82. Though the Dog Control Policy and Bylaw Chapter may be important to achieve some input for education, monitoring and enforcement to achieve a decrease in attack, it is considered the Bylaw Chapter primarily provides enforcement mechanisms to effectively manage dog control issues.
83. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
84. Staff identified four options:
- Option 1: Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is not considered the best option as in reviewing the current Dog Control Chapter, staff considered there were changes to the wording of the bylaw required.
 - Option 3: Amending the existing bylaw - is considered the best option.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering dog control issues.
85. It is the view of staff that for the reasons mentioned above, it is considered a bylaw is the most appropriate way to address the dog control problems as outlined. The Dog Control Chapter is required to cover provisions relating to prohibiting dogs from specified public places (e.g. around children's play areas and swimming areas on beaches) and requiring dogs to be leashed in public places such as footpaths.
86. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
87. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.
88. To summarise the conclusions reached:
- The Dog Control Chapter is considered the appropriate way to address problems in public places
 - The attached draft Dog Control Chapter is considered the most appropriate form of bylaw
 - The Dog Control Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990
 - The Dog Control Chapter is authorised by the statutory provisions referred to above
 - The Dog Control Chapter is not considered repugnant to the general laws of New Zealand
 - The Dog Control Chapter is certain
 - The Dog Control Chapter is reasonable.

RECOMMENDED

That Council agree the attached Dog Control Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems relating to dog control in the District; 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.**

MDC Bylaw 2002 - Chapter 7 - Keeping of Animals, Poultry and Bees

89. This chapter is a bylaw that sets controls for the keeping of animals, poultry and bees within the Marlborough District.
90. 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 is 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))).
91. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
92. Staff identified four options:
- Option 1: Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is not considered the best option as in reviewing the Keeping of Animals, Poultry and Bees Chapter, staff considered that there were some minor changes to the wording of the bylaw required.
 - Option 3: Amending the existing bylaw - is considered the best option.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering dog control issues.
93. It is critical to ensure both owners and non owners' requirements are satisfactorily catered for across the district, however this needs to be aligned with noise, odour and health issues arising from the keeping of animals, poultry and bees.
94. There have always been isolated issues arising from the keeping of animals that Council have had to deal with. With these bylaws Council has been able to mediate and resolve these issues.
95. It is the view of staff that for the reasons mentioned above, a bylaw is the most appropriate way to address the problems arising from the keeping of animals, poultry and bees.
96. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council as per previous audits, that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
97. 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.
 - (d) the bylaw must be reasonable.

98. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.
99. To summarise the conclusions reached:
- The Keeping of Animals, Poultry and Bees Chapter is considered the appropriate way to address problems in public places
 - The attached draft Keeping of Animals, Poultry and Bees Chapter is considered the most appropriate form of bylaw
 - The Keeping of Animals, Poultry and Bees Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990
 - The Keeping of Animals, Poultry and Bees Chapter is authorised by the statutory provisions referred to above
 - The Keeping of Animals, Poultry and Bees Chapter is not considered repugnant to the general laws of New Zealand
 - The Keeping of Animals, Poultry and Bees Chapter is certain
 - The Keeping of Animals, Poultry and Bees Chapter is reasonable.

RECOMMENDED

That Council agree the attached Keeping of Animals, Poultry and Bees Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems relating to the keeping of animals, poultry and bees in the District; 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.**

MDC Bylaw 2002 - Chapter 8 - Cemeteries

100. This chapter, made under the Burial and Cremation Act 1964 is a bylaw that sets controls for cemeteries within the Marlborough District.
101. 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 is 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))).
102. The nature of the perceived problem is, generally speaking, that of ensuring that cemeteries are maintained to allow a balance between the various different, and sometimes competing, views that the public may have.
103. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
104. Staff identified four options:
- Option 1: Do nothing - this not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is not considered the best option as in reviewing the Cemeteries Chapter, staff considered that there were some minor changes to the wording of the bylaw required.
 - Option 3: Amending the existing bylaw - is considered the best option.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering cemetery controls.
105. It is the view of staff that a cemeteries bylaw is the most appropriate way to deal with those issues that have some significance and which Council is empowered to legislate for under the Act. Such a bylaw is required to provide for reasonable controls for the maintenance of cemeteries, to protect health and safety and to protect the public from nuisance.
106. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process, that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
107. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.

108. To summarise the conclusions reached:

- The Cemeteries Chapter is considered the appropriate way to address problems in cemeteries
- The attached draft Cemeteries Chapter is considered the most appropriate form of bylaw
- The Cemeteries Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990
- The Cemeteries Chapter is authorised by the statutory provisions referred to above
- The Cemeteries Chapter is not considered repugnant to the general laws of New Zealand
- The Cemeteries Chapter is certain
- The Cemeteries Chapter is reasonable.

RECOMMENDED

That Council agree the attached Cemeteries Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems relating to the control of cemeteries; 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.**

MDC Bylaw 2002 - Chapter 9 - Coat of Arms

109. This chapter, made under the Local Government Act 1974 is a bylaw that sets restrictions on the use of the Marlborough District Council Coat of Arms.
110. The provisions of the Local Government Act 1974 that governed this bylaw (s684(1)(10)) have been repealed and therefore subject to s293(3) of the Act, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.
111. Staff consider there is no need to continue or replace the bylaw chapter because the problem addressed in the bylaw, can be dealt with by the legislation covering copyright.
112. 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 is 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))).
113. To summarise the conclusion reached:
- The Coat of Arms Chapter is not considered to be the appropriate way to address problems in Council facilities as the bylaws are redundant in that the governing Act has been repealed, and any problems are covered by other legislation.

RECOMMENDED

That Council agree the existing Coat of Arms Chapter 9 of the Marlborough District Council Bylaw 2002, in terms of section 156 of the Local Government Act 2002, be revoked.

MDC Bylaw 2002 - Chapter 11 - Fire Prevention

114. This chapter, made under the Forest and Rural Fires Act 1977 is a bylaw that provides for controls on removal of vegetation and fire prevention within urban fire service districts which are not covered by the Forest and Rural Fires Act 1977 of the Marlborough District.
115. Section 146 of the Act provides a specific bylaw-making power, subject to sections 20 to 22 of the Forest and Rural Fires Act 1977, of preventing the spread of fires involving vegetation.
116. This review of the existing coverage of the Fire Prevention Chapter has not revealed any new issues to be added to the existing bylaw chapter.
117. In undertaking the 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 is 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))).
118. Section 77 of the LGA 2002 relates to decision making and requires the Council to identify and assess all practical options.
119. Staff identified four options:
- Option 1: Do nothing - this is not considered acceptable as the bylaw must be reviewed under the requirements of section 158 of the Act.
 - Option 2: Retaining the existing bylaw - is considered the best option.
 - Option 3: Amending the existing bylaw - is not considered the best option.
 - Option 4: Revoking the existing bylaw - is again unacceptable as there is a demonstrated requirement for a bylaw covering Fire Prevention issues.
120. The problem in this particular instance is the possible cause of fires, through overgrown and/or untended vegetation. It is considered this bylaw is the most appropriate way to manage and regulate this issue.
121. It is the view of staff, confirmed by Buddle Findlay, Solicitors, who acted for Council in this review process, that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Fire Prevention Chapter can be said to be inconsistent with that Act.
122. Section 81 LGA 2002 requires that Council consider processes to provide opportunities for Maori to contribute to the decision-making process. Council considers that public notification and an opportunity for submission provides adequate opportunity for public response including from Maori.

123. To summarise the conclusions reached:

- The Fire Prevention Chapter is considered the appropriate way to address problems in the prevention of fire
- The current Fire Prevention Chapter is considered the most appropriate form of bylaw
- The Fire Prevention Chapter does not give rise to any implications under the New Zealand Bill of Rights Act 1990
- The Fire Prevention Chapter is authorised by the statutory provisions referred to above
- The Fire Prevention Chapter is not considered repugnant to the general laws of New Zealand
- The Fire Prevention Chapter is certain
- The Fire Prevention Chapter is reasonable.

RECOMMENDED

That Council agree the attached Fire Prevention Chapter of the Marlborough District Council Bylaw 2002, in terms of section 155 of the Local Government Act 2002:

- **is the most appropriate way to address perceived problems in the prevention of fire; 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.**

MDC Bylaw 2002 - Chapter 12 - Revocation and Savings

124. This chapter will need to be rewritten at the completion of the bylaw review exercise.

RECOMMENDED FOR THE OVERALL REPORT

- 1. That the report be received.**
- 2. That the separately attached draft Statement of Proposal be adopted, subject to any changes the Committee resolves.**
- 3. That the separately attached draft Summary of Information be adopted, subject to any changes that the Committee resolves.**
- 4. That the period within which submissions may be made to the Council in the course of the Special Consultative Procedure be from 1 October 2009 until 27 November 2009 (inclusive).**

12. Information Package

RECOMMENDED

That the Regulatory Department Information Package dated 27 August 2009 be received and noted.

13. 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:

- Harbour Incidents - Infringement Offence Notices
- Unauthorised Discharge
- Monitoring

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:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Harbour Incidents - Infringement Offence Notices Unauthorised Discharge Monitoring	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.