



**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE  
TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,  
WAITAKERE CITY, ON TUESDAY, 12 APRIL 2005  
COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

**NOTE:** Urgent Business need not be dealt with now and may be delayed until later in the meeting.



**3 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 8 March 2005

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 8 March 2005, as circulated, be taken as read and now be confirmed.



## **PART B - PRESENTATION**

### **4 PETER RAEURN: CATO BOLAM ASSOCIATES**

The Pakanui Structure Plan is a privately initiated structure plan that commenced in 2000, and was funded by landowners. Over a 2 year period in consultation with Council staff, the structure plan was developed and formally lodged with Council in November 2002 as a private plan change. At this time the Council decided to review the structure plan methodology promoted by the District Plan, which has placed Pakanui on hold indefinitely.

Now that the Waitakere Ranges and Foothills project has placed Pakanui outside of the area of interest, Cato Bolam Associates is requesting the Council to consider progressing the structure plan.



## **PART C - REGULATORY / ENFORCEMENT**

### **5 LEGAL UPDATE (AS AT 24 MARCH 2005)**

#### **INTRODUCTION**

The following is a list of legal actions in respect of matters within the scope of the Committee, which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include references to Council's District Plan, minor prosecutions for dogs, swimming pools, health and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. The dates referred to in the headings are the dates on which appeals, information or proceedings were first filed in Court.

#### **ENVIRONMENT COURT**

##### **Kitewaho Bush Reserve, Peter Mawhinney and Others v Waitakere City Council**

Council's application for costs against Mr Mawhinney was heard before Judge Whiting and two commissioners on 17 February 2005. Having heard submissions the Court awarded \$70,000 costs, plus approximately \$4,500 disbursements (\$74,500 in total) reflecting an almost 70% recovery on costs. It is considered this is a good outcome from Council's point of view in light of experience with previous costs awards in the Environment Court.

The order is currently being sealed and demand for payment will be made immediately thereafter. Mr Mawhinney has 15 working days in which to appeal the decision. An appeal does not operate as a stay. It is recommended that enforcement proceedings be commenced to ensure payment. If an appeal is lodged it will be necessary for Mr Mawhinney to seek a stay.

**Selak v Waitakere City Council (7 March 2002)**  
**Collett & Nye v Waitakere City Council (8 March 2002)**

Appeals filed by the applicant Messrs Selak and their neighbours, Messrs Collett & Nye. Both appeals relate to the operation of the Selaks' Go-kart track on their property at Kennedy's Road, Whenuapai. The Selaks have appealed a condition disallowing use of the track on Sundays and public holidays. The Colletts & Nyes have appealed Council's decision to allow the Go-Kart activity. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impacts of the Go-Kart track, which is to be considered by all parties and may result in settlement of these appeals. The parties are presently considering consent orders which may settle this appeal.

**Abacus Developments Ltd & Mawhinney v Waitakere City Council (February 2000)**

This is a long running appeal against 29 consent conditions imposed on a subdivision consent previously held by Abacus. It was set down for hearing in week of 14 February 2005 before Judge Whiting with various other matters relating to Peter Mawhinney and his related companies. The case was opened by Peter Mawhinney, and the Judge (and the two commissioners) then retired to read the evidence. The Judge was clearly very concerned about the amount of evidence that Mr Mawhinney had filed (approximately 1200 pages of evidence-in-chief and a further 200 pages of 'rebuttal') and also the extent of submissions.

The Judge also considered that Mr Mawhinney was unnecessarily duplicating proceedings in light of the current reference appeal (RMA 886/98) in relation to the proposed Dilworth Structure plan, which is part heard. The Judge took the view that the Court would be better to spend its time on the structure plan rather than this resource consent appeal which concerns largely the same land. The outcome of this appeal could potentially pre-empt the structure planning process, which the Court has determined is the appropriate way to deal with the land. The reference was progressing and will be heard in August 2005 if mediation is not successful prior to that time. In those circumstances the Court considered that it was not appropriate to hear this appeal as it may well compromise the structure plan. The Court ordered the proceeding be adjourned *sine die*.

Consequently this case has been placed in the 'on hold' list by the Court, at least until the structure plan proceedings have been concluded. Judge Whiting also commented that, had Mr Mawhinney continued with this appeal, the Court would have considered entertaining an application to have the Dilworth Structure Plan struck out as a potential abuse of process.

**Juderon Family Trusts v Waitakere City Council (December 2003)**

An appeal against the Council's decision confirming the consent conditions regarding financial contributions payable in respect of a proposed subdivision. The parties attended a Court-assisted mediation on 7 September 2004, however no resolution was achieved. The parties are in discussions regarding timetabling for a hearing on this matter.

**Te Atatu Residents' & Ratepayers' Association Inc v Waitakere City Council (January 2004)**

A reference against the Council's decision approving Plan Change 2. It re-identifies the Harbourview land on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to 'Open Space Environment' and 'Marae Special Area'. A Court assisted mediation occurred on 16 July 2004 and 20 October 2004. Progress has been made and, as a result, the Council is likely to consider the options for dealing with the Plan Change at the end of March.

### **I & Z Farac v Waitakere City Council**

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It seeks to rezone all (or part) of the property as 'Living 2 Environment'. Discussions are to take place on the relief being sought. Settlement discussions are taking place in an attempt to refine the issues in dispute.

### **Auckland Regional Council v Waitakere City Council (September 2004)**

An appeal by the Auckland Regional Council against a decision of the Council to grant approval to a subdivision by Mr P Lipsham, relating to the property at 146-148 Parker Road, Oratia. Evidence is to be exchanged over the next few months, with a hearing after mid 2005.

### **Trichon v Waitakere City Council (October 2004)**

An appeal against an abatement notice issued by the Council in respect of unauthorised earthworks. The matter was referred to a Court-assisted mediation on 17 November 2004 and it has since been agreed that the Trichons' consultants would provide further information that Council requires with the purpose of advancing the resource consent application for stabilisation of the earthworks and additional development of the site (as proposed by the Trichons). The Trichons have since provided Council with reports from a geotechnical engineer and survey plans regarding the proposed development and remedial works; further information is still required before the application can be processed.

However, given the progress made to date, the Council considers that the current abatement notice is no longer required and has advised the Court that the notice can be cancelled and the appeal can be allowed by consent (we await the appellant's agreement to this course of action).

### **E A Haines v Waitakere City Council (December 2004)**

An appeal against a decision of Council's Commissioner (John Childs) to refuse consent for a golf driving range. The appeal has only recently been filed and the parties to the appeal have yet to take any substantive steps.

Interested parties have confirmed their interest, Council has now canvassed the possibility of an agreed resolution. In these circumstances Council will report to the Court with a suggested timetable for exchange of evidence by mid April 2005.

### **Vault Investments Limited v Waitakere City Council (October 2004)**

An appeal (pursuant to the Local Government Act 1974) against Council's confirmation of its decision to create a pedestrian mall at Todd Avenue, New Lynn as part of the town centre revitalisation (resolution no.1344/2004 on 28 July 2004 confirming resolution no.854/2004 on 26 May 2004), together with the amendments to the Todd Triangle redevelopment plan as recommended by the Hearings Committee in response to the Appellant's submissions. The Appellant owns tenanted commercial properties in Todd Avenue and submitted that the loss of roadside parking resulting from the creation of a pedestrian mall reduces their commercial viability. They also had an issue with a resource consent parking shortfall in relation to Council's district plan car parking requirements for their property redevelopment plans given that Council is removing the car parking at Todd Avenue.

Vault Investments withdrew their appeal against Council on 30 March 2005.

### **Auckland Regional Council v Waitakere City Council (February 2005)**

An appeal against the Council's decision granting consent to Shefco Ltd to establish a food processing facility at 76-78 State Highway 16. A notice of reply has been lodged.

### **Waitakere City Council v Minister of Defence (February 2005)**

Council has recently filed a Notice of Appeal in relation to a proposal by Defence to remove St Marks Chapel from the Hobsonville Air Base to Papakura. The Chapel is a listed heritage building and is protected under the District Plan. A key issue concerns whether Defence is entitled to remove the Chapel under the Defence designation associated with the Air Base. The appeal was lodged on 23 February 2005. Defence have 20 working days to lodge their notice of reply. No reply has been lodged to date. Standard track directions have been issued by the Court, requiring that parties lodge a memorandum with the Court on or by 12 May 2005 as to how this matter is progressing. It is expected that further declaratory proceedings may have to follow, to clarify whether Defence has the power to remove the Chapel.

### **HIGH COURT**

#### **P W Mawhinney (substituted plaintiff) v Waitakere City Council (February 2002) (Civil Proceedings)**

This is a civil claim for approximately \$6.7 million by Mr Mawhinney (who has been substituted as plaintiff for the Kitewaho companies) against Council alleging that he has suffered losses as a result of Council improperly delaying the processing of the subdivision consents. These applications were also the subject of the Declaratory Proceedings.

The Council's application for security for costs was completed on 28 January 2005 before Associate Judge Sargisson. A decision is awaited currently. If an order is made and Mr Mawhinney then fails to pay this amount into Court these proceedings will be stayed pending the provision of security.

#### **Waitakere City Council v Estate Homes Ltd (28 March 2002) (Ranui Station Road)**

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004. This decision was in Council's favour and reversed the decision of the Environment Court. Since the release of the decision Estate Homes has been granted leave to appeal to the Court of Appeal (on two issues, out of an original 7 pursued). A hearing will take place in the Court of Appeal in mid 2005.

#### **Estate Homes Limited v Waitakere City Council (Sturges Road)**

This is an arbitration concerning the valuation of reserve land, Lockington Green at Sturges Road, Henderson. The value of the reserve is to be offset as a credit against payment of reserve contributions by the developer, Estate Homes. The arbitration was commenced in November 2004 and was completed in early March. The parties are now awaiting a decision from the arbitrator.

#### **Foundation Engineering Piling Limited v Waitakere City Council - Dovey Place - (December 2004)**

This is an appeal against a conviction for undertaking or permitting building work without a building consent. Foundation Engineering is pursuing a technical point in relation to the time the charge was laid in relation to the work being undertaken. The District Court determined that the charge was properly laid. The parties are awaiting notification of a date of a date of hearing from the High Court.

## **DISTRICT COURT**

### **I & A Covich - 40 Sunnyvale Road, Massey (May 2003)**

The Committee requested a further report at the meeting on 8 March 2005, regarding the outcome of this prosecution and the costs incurred by the Council in this matter.

Mr & Mrs Covich were each sentenced to 300 hours' community service. The Court imposed this sentence having taken into account the various aggravating and mitigation features of the case, including the defendants' guilty plea and financial circumstances (their declaration of financial circumstances claimed that both defendants were receiving a benefit and had limited income and assets; further, the defendants were unlikely to be given custodial sentences due to their respective ages).

Despite extensive efforts by Council the land-filling operation continued in the face of warnings to cease and various abatement notices; work only stopped following the issue of a Court enforcement order.

The property was used for land-filling prior to the Covichs taking ownership. In resolving this matter, the Council's key concern was that the land-filling cease (as there is no consent for it) and that the land be stabilised. The Council was satisfied as to the stability of the land and did not subsequently seek any further remediation of the site aside from the replanting that the Covichs' have undertaken near the neighbouring property.

The Council has incurred no legal costs in respect of the prosecution as the matter was handled by Meredith Connell, Crown Solicitors due to the defendants' election of a jury trial.

### **Lance Olsen - Dovey Place, Massey (February 2004)**

Charges were laid against the building contractor who undertook work on five houses without building consent. A pre-trial issue has been raised by Mr Olsen regarding the validity of informations as his company has been struck off the register – the Council seeks to have the charges amended so that Mr Olsen is personally liable for the alleged offences. This matter will be heard on 26 April 2005.

### **A & J Kumar - 23 Roberts Road, Te Atatu (March 2004)**

Charges have been laid alleging unauthorised building works and failure to comply with a notice to rectify building work. The defendants have been granted building consent for removal of the unauthorised works. The prosecution matter has been adjourned to 2 May 2005.

### **Contract Sealing Ltd, Action Plumbing Gas & Drainage Ltd & Others – 547 West Coast Road, Oratia (March 2004)**

Charges have been laid alleging unauthorised building works. The defendants have entered not guilty pleas; we await allocation of a defended hearing date.

### **I R Stanic – 11 Orchid Place, Henderson (May 2004)**

Charges laid under the Resource Management Act alleging contravention of District Plan Rules, as the property being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent, and for contravention of an abatement notice in respect of such activities. The defendant has entered not guilty pleas. A status hearing occurred on 14 March 2005; the defendant failed to appear (for the second time) and a warrant was issued.

**Future Developments Ltd & P Slimo – 221-233 Scenic Drive, Titirangi (June 2004)**

Charges have been laid under the Resource Management Act alleging various District Plan breaches and under the Building Act alleging various instances of unauthorised building work and allowing the use of an unsafe building (in respect of fire safety concerns) for residential purposes.

The defendants have entered guilty pleas; sentencing is scheduled for 11 April 2005 in the Auckland District Court.

**L A Green – 9 Herrings Cove Lane, Titirangi (July 2004)**

Charges laid under the Resource Management Act alleging contravention of an abatement notice which required the installation of erosion/sediment control, removal of earth deposited at the site and revegetation works.

The defendant has entered a guilty plea and the matter has been adjourned for sentencing on 12 July 2005.

**Trubuhovich Holdings Ltd – 18 Brigham Creek Road, Whenuapai (August 2004)**

Charges laid under the Building Act and the Resource Management Act in respect of the unauthorised construction of numerous poly/shade houses, which were built without building consent and which breach various District Plan Natural Environment Rules. Trubuhovich Holdings Ltd entered guilty pleas in the Auckland District Court on 28 February 2005 and was convicted and fined \$6,000 in total (\$3,000 for each charge).

**S & U Kumar – 24 Te Muri Place, Glendene (August 2004)**

Charges laid under the Building Act for unauthorised building work (including extension to house and change of use of lower level of dwelling to create separate residential unit). The owners have advised that they are undertaking works to address some of Council's concerns. In these circumstances the matter has been adjourned to 2 May 2005 without plea.

**C Nisbett – Dovey Place, Massey (September 2004)**

Charges laid under the Building Act for continued building work on two unauthorised houses. The prosecution against Mr Nisbet has been set down for defended hearing on 30 May 2005.

**EA Haines – 80 Hobsonville Road, Hobsonville (September 2004)**

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. The matter has been adjourned without plea and is listed for call in the Auckland District Court on 11 April 2005.

**DP Kiely – 60 Wisely Road, Hobsonville (September 2004)**

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. The matter has been adjourned without plea and is listed for call in the Auckland District Court on 11 April 2005.

**J & M Activities Ltd (directors: MR Hannett & JM Timoteo) – 77 Fruitvale Road, New Lynn (September 2004)**

Charges laid under the Building Act for using and/or permitting the use of an unsafe building. The matter has been adjourned to 2 May 2005 on the basis that the defendant is undertaking building works to rectify the dangerous state of the building.

**Steven Lee and Hee Ja Noh – 2/7 Te Atatu Road (December 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work. Mr Lee is alleged to be the builder; Ms Noh is the property owner. Ms Noh has indicated that she is undertaking building works to address Council's concerns and on this basis both matters has been have been adjourned to 2 May 2005.

**TM Sharman & Others – 5 Stephen Avenue (December 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of garage into a minor household unit). The property owner has submitted a "safe and sanitary" report in relation to the works and asked Council to consider this. On this basis the matter has been adjourned to 2 May 2005 for Council to determine whether it should proceed with prosecution and whether any other rectification steps are required.

**N Alexander and D Pirrit – 11 Cascade Avenue (December 2004)**

Charges laid under the Resource Management Act in respect of unauthorised earthworks (approx. 60m<sup>3</sup>) in the Protected Natural Area and on a protected ridge (subject to slope instability).

The defendants entered guilty pleas in the Auckland District Court on 28 February 2005 and were convicted and fined \$4,000 each.

**John Steed – Public Places Bylaw (March 2005)**

An application for an injunction, pursuant to section 162 of the Local Government Act 2002, requiring Mr Steed to cease breaching the Council's Public Places bylaw (Bylaw No. 4, Ch 2, cl 233.1(b)).

Mr Steed has been living in his caravan on roadsides and road reserves in various locations in the City in breach of the bylaw and has refused to comply with Council officers' requests to cease doing so, has contravened an abatement notice, and is generally causing a nuisance in the locations where he resides in the caravan (e.g. by burning his household rubbish on the roadside and emptying wastewater from the caravan into the stormwater drainage system). Council officers have tried to assist him with alternative accommodation but he refuses to consider such options.

A hearing is scheduled for 4 April 2005.

**RECOMMENDATION**

That the Legal Update (as at 24 March 2005) report be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



## **PART D - ENVIRONMENTAL MANAGEMENT**

### **6 BYLAW REVIEW UNDER THE LOCAL GOVERNMENT ACT 2002**

#### **PURPOSE OF THE REPORT**

The Bylaw Review Programme was approved at the Council meeting on 15 December 2004. On 8 February 2005, the Planning and Regulatory Committee noted that Council had directed the Planning & Regulatory Committee to oversee the review process, consider any submissions received and make recommendations. The scheduled programme of work for 2005 and 2006 was also noted and approved by the Committee. The purpose of this report is now to analyse and consider the first 5 Bylaws to be reviewed during 2005.

#### **STATUTORY BACKGROUND**

The starting point in the review process is Section 145 Local Government Act 2002 (LGA02) which states that territorial authorities have a general power to make bylaws for one or more of the following purposes:

- (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.

Section 146 of the Act then lists specific bylaw making powers available to territorial authorities. These specific powers do not limit the general power outlined above, but confirm that the following objectives are proper and appropriate subjects for regulation through the bylaw process. The specific powers are:

- (a) Regulating one or more of the following: (i) on-site waste water disposal systems, (ii) waste management, (iii) trade wastes, (iv) solid wastes, (v) keeping of animals, bees and poultry, (vi) trading in public places; and
- (b) Managing regulating and/or protecting land structures or infrastructure associated with one or more of the following: (i) water races, (ii) water supply, (iii) waste water drainage and sanitation, (iv) land drainage, (v) cemeteries, (vi) reserves recreation grounds and other land under the control of the authority; and
- (c) Preventing the spread of fires involving vegetation.

If a legal power to make a bylaw exists ie. the object of the bylaw falls within the definitions given above, the next step is for the local authority to determine whether a bylaw is the most appropriate way of addressing the perceived problem (Section 155 Local Government Act 2002). Factors such as other legislative powers, common law remedies, previous enforcement history and generally other means of controlling the perceived problem (such as through contractual arrangements) must be considered at this stage.

If the local authority determines that:

- (a) There is a power to make a bylaw.
- (b) That a bylaw is the most appropriate way of addressing the perceived problem, it must then determine:
  - the most appropriate form of bylaw; and
  - whether there are any implications under the New Zealand Bill of Rights Act 1990.

**BYLAW ANALYSIS**

The bylaws to be reviewed in this report are listed below. In all of these cases, applying the provisions of the Local Government Act 2002, the recommendation is to repeal for the reasons given.

- No.3 (1990) Land Subdivision & Development
- No.12 (1990) Certification Fee for Document
- No.15 (1990) Dangerous Goods Approvals & Inspection Fees
- No.16 (1990) Fencing of Swimming Pools
- No.23 (1990) Clean Indoor Air

A review of Manukau, North Shore, Auckland and Christchurch’s current bylaws as they relate to those listed above is summarised below:

Bylaw	Manukau	North Shore	Auckland	Christchurch
Land Subdivision & Development				
Certification Fee for Documents	Inspection Certificate Fees			
Dangerous Goods Approval & Inspection Fees			Dangerous Goods Fees	Dangerous Goods Fees
Fencing of Swimming Pools				
Clean Indoor Air				

It will be noted that some authorities retain one or other of the bylaws currently under consideration, but all local authorities are also reviewing their bylaws in accordance with the statutory requirement to do so as contained in Section 158 Local Government Act 2002. It is likely that these particular bylaws have not yet been reviewed.

Field Services confirm that none of the bylaws listed above have been relied upon for enforcement purposes over the past 12 months at least. It is now appropriate to consider each of the bylaws individually.

**1. No.3 (1990) Land Subdivision & Development**

- (a) *Does the purpose of the bylaw fall within one of the general purposes defined in Section 145 or one of the specific powers detailed in Section 146?*

A1-A3

A copy of the bylaw is attached at pages A1 to A3. Its purpose is to adopt the NZS9201 Model General Bylaw and provide for the recovery of specific charges or fees relating to subdivision applications. It is submitted that the bylaws’ purpose does not fit within the general or specific bylaw making powers contained within the Local Government Act 2002. In the circumstances it is not appropriate to consider the further steps in the bylaw-making process, and the recommendation will be to repeal this particular bylaw.

For information, all fees and charges relating to matters referred to in the bylaw are now set in accordance with the Resource Management Act 1991 and Section 150 Local Government Act 2002 which states that:

- “(i) *The local authority may prescribe fees or charges payable for a certificate, authority, approval, permit, consent, or inspection provided or undertaken by the local authority relating to a matter provided for:*
- (a) *in a bylaw or*
  - (b) *under any enactment unless a specific charge is given in that Act, or the legislation states that the service is to be given free of charge.”*

**2. No.12 (1990) Certification Fee for Documents**

- (a) *Does the purpose of the bylaw fall within one of the general purposes defined in Section 145 or one of the specific powers detailed in Section 146?*

A4

A copy of the bylaw is attached at page A4. Its purpose is to provide the Council with the power to prescribe a fee to be paid in respect of certificates issued in relation to cross leases and unit title developments for Land Registry purposes. The bylaws' purpose does not fit within the general or specific bylaw making powers contained within Local Government Act 2002. Again, it is not therefore appropriate to consider further steps in the bylaw making process, and the recommendation will be to repeal this particular bylaw.

For information, no fee is currently charged although the power exists under Section 150 of the Local Government Act 2002 as outlined above, to recover reasonable costs associated with this process. A submission has been made in the Annual Plan process suggesting a Certification fee of \$75.00 (GST Inclusive) be charged in these circumstances.

**3. No.15 (1990) Dangerous Goods Approval and Inspection Fees**

- (a) *Does the purpose of the bylaw fall within one of the general purposes defined in Section 145 or one of the specific powers detailed in Section 146?*

A5-A6

A copy of the bylaw is attached at pages A5 to A6. Its purpose is to ensure that specified activities relating to the storage of dangerous goods (as defined by the now repealed Dangerous Goods Act 1974), oil burning equipment and gas equipment are approved by the Council's Dangerous Goods Inspector. The bylaw also makes provision for the Council to set fees for the issue of licences and undertaking relevant inspections. The "purpose" therefore does fall within the general power to protect and maintain public health and safety.

- (b) *Is the bylaw the most appropriate way of addressing the perceived problem (Section 155 Local Government Act 2002)?*

The Dangerous Goods Act 1974 has been superseded by the Hazardous Substances & New Organisms Act 1996 which came into force in July 2001. Under the 1974 Act, the Local Authority was the "licensing authority" for premises upon which dangerous goods were stored. The licensing regime is now administered by the Environmental Risk Management Authority (ERMA) established under the 1996 Act. The Council does not now issue any licences or undertake any inspections referred to in the bylaw, and nor does it employ a Dangerous Goods Inspector. The bylaw is therefore redundant, and ought to be repealed.

4. **No.16 (1990) Fencing of Swimming Pools**

- (a) *Does the purpose of the bylaw fall within one of the general purposes defined in Section 145 or one of the specific powers detailed in Section 146?*

A7-A12

A copy of the bylaw is attached at pages A7 to A12. Its purpose is to regulate the fencing of swimming pools, and as such falls within one of the general powers, namely to protect public safety.

- (b) *Is the bylaw the most appropriate way of addressing the perceived problem (Section 155 Local Government Act 2002)?*

A13-A20

A copy of the Fencing of Swimming Pools Act 1987 is also attached at pages A13 to A20. In all cases where enforcement action has been taken, legal proceedings have been issued pursuant to that legislation and not under the bylaw. The bylaw replicates the legislation, other than the last two clauses which are paraphrased as follows:

13. Expiry of Certificates of Compliance – all certificates previously issued shall be deemed to have expired on the 1<sup>st</sup> of August 1990, and have no further effect from that date.

Field Services advise that all affected pool owners were informed of the expiry date by letter following a Council resolution on 19 June 1990. The clause therefore simply states what happened 15 years ago, and serves no useful purpose.

14. Alterations - every owner shall inform the Council of any event, occurrence or work that alters the fence or structure to which the bylaw applies to ensure continued compliance.

There is no stipulated offence of failing to comply with clause 14 contained within the bylaw, and Field Services confirm that no action has ever been taken for failure to notify alterations per se.

The responsibility of pool owners under the Fencing of Swimming Pools Act 1987 Section 8(1) is to ensure that the pool (and/or relevant area) is fenced by a fence which complies **at all times** with the Act and the building code. That is a continual responsibility, giving rise to daily penalties under Section 9, for every day that the failure continues. If alterations are proposed clearly there is an obligation to ensure that the fence remains compliant.

For the following reasons it is recommended that the Fencing of Swimming Pools bylaw be repealed:

- (i) The Act itself is the most appropriate means of ensuring public safety by enforcing fencing compliance, evidenced by the fact that it is relied upon for that purpose.
- (ii) The bylaw simply replicates the Act, other than the two additional clauses referred to above, which provide no additional benefit to the overall purpose of the bylaw.
- (iii) No other local authority surveyed in the table above, has a similar bylaw.
- (iv) It is contrary to the spirit of the Local Government Act 2002 to retain a bylaw which is redundant. The intention of the review programme is to ensure bylaws remain appropriate in a changing social/legal environment.

**5. No.23 (1990) Clean Indoor Air**

- (a) *Does the purpose of the bylaw fall within one of the general purposes defined in Section 145 or specific powers detailed in Section 146?*

A21-A25

A copy of the bylaw is attached at pages A21 to A25. The purpose is stated to be the conservation of public health by regulating smoking in certain indoor areas. The purpose therefore falls within the general power contained in Section 145 to protect, promote and maintain public health.

- (b) *Is the bylaw the most appropriate way of addressing the perceived problem (Section.155 Local Government Act 2002)?*

The bylaw has been superseded by the Smoke-free Environments Act 1990 (SFEA) (as extensively amended). Field Services advise that the Council has never in fact taken enforcement action under the bylaw. The SFEA 1990 has led to the appointment by the Ministry of Health of 'smoke-free officers', who investigate complaints of non-compliance and take enforcement action as and when required. The bylaw is therefore redundant and should also be repealed.

**CONCLUSION**

This report analyses five (5) existing bylaws that for the reasons given above are now outdated, the recommendation is therefore to repeal them all. The Bylaw Review Programme previously approved, envisages the review of 24 bylaws in 2005. This may not be realistic given the amount of work required in respect of each individual bylaw. However, further reports will be brought to the Planning & Regulatory Committee for consideration over the next few months.

A Statement of Proposal and Summary (for use in the Special Consultative Procedure (SCP)), will be prepared and attached to the final report in respect of all the bylaws reviewed within this first "batch", including those to be repealed. Once approval is obtained from the Planning & Regulatory Committee and ultimately Council, the SCP will commence in September/October 2005. Hearing dates for submissions are provisionally booked for November. If deemed appropriate as a result of submissions received, amendments can be made to the bylaws before finally referring them to Council for decision.

## **RECOMMENDATIONS**

- 1 That the Bylaw Review under the Local Government Act 2002 Report be received.
- 2 That it be recommended to Council that the bylaws listed below be repealed for the reasons given in this report:  
  
No.3 (1990) Land Subdivision & Development  
  
No.12 (1990) Certification Fee for Document  
  
No.15 (1990) Dangerous Goods Approvals & Inspection Fees  
  
No.16 (1990) Fencing of Swimming Pools  
  
No.23 (1990) Clean Indoor Air
- 3 That officers prepare a statement of proposal and summary of information in respect of the proposals to repeal each of these bylaws for inclusion in the special consultative procedure relating to the review of the Council's bylaws and scheduled for October/November 2005.

Report prepared by Yvonne Donaldson, Team Leader Legal.



## **7 DOG REGISTRATION FEES - 2005/2006**

### **PURPOSE OF THE REPORT**

The purpose of this report seeks to set the Dog Registration and other dog related fees for the 2005/2006 registration year, which runs from 1 July 2005 to 30 June 2006. It is necessary that a decision on dog fees is made as early as possible in the calendar year to allow sufficient time to implement the registration process and meet statutory timelines.

### **BACKGROUND**

A significant increase in the dog registration fee was implemented in the 1999/2000 financial year (30%). The impact of the increase was that many dog owners were deterred from registering their dogs and an increased labour-intensive process to attempt fee recovery ensued. Despite increased effort and planning, the number of registered dogs decreased from 13,700 to approximately 12,000 in 2000/2001. Numbers have been gradually increasing since then but are still not up to former levels. For example the 2003/2004 final total of registered dogs was 11,902.

The dog registration fee revenue budget of \$749,000 is on track for the current year. Intensive door to door checks and a systematic fee recovery program have been and are being implemented to minimise the numbers of unregistered dogs. Currently approximately 83% of dogs on our records are now registered and we have a similar figure of registered dog numbers compared to the same time last year. Those unregistered dogs that remain on our records are not eliminated until the recovery programme can verify that the animals are either dead or have moved out of the City. Obviously if they are found then steps are undertaken to get them registered.

For the 2004/2005 year several other territorial authorities in the Auckland region increased fee levels to closer align with those of Waitakere. This has achieved a more consistent fee set over the region.

Fee setting has previously been subject to the annual budget planning and consultation round, however, due to the impediment that this placed upon timing and financial success, a detailed legal opinion was sought to determine if that was necessary.

A legal opinion concluded that “...the Dog Control Act requires fees for the relevant year to have been set before the Annual Plan process is finalised for that year...a local authority’s only obligation would be to take into account submissions received on the Annual Plan in setting the dog registration fees for the following year...”.

Therefore, the setting of dog registration fees has been forwarded to the Planning and Regulatory Committee for consideration and recommendation to Council.

### STRATEGIC CONTEXT

Council’s objectives are to achieve responsible dog ownership, recognising the rights of the community at large and also those of dog owners and their families. Key elements to this are:

- (a) To ensure registration of all known dogs in the City.
- (b) To ensure the detection and registration of as many unregistered dogs as possible within the City.
- (c) To continue issuing infringement notices and pursuing legal action against owners of unregistered dogs.
- (d) To keep fees to an acceptable level by ensuring that as many people as is practical register their dogs, so that the fee is shared over the majority of dog owners and not just by those who register.
- (e) To strike a fee which is of an acceptable level to dog owners generally, yet which allows Council to provide an efficient and cost effective service to the public.
- (f) To set fees in line with Council’s draft Annual Budget and Council’s Animal Control and Welfare Funding Policy.

Council’s Finance and Revenue Policy relating to animal control states that:

- *Dog owners will fund the dog registration system and associated needs.*
- *Costs of impounding will be recovered from the animal owner through impounding fees and fines. When those costs cannot be fully recovered from the exacerbating animal owner, they will be funded by rates.*
- *The costs of complaints will be funded from dog registration fees and rates. The proportion of complaints costs met from dog registration fees will be approximately equal to the proportion of complaints related to registered dogs.*

### LEGISLATIVE REQUIREMENTS AND FEE SETTING

Council is required, under Section 37 of the Dog Control Act 1996, to set fees for the registration and control of dogs. Under the Act, Council may fix lower fees for:

- (a) Neutered dogs;
- (b) Working dogs and various classes of working dogs;
- (c) Dogs under the age of 12 months;

- (d) Dogs where the owner demonstrates to the satisfaction of Council's Dog Control Officer, that he or she has a specified level of competency in terms of responsible dog ownership.

Council may also fix a penalty fee for late registration (beginning not earlier than 2 August 2002) and a fee for replacement tags. Pursuant to Section 39 of the Act, Council may also remit, reduce or refund the fee where it is satisfied that there are special circumstances for doing so.

Any submissions requesting amendments to the dog fees and services would be referred to the next year's Annual Plan process.

### CURRENT SITUATION

Following the 30% fee increase in the 1999/2000 dog registration year there was significant resistance to pay by some dog owners within Waitakere City, being either unwilling or unable to finance their statutory obligation. The recent highlighted publicity on dog issues coupled with amendments to the Dog Control Act - which came into force on 1 December 2003 - are also factors involved in resistance to paying the fee and have necessitated increased activities to recover the current and previous years fee. This indicates that any increase in fees could be detrimental to the dog registration revenue stream, and also to dog control activities, which are reliant upon registration records to impose good dog control. In contrast, reducing the fee would be unlikely to suddenly attract the recidivists of the previous registration years.

Current fees are as follows:

<b>DOG REGISTRATION &amp; ASSOCIATED FEES 2004-2005</b>			
<b>• REGISTRATION FEES</b>		<b>Fee for Late Registration after 1/8/05 (GST incl)</b>	<b>Fee if Paid On or Before 1/8/05 (GST incl)</b>
1.	Entire Dog (not castrated) & Entire Bitch (not spayed)	\$141	\$94
2.	Neutered Dog (castrated male & spayed female)	\$102	\$68
3.	Dog Owner Licence Holder with un-neutered dog	\$82.50	\$55
4.	Dog Owner Licence Holder with neutered dog Superannuitants	\$72	\$48
5.	Seeing Eye & Hearing Ear Dogs	\$4.50	\$3
<b>• OTHER FEES</b>		<b>Fee</b>	
Replacement Registration Tags		\$3	
<u>Impoundings:</u>			
First		\$65	
Second		\$130	
Third		\$195	
Subsequent		\$260	
Sustenance Fee (day or part thereof)		\$15	
<u>Adoptions:</u>			
Adoption Fee		\$45	
Adoption Registration Fee (for SPCA adoptions into Waitakere City & Waitakere Animal Welfare Services adoptions)		\$20	

Table 1: Schedule of Dog Registration Fees

Dog owners have the option to sit and pass the “Standard New Zealand Dog Owner Licence Test” which significantly reduces the fee. This information is circulated to all dog owners when the fees are due. If the Dog Owner Licence test is passed and the registration fee paid on time, the cost is \$48; failure to achieve both will incur the maximum fee of \$141 per dog.

### PROPOSED FUNDING

Council is also required under Section 37(6) of the Dog Control Act 1996 to publicly notify during the month preceding the start of every registration year the dog registration fees to be fixed for the forthcoming registration year.

The dog registration fees are to cover the statutory functions of dog control as required by the Act, and not for general animal welfare.

The forecast cost of Animal Welfare Services for the 2004/2005 annual budget year is \$1,568,568. It is anticipated that the recovery through fees including the North shore contract will be 61% of this total (or \$959,317). The ratepayer contribution to fund the public good elements of the service is \$609,251.

CITY	PERCENT RATES FUNDED
Waitakere	39% (in house operation)
Auckland	50% (contracted service)
Manukau	49% (contracted service)
Hamilton	40% (in-house operation)
Rotorua	50% (in-house operation)

**Table 2: Comparison of Rates Funding Percentages**

It is proposed to retain the current registration and associated fees structure which rewards responsible ownership.

### CATEGORY RATIONALE

A range of discounts on the dog registration fee currently exist for neutering, dog owner responsibility, superannuitants, and seeing eye/hearing ear dogs, and it is recommended that these continue. The rationale for these discounts are:

a. Neutering

Encouraging people to neuter their dogs is an important function of Animal Welfare Services, as an un-neutered dog is a potential breeder and contributor to the excessive unwanted dog population. In addition, neutered dogs are generally more manageable and, therefore, contribute less to dog control problems. Discounts for neutered dogs are a proven incentive for people to neuter their dogs. To this end, it appears worthwhile to continue discounts for neutered animals.

b. Responsibility

Recognition of responsible dog ownership serves as an acknowledgement of responsible behaviour and encourages continued registration of the dog. Discounts for Dog Owner Licence Education are currently offered. It is proposed that the discount for sitting and passing the Dog Owner Education Licence Test be maintained and so serve the purposes of promoting dog owners to learn more about their responsibilities. It is also proposed that superannuitants be generally classified in the responsible dog owner category and remain in a reduced fee category because of this groups insignificant incident rate in dog control problems.

c. Special Use Dogs

The owners of special use dogs (Seeing Eye and Hearing Ear Dogs) might be considered deserving of a reduced fee because their dogs are used through necessity rather than luxury. Seeing Eye and Hearing Ear dogs are instrumental in assisting a small minority of people who suffer from disabilities and it is proposed that the reduction for these dogs be maintained.

### **WORKING DOGS**

Self employed working dog owners, such as security guards, are able to obtain a tax rebate on the costs associated with the dog, so it is proposed to not offer a discount for security dogs, pest destruction dogs or herding dogs. Additionally, it is considered that there need be no special discount category for Government Department owned dogs.

### **COMMUNITY CARD HOLDERS**

The idea of Community Card Holders receiving a reduced fee has been investigated. Statistics provided by the "National Community Services Card Centre" do not isolate the Waitakere community card holders separately which means an accurate budgeting of projected revenue (loss) from having a reduced fee for community card holders is not possible. In addition, even an estimate of community card holder numbers in Waitakere City would be fraught as there would still be no way of identifying how many in the estimate owned dogs. Holders of community cards are still able to gain a reduced fee by sitting the dog owner license test and de-sexing their dogs. It therefore appears more practical to retain the status quo in relation to community card holders and offer no special discount other than reductions applicable to responsibility levels which are available to all dog owners.

### **DOG OBEDIENCE TRAINING INCENTIVES**

Investigation into the practicality of providing discounted fees for dog owners who have passed various dog obedience courses such as puppy training, basic dog obedience, etc has occurred. In principle this consideration appears to have considerable merit. However, currently the inclusion of such an incentive would be problematical in that the computerised fee structure would become unwieldy and difficult to administer. The computerised system containing the fee permutations would become impractical and negatively impact on efficiency of the system. In addition the matter of which courses would be recognised as valid or not valid would undoubtedly raise further issues as criteria would need to be consistent. Currently for example there is only one organisation with New Zealand Qualifications Authority dog obedience training and other dog obedience schools may provide effective learning but not have the New Zealand Qualifications Authority approval. The administration of accepting various certificates from a variety of different dog obedience schools would also impact on administrative efficiency and potentially on public relations. Currently the incentives for responsibility - desexing and dog owner education test - cover the responsibility incentive aspect to some extent.

### **ADOPTIONS**

It is recommended that Council's adoption fee policy continue as it enables unclaimed dogs to be moved out alive, thus providing:

- (a) good customer service;
- (b) a dollar return;
- (c) more adoptions;
- (d) de-sexing;
- (e) owner accountability.

## IMPOUNDINGS

It is recommended that Council's impounding fee policy continue, with the conditions that in every case of impounding:

- A sustenance fee of \$15 per day or part day thereof shall apply (each day is defined as being from midnight to the following midnight);
- If the dog is unregistered it must be registered prior to its release in addition to any impounding or sustenance fees;
- For release of dogs on the first impounding, the owner will be issued with a dog owner manual and encouraged to sit the Dog Owner Education Licence test.

## CONCLUSION

The fees are generally structured towards rewarding responsible dog ownership. Dog owners always have the option of lowering the fee payable by sitting the Dog Owner Licence test.

## RECOMMENDATIONS

1. That the Dog Registration Fees - 2005/2006 report be received.
2. That it be recommended to Council for setting the following 2005/2006 dog registration and associated fees:

<b>DOG REGISTRATION &amp; ASSOCIATED FEES 2005-2006</b>			
<b>• REGISTRATION FEES</b>		<b>Fee for Late Registration after 1/8/05 (GST incl)</b>	<b>Fee if Paid On or Before 1/8/05 (GST incl)</b>
1.	Entire Dog (not castrated) & Entire Bitch (not spayed)	\$141	\$94
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5.	Seeing Eye & Hearing Ear Dogs	\$4.50	\$3
<b>• OTHER FEES</b>		<b>Fee</b>	
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Third		\$195	
Subsequent		\$260	
Sustenance Fee (day or part thereof)		\$15	
<u>Adoptions:</u>			
Adoption Fee		\$45	
Adoption Registration Fee (for SPCA adoptions into Waitakere City & Waitakere Animal Welfare Services adoptions)		\$20	

3. That it be recommended to Council that all dog owners who book to sit the Dog Owner Licence test prior to the penalty date of 1st August 2005 pay the reduced fee within a week of passing the test; or pay the fee which they would have otherwise paid within a week of failing the test, otherwise the late fee applies to whatever category each dog falls into.
4. That it be recommended to Council that for all newly acquired dogs (providing the owners have not been served an infringement notice), a reduced pro-rata fee based on the months of the year be applicable.
5. That it be recommended to Council that where an adult dog is impounded and unregistered, or for which the owner is served an infringement notice, the full registration fee including the penalty be applied.
6. That the dog registration fees adopted for the 2005/2006 financial year be publicly notified in accordance with Section 37(6) of the Dog Control Act 1996.

Report prepared by: Tom Didovich, Manager: Animal Welfare Services.



## **PART E - COMMITTEE REPORTS**

### **8 KAY ROAD BALEFILL SITE MANAGEMENT COMMITTEE**

**THE COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS EXTRAORDINARY MEETING HELD ON MONDAY, 21 FEBRUARY 2005**

#### **MATTERS CONSIDERED**

A26-A27

The Committee dealt with a number of items for which it has delegated powers to act and a copy of the minutes of the meeting is attached at pages A26 to A27.

#### **The Committee Recommends:**

That the Meeting report of the Kay Road Balefill Site Management Committee held on Monday, 21 February 2005 be received.

I Hutchinson  
**CHAIRPERSON**



**PART F - CONFIDENTIAL ITEMS**

**9 DISTRICT PLAN - BETHELLS APPEALS**

**10 SWANSON STRUCTURE PLAN - ENVIRONMENT COURT MEDIATION**

These items will be considered in the Confidential Supplement of the agenda, and has been circulated to members separately with this agenda.

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, namely District Plan - Bethells Appeals and Swanson Structure Plan - Environment Court Mediation.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of 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 the matters to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"><li>• District Plan - Bethells Appeals;</li><li>• Swanson Structure Plan - Environment Court Mediation.</li></ul>	The withholding of information is necessary in order to: <ul style="list-style-type: none"><li>• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li></ul>	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 would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The reports contain information which if released could affect Council's negotiations.*

