



# Minutes

of the

## Judicial Committee

# Ordinary Meeting

Date 14 July 2016  
Venue Council Chamber  
515 Mackay Street  
Thames

### Present

MK McLean JP (Chairperson) P A Brljevich  
L A Fox  
D Connors

### In attendance

Barry Smedts, Steve Hart, Nicki Williams, Jakki Handcock, Corrine Hamlin, Mark van Diepen, Emma Wright, Yvonne Franklin

**Meeting commenced** 09.00

### Adjournments and absences

Adjournment	Start	Finish	Reason
Chairperson	10.03	10.30	Morning tea

Absences	Start	Finish	Item
Tony Brljevich	10.03		

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# **1 Meeting conduct**

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## **1.1 Apologies**

All members were present.

## **1.2 Public forum**

There were no speakers in the public forum.

## **1.3 Items not on the agenda**

No additional items were added to the agenda.

## **1.4 Conflict of interest.**

Councillor Brljevich declared an interest in item 4 Deliberations Fires in the Open bylaw.

## **1.5 2 June 2016 - Judicial Committee minutes for confirmation**

38/16 **Resolved**

JC That the Judicial Committee confirms the minutes of the meeting held on 2 June 2016 as a correct record of proceedings.

**Moved/seconded by:** Connors/Brljevich

## 2 Monthly reports

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### 2.1 Planning report May 2016

The Committee received information of a proposed 90 lot subdivision at Matarangi and noted issues to be addressed by the developer in respect to water and wastewater capacity.

The Committee requested an assurance that stormwater issues at Whitianga Waterways is resolved before consent is granted for the Stage 8 residential subdivision.

The Committee was advised that some processing of consents was being outsourced to consultants due to the high workload, and to meet RMA timeframes.

39/16 **Resolved**

JC That the Judicial Committee receives the May 2016 - Planning Group monthly report dated 14 July 2016.

**Moved/seconded by:** Fox/Connors

### 2.2 Community Environment Group report May 2016

The Committee was advised that the monitoring for consent compliance was ongoing and a review over the past five years was to determine the process for the future in terms of low, medium and high risks.

The Committee requested confirmation that a resource consent for house renovations at Whitianga be reviewed to determine if there had been a breach of the resource consent conditions, following complaints from the public. Staff would carry out a site visit and brief Councillors on the outcome.

The committee was informed that freedom camping compliance levels were high with visitors complying with the bylaws.

40/16 **Resolved**

JC That the Judicial Committee receives the May 2016 - Community Environment Group monthly report dated 14 July 2016.

**Moved/seconded by:** McLean/Brljevich

### 2.3 Building Control report May 2016

The committee was advised that the building unit continued to contract out services, due to the high level of work and shortage of qualified staff. It was preferable to maintain staff and keep in-house, however, it was difficult to get trained staff and this was a nationwide problem.

41/16 **Resolved**

JC That the Judicial Committee receives the May 2016 Building Controls report dated 23 June 2016.

**Moved/seconded by:** Connors/Fox

### 2.4 Members' reports

There were no members' reports.

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## 3 Special exemptions

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### 3.1 Application for special exemptions to the Swimming Pools Act 1987 - 5 Victoria Street, Whitianga

The Committee was requested to determine whether a special exemption from some of the requirements to the Fencing of Swimming Pools Act 1987 should be granted with respect to the swimming pool located at 5 Victoria Street, Whitianga, as per the application made by owners B R and J M Johnston.

The Chair viewed the property from the Marina and the Committee considered the matters raised in the report.

42/16 **Resolved**

JC That the Judicial Committee -

1. Receives the application for special exemptions to the Swimming Pools Act 1987 - 5 Victoria Street, Whitianga report dated 24 June 2016.
2. Declines the request for special exemption to the Swimming Pools Act 1987 sought for the swimming pool at 5 Victoria Street, Whitianga.

**Moved/seconded by:** McLean/Fox

### 3.2 Application for special exemptions to the Swimming Pools Act 1987 - 14 Dunlop Drive, Pauanui

The Committee was requested to determine whether a special exemption from some of the requirements to the Fencing of Swimming Pools Act 1987 should be granted with respect to the spa pool located at 14 Dunlop Drive, Pauanui, as per the application made by agent Gerrit Olivier on behalf of the owner D R Ebert.

43/16 **Resolved**

JC That the Judicial Committee:

1. Receives the application for special exemptions to the Swimming pools Act 1987 - 14 Dunlop Drive, Pauanui report dated 24 June 2016.
2. Grants the request for special exemption for the spa pool at 14 Dunlop Drive Pauanui subject to the following conditions:
  - i. the spa pool has a standard lockable cover and is further lockable with a hasp and staple fixed to decking
  - ii. deadbolt locks are installed at 1.5m from the floor level on each set of doors that give access to the deck area housing the spa pool.

**Moved/seconded by:** McLean/Fox

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## 4 Deliberations

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### 4.1 Fires in the Open Bylaw

Staff presented a summary and analysis of submissions received to the proposed Fires in the Open Bylaw, and sought the Committee's recommendations to Council in order to adopt a revised bylaw. It was noted that 18 submissions had been received.

Considerable discussion took place on compliant outdoor fire devices with clarification being sought from staff on the types of devices not requiring a permit. The meeting was informed by staff that a fire in the open fuelled by gas, for example a BBQ, was not affected by the bylaw and would not need a permit, as it was excluded from the definition of an open fire.

Concern was expressed by the Committee that the public did not know what a compliant outdoor fire device was and this must be explained in public communication. Staff confirmed that an educational campaign would be undertaken and pictorial guidelines will be developed to assist in the public's understanding, in conjunction with the Thames Valley Rural Fire Authority and the Department of Conservation where possible.

The following was noted and supported by the committee:

- Council staff would engage with the Waikato Regional Council in supporting the rules within the Waikato Regional Plan for fires in the open.
- Council staff will coordinate and implement a system for recording where and when permitted fires will be lit throughout the district. This information would be shared with the NZ Fire Service, the Department of Conservation and with the Thames Valley Rural Fire Authority.
- Council staff would continue to engage with the NZ Fire Service throughout the implementation of the bylaw in order to foster a multi-agency approach to permits, education and other implementation matters.
- On adoption of the Fires in the Open Bylaw council staff will work with other regulators of fires in the open (the Department of Conservation, the Thames Valley Rural Fire Authority) in the Thames-Coromandel District to put a procedure in place to ensure that consistent fire seasons are maintained between rural and urban fire districts.
- It was noted that no change will be made to the bylaw regarding amateur fireworks in the urban fire district in that no permit will be required for fireworks in a Restricted and Total Fire Ban Season.
- Options for fireworks were presented to the Committee, one of which was the prohibition of fireworks. It was suggested that in order to realistically prohibit fireworks, national regulation is needed and how to best address this should be considered by a future Judicial Committee.
- The Committee discussed the need to ensure that the public are aware of when they can light fires, emphasising education and awareness is required.
- The meeting was advised that an educational campaign regarding the implementation of the bylaw will be targeted to visitors to the peninsula, as well as residents and absentee ratepayers.

44/16 Resolved

JC That the Judicial Committee recommends references to organisations are removed from the following bylaw definitions (to assist in future proofing the bylaw in the event of fire sector reform) as follows:

**6. DEFINITIONS**

**Gazetted Rural Fire District** means land constituted under the Forest and Rural Fires Act 1977 as a rural fire district ~~under either the Department of Conservation or the Thames Valley Rural Fire Authority~~

**Gazetted Urban Fire District** means those areas in the Thames-Coromandel District that have been gazetted ~~by the New Zealand Fire Service~~ under the Fire Service Act 1975 as urban fire districts and as mapped in Schedule Two of this bylaw.

**Moved/seconded by:** McLean/Fox

45/16 Resolved

JC That the Judicial Committee recommends to edit the clause allowing authorised council officers the ability to extinguish fires in the open that breach the bylaw to reflect that extinguishing the fire is only undertaken if appropriate, and that other action (for example calling the NZ Fire Service) may be undertaken instead, as follows:

**16. COUNCIL MAY EXTINGUISH FIRES**

16.1. Where a fire has been lit or allowed to burn in breach of any part or parts of this bylaw, ~~the councilan authorised officer~~ may direct the occupier of the land where the fire is located and/or the person(s) who lit the fire, to immediately extinguish the fire.

16.2. If a direction given under clause 16.1 is not complied with to the satisfaction of ~~the councilan authorised officer~~, an authorised officer may extinguish the fire ~~and or~~ take other steps as considered ~~reasonably necessary appropriate~~, to prevent the spread of fire.

**Moved/seconded by:** Fox/Connors

46/16 Resolved

JC That the Judicial Committee recommends the compliant fire device definition be amended to reflect the feedback from submissions while keeping the definition appropriate to manage fire risk as follows:

**A compliant outdoor fire device must have the following characteristics -**

- a) is a permanent fixed structure; and
- b) is constructed of non-combustible materials; and
- c) has a chimney with a spark arrester fitted; and ~~either~~ has:
  - a. a non-combustible hearth or base (which can include the ground surrounding the fixed structure) that extends no less than 750mm forward from the front edge of the fire box and no less than 500mm from the outside edge of the fire box to both sides; and

- b. a door to contain burning materials, or a protective grille or barrier across the front of the fire box, with a minimum height of 400mm80mm, to contain burning materials.; ~~or~~  
~~has a non-combustible hearth or base that extends a minimum of 750mm from the outside edge of the fire box opening and 900mm forward from the front edge of the fire box; and a door that can be put in place when use is complete, so no burning material can escape such as in a pizza oven.~~

**Moved/seconded by:** Connors/Fox

47/16 **Resolved**  
JC

That the Judicial Committee recommends the heading of the provision 'PERMITTED FIRES' be amended to read 'PERMITS' to better reflect the intention of the provision as follows:

### 13 ~~PERMITTED FIRES~~PERMITS

**Moved/seconded by:** Connors/Fox

48/16 **Resolved**

JC That the Judicial Committee delegate to the Chair and the Operations Manager to draft appropriate wording to give authorised officers the power to grant a dispensation.

**Moved/seconded by:** Fox/Connors

49/16 **Resolved**

JC That the Judicial Committee recommends following amendments be made to the bylaw to require a permit for the use of professional fireworks in the Thames-Coromandel District:

### 6 DEFINITIONS

**Fireworks** has the same meaning as in section 2 of the Hazardous Substances (Fireworks) Regulations 2001, but excludes pyrotechnic displays.

**Pyrotechnic display** means a firework display which uses Class 1 hazardous substances as regulated by the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001.

### 7 FIRES IN THE OPEN

7.4 Notwithstanding any other provision in this bylaw, any pyrotechnic display requires a permit.

### 8 OPEN FIRE SEASON

8.1 Council may at any time prescribe an open fire season or seasons within the district or in any specified part or parts thereof, and may at any time cancel or vary such prescription.

8.2 Permits are not required for lighting fires in the open air during an open fire season, with the exception of pyrotechnic displays.

**13 ~~PERMITTED FIRES~~PERMITS**

13.4 Where the permit is for a pyrotechnic display, the authorised officer may require proof that the requirements under 'Code of Practice for Outdoor Pyrotechnic Displays HSNOCOP 30' (New Zealand Environmental Protection Agency, October 2012) have been complied with before issuing a permit.

**Moved/seconded by:** Connors/Fox

50/16 **Resolved**

JC The Judicial Committee recommends that as clause 7.1(c) already provides the requirement of adequate supervision of fires in the open, clause 7.3 of the bylaw relating to the time of day a fire in the open may be lit be removed in its entirety.

~~7.3 A person must not light a fire in the open air between the hours of sunset and sunrise, unless-~~

- ~~a) the fire is contained within a compliant fire device or compliant incinerator; or~~
- ~~b) the fire is a firework which has been lit subject to the restrictions in Clauses 7.1 and 7.2; or~~
- ~~c) a permit for the fire has been issued and then only in accordance with the conditions of that permit.~~

**Moved/seconded by:** Connors/Fox

51/16 **Resolved**

JC The Judicial Committee recommends that as clause 7.1(b)(i) refers to 'combustible material', and through its definition covers flammable materials in buildings, fences, other structures and vegetation, and clause 7.1(a) prohibits the lighting of a fire if it would cause or be likely to cause a hazard or danger, clauses 7.1(b)(ii) and 7.1(b)(iii) of the bylaw should be removed and clause 7.1(b)(i) be relabelled as 7.1(b).

7. 1 No person shall light a fire in the open air at any time whether a permitted fire or not -

b) within five metres of any-

- ~~i. combustible materials; or~~
- ~~ii. a building, fence or other structure; or~~
- ~~iii. vegetation~~

**Moved/seconded by:** Connors/Fox

52/16 **Resolved**

JC The Judicial Committee recommends that to be consistent with clause 10.2(a) of the Bylaw, the definition 'customary cooking fire' should be changed to 'cultural cooking fire' as follows:

**Cultural**~~Customary~~ cooking fire means any hangi, umu, fire pit or other solid fuel outdoor fire used for the preparation of food using traditional cooking methods.

**Moved/seconded by:** Fox/Connors

53/16 **Resolved**

JC The Judicial Committee recommends that staff be instructed to include guidelines for the sensible use of fireworks throughout educational communications in the implementation of the bylaw.

**Moved/seconded by:** Connors/Fox

54/16 **Resolved**

JC The Judicial Committee recommends that the matter of the national prohibition of fireworks and whether to engage with Parliament on the topic be added to the Judicial Committee action list and referred to the next Judicial Committee for discussion after the elections.

**Moved/seconded by:** McLean/Fox

55/16 **Resolved**

That the Judicial Committee:

- a) Receives the Deliberations on the Fires in the Open Bylaw report dated 15 June 2016.
- b) Recommends that with the above changes the Council adopts the revised Fires in the open Bylaw.
- c) Instructs staff to make changes to the proposed Fires in the Open Bylaw that reflect deliberation decisions.
- d) Determines that it has followed the required special consultative procedure as set out in the Local Government Act 2002.
- e) Determines that the Fires in the Open Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- f) Recommends that Council staff will respond to out of scope submission points through Council's request for service system.
- g) Recommends that submission points relating to fires in rural fire districts be passed on to the rural fire authorities for their information.

**Moved/seconded by:** Connors/McLean

**Meeting Closed at 11.58am**

The foregoing Minutes were certified as being a true and correct record of the meeting of the Judicial Committee meeting held on 14 July 2016.

**Chairperson** \_\_\_\_\_ **Date** \_\_\_\_\_