

**AGENDA FOR AN EMERGENCY MEETING OF THE COUNCIL TO BE HELD IN THE
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 19 DECEMBER 2001,
COMMENCING AT 4.30 PM.**

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1 APOLOGIES



2 PROPOSED HIGH COURT APPEAL - KITWAHO BUSH RESERVE COMPANY LIMITED

PURPOSE OF THE REPORT

The purpose of the report is to obtain the Council's approval to lodge an appeal in the High Court.

The appeal would relate to some aspects of a decision by the Environment Court in relation to declarations and enforcement orders sought against the Council by Kitewaho Bush Reserve Company Limited.

BACKGROUND

A1-A4

A report from the Council's solicitor as attached at pages A1 to A4. The report summarises the background to this matter and discusses the issues raised by the Court's decision.

ISSUES

Section 114Q of the Local Government Act stipulates matters that can be delegated to Committees and Subcommittees. A specific exclusion applies in respect of a decision to initiate proceedings in the High Court. As such, Council itself must make any decision to lodge an appeal in the High Court. It is noted that any such decision would need to be made at the Council's December meeting so that the appeal can be filed within the appeal period.

If Council elects not to file an appeal in relation to the matters of concern, it would be obliged to adhere to the direction contained within the Court's decision. This would effectively constrain the Council's powers in relation to the processing of resource consent applications and would impact significantly on current practice and understandings adhered to by other territorial and regional Councils with regard to the Resource Management Act consent processing.

RESOURCES

The appeal will incur some legal costs. However, because the appeal would be confined to a point of law it is anticipated that the legal costs would not be substantial. It is possible that the Auckland Regional Council may consider joining the Council in lodging a joint appeal and facilitate an arrangement to share the legal costs.

The Regional Council were a party to the proceedings before the Environment Court and would also be affected by that part of the Court's decision that relates to Sections 91 and 92 of the Resource Management Act. The possibility of a joint appeal will be explored further prior to the appeal period expiring.

RECOMMENDATIONS

1. That the information be received.
2. That Council authorise the lodging of an appeal to the High Court against the decision of the Environment Court in proceedings ENF147/96, ENF148/96, MIS005/00 and MIS050/00, limited to the Court's rulings on Section 91 and section 92 of the Resource Management Act 1991.
3. That the Service Manager: Resource Management and Building and Manager: Legal Services be authorised to liase with the Auckland Regional Council to discuss the possibility of a joint appeal with that party.

Report prepared by: Philip Brown, Service Manager: Resource Management & Building and endorsed by Graham Wakefield, Manager: Legal Services.



3 LOCAL GOVERNMENT BILL - FORUM FOR ELECTED MEMBERS

PURPOSE OF THE REPORT

A5-A6

To inform Councillors of Local Government New Zealand's Forum for Elected Members on the Local Government Bill to be held in Wellington on Thursday, 7 February 2002, as attached at pages A5 to A6.

BACKGROUND

The Forum is designed to inform participants of the content of the Bill, provide an insight into Local Government New Zealand's draft submission on the bill and the opportunity for comment on that submission.

ISSUES

The matter is brought before the Council to approve participation at the Forum. It is suggested that the participants be, the Mayor, the Chairpersons of the City Development Committee, Environmental Committee and the Finance and Operational Performance Committee.

CONCLUSION

Local Government New Zealand are to hold a one day Forum on the Local Government Bill in Wellington on Thursday, 7 February 2002, it is suggested that Council be represented at the Forum by Mayor Bob Harvey and the Chairpersons of the City Development Committee, Environmental Committee and the Finance and Operational Committee.

RECOMMENDATIONS

1. That the information be received.
2. That Mayor Bob Harvey, and the Chairpersons of the City Development Committee, Environmental Committee and the Finance and Operational Performance Committee attend the Local Government New Zealand's Forum on the Local Government Bill in Wellington on Thursday, 7 February 2002.

Report prepared by: Sharon Simiona, Committee Secretary.



4 **ROLES AND RESPONSIBILITIES UNDER THE RESOURCE MANAGEMENT ACT 1991 - SEMINAR FOR ELECTED MEMBERS**

The purpose of this report is to inform Councillors of the New Zealand Planning Institute's Seminar on Roles and Responsibilities Under the Resource Management Act 1991, in Auckland, on Monday, 4 February 2002, and to ascertain participation at the Seminar.

A7-A8

It has been suggested that members of the Hearings Committee would find the content and interaction with the other local authority's elected members extremely beneficial, and therefore may wish to attend. A copy of the Seminar's content is attached at pages A7 to A8.

RECOMMENDATIONS

1. That the information be receive
2. That attendance at the New Zealand Planning Institute's Seminar on Roles and Responsibilities Under The Resource Management Act 1991, to be held in Auckland on Monday, 4 February 2002, be considered.

Report prepared by: Sharon Simiona, Committee Secretary.





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By Facsimile**

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Waitakere

Contact: R B Enright

Attention: Philip Brown/Elizabeth Wells

17 December 2001

Dear Philip/Liz

Appeal - Kitewaho Environment Court decision

- 1 I refer to the final decision of Judge Treadwell dated 10 December 2001, and our meeting to discuss this decision on 14th December.
- 2 Although in overall terms, the decision is very favourable to Council, there is one aspect that is of concern, where we consider that the Judge has blatantly erred in law. I confirm our recommendation that Council should lodge an appeal against this sole aspect of the decision.
- 3 I have set out below some background for elected members, as well as an outline of why we recommend an appeal. We also confirm that this matter merits urgency because:
 - a. Under the Local Government Act, a decision to lodge an appeal must be ratified at a meeting of Council;
 - b. This is the last meeting of Council prior to the Christmas break, with the next meeting of Council being in February 2002.
 - c. The Court's decision was received on 11 December, and the appeal period for lodging an appeal to the High Court will expire on or about 25 January 2002.

Background

- 4 In 1996 Kitewaho Bush Reserve Company Ltd and associated companies (all being under the direct or indirect control of Mr Peter Mawhinney) ("Kitewaho") lodged proceedings in the Environment Court against Council relating to a number of



KPMG Legal is an independent law firm and it incorporates the firm formerly known as Kensington Swan.
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Office at
Auckland
KPMG Legal

FROM: KPMG LEGAL

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subdivision consent applications.¹ These applications sought to subdivide land owned by Kitewaho in Anzac Valley Road, Bethells. Each subdivision application is complex in nature but generally seeks to create a lot density well below the 4ha minimum site size required in the Foothills Human Environment. Normally such subdivision applications would be treated as non complying and would be publicly notified. However Kitewaho attempted to argue that the applications were in fact either permitted, controlled or limited discretionary, such that Council would be obliged to grant consent on a non-notified basis.

- 5 A number of technical arguments were made by Kitewaho to justify this position. However one of the key legal arguments related to the use of common areas to 'ratchet' up the theoretical lot size for each proposed lots. For example, in one of the applications lodged by Kitewaho, a total of 90 lots was proposed in a total site area of about 125ha. Normally, a site would need to be 360 ha in size to create 90 lots of four ha each. Under Kitewaho's common area approach, each lot was represented to be 4ha in area, however most of each lot would be 'common area' shared with numerous other lots.

Sections 91 & 92 of the RMA

- 6 Whenever Council officers process a resource consent application they are required to consider, under s91 RMA whether additional resource consents should be applied for; and under s92 RMA, whether further information is required from an applicant to ensure that a full assessment of effects has been undertaken.
- 7 In relation to Kitewaho's applications for consent, advice was received from the Auckland Regional Council ("ARC") that ARC consents for stormwater and other matters would be required. Based on this advice, and at various times, Council officers issued notices under s91 RMA deferring Kitewaho's applications until such time as Kitewaho had applied for the necessary ARC consents.
- 8 S91 RMA provides :
- (1) A consent authority may determine not to proceed with the notification or hearing of an application for a resource consent if it considers on reasonable grounds that
 - (a) Other resource consents under this Act will also be required in respect of the proposal to which the application relates; and
 - (b) It is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any one or more of those other resource consents be made before proceeding further.
- 9 As set out above, Council officers are entitled to issue a s91 notice where other consents are required and it will assist the understanding of an application for consent. Applicants have a right of appeal where they disagree about the need to obtain further consents.
- 10 Councillors will no doubt be familiar with s92 RMA – that provision entitles officers to require applicants for resource consent to provide additional information to assist Council to evaluate the potential effects of activities. S92 RMA is frequently used by officers to require assessments on such things as traffic effects, noise effects, ecological

¹ Some of these subdivision applications were lodged in 1996 or earlier, some were lodged between 1996-2000, prior to the Environment Court hearing.



effects, etc. An applicant would normally be required to fully comply with a s92 requirement.

Judge Treadwell's decision

- 11 As stated above, on the whole the Judge's decision is very favourable to Council. The Court has found that Kitewaho's proceedings were an abuse of process, and the proceedings have been struck out, apart from as they relate to ss91 and 92 RMA. Council will shortly be filing an application for costs against Kitewaho.
- 12 In relation to ss91 and 92 RMA the Judge has ruled that :
- "...Should the Council endeavour to use s91 or s92 procedures for the purpose of avoiding making a decision if a decision is requested by any applicant then it may find itself facing an order for costs. The sections are not to be used as a delay mechanism. If an applicant states he is not prepared to comply with s91 and s92 requests and requests a decision then Council can simply refuse consent leaving the matter for later determination by the Court."
- 13 We consider that the Judge has erred in law in this approach because :
- a. Whether or not an applicant for consent agrees that further consents or further information is necessary is irrelevant : the legal test is whether the additional consents are required and will better assist Council's understanding of an application (s91 RMA) or whether additional information will assist Council to assess an application including its effects (S92 RMA). Otherwise it makes it too easy for an applicant to refuse to cooperate, with the net effect being that Council officers then have to continue processing a poorly prepared application. Inevitably that will result in officers having to spend more time undertaking their own appraisal of an application - so that they can prepare the planner's report, as required by the RMA.
 - b. It is simplistic for the Judge to suggest that an application can simply be refused if an applicant refuses to comply with ss91 or 92. Council is still required to determine the status of an application (eg controlled, discretionary, non complying), assess its relevant effects, assess who may be affected by the application, assess whether to notify an application, and ensure that a holistic appraisal of an application, taking into account all relevant effects, is undertaken. To undertake these activities Council must be able to rely on its powers under s91 and 92, and not have to rely upon the agreement of an applicant.
 - c. The suggestion by the Court that ss91 and 92 cannot be used as 'a delay mechanism' is also rejected : these provisions can be legitimately used to 'stop the clock' where an application is inadequate.
 - d. The decision is potentially far-reaching in its consequences : if applicants were to routinely refuse to comply with ss91 or 92 requests then this could have significant implications on Council's ability to process resource consent applications.

Summary



- 14 In summary then we recommend that Council lodge an appeal against the Court's decision, as it relates to ss91 and 92 RMA.

Recommendations :

- a. That this report be received.
 - b. That Council authorise the lodging of an appeal to the High Court against the decision of the Environment Court in proceedings ENF147/96, ENF148/96, MIS005/00 and MIS050/00. The appeal is to relate to the Court's rulings on s91 and s92 of the Resource Management Act 1991.
 - c. That the Service Manager : Resource Management and Building be authorised to liaise with the Auckland Regional Council to discuss the possibility of a joint appeal in relation to (b) above.
- 15 Please let me know if you require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Enright', written over a horizontal line.

Robert Enright
Partner
013510275 rbe

Telephone: (09) 375 1134
email: renright@kpmg.co.nz

cc:
Graham Wakefield, by fax 836 801

Registration Details:

Council name:.....

Contact:.....

Phone:.....

Names of attendees:

-
-
-
-
-
-
-

Fees: \$100.00 per person (gst incl.)

Total enclosed:

\$

Please return form to:

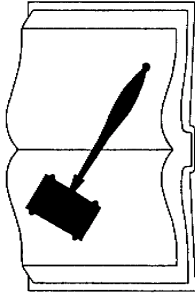
Denise Bush
Local Government New Zealand
P O Box 1214
WELLINGTON

Refunds & Cancellations

Registration payment will be refunded if cancellations received 7 days prior - substitutions will be accepted. All substitutions/cancellations must be notified in writing. Cancellations received within 7 days will not receive a refund.

Confirmation of Registration

Please enclose payment with your registration. Registration not confirmed until payment received. This becomes a tax invoice on payment of the fee.
GST No. 49-455-479



Local Government Bill

Forum for all Elected Members

7 February, 2002

Ilott Theatre
Town Hall
Wellington



For further information about the Forum

please contact:

Denise Bush
04 470 0021

or

04 924 1205

(after 1 January 2002)

denise.bush@lgnz.co.nz



Local Government New Zealand
PO Box 1214, Wellington, New Zealand
Phone 04-4-470 0000 Fax 04-4-470 0001
<http://www.lgnz.co.nz>

1 Why?

The new Local Government Bill marks a new era in the development of local government in New Zealand. It promises to transform the way in which local governance occurs in our communities.

This Forum is designed to inform participants of the content of the Bill, brief you on the central government's vision for local government in the future and give you an opportunity to debate the Bill's strengths and weaknesses.

The Forum will also provide you an insight into *Local Government New Zealand's* draft submission on the Bill and give you an opportunity to comment on that submission.

The Forum has been timed to provide you all with the information you need to contribute to your own Council's submission in time to meet the deadline for submissions to the Select Committee at the end of February, 2002. (At this stage the closing date for submissions is provisional as the Bill has not yet had its first reading in Parliament).

2 Who?

This Forum is aimed primarily at all Mayors/Chairs and Councillors.

There is a Workshop for Officers being held on 25 January, 2002.

There will be informed speakers to present overviews, explain components, answer any questions and more than one opportunity for you to participate in small discussion groups with the results of your discussions being reported back to the meeting for consideration in the overall final submission on behalf of the sector from *Local Government New Zealand*.

3 Agenda

9.00am	Coffee & Tea on arrival
9.30am	Welcome and "How it started"
9.40am	Overview Local Government Bill
10.00am	Presentation of Draft Submission
10.30am	MORNING TEA
11.00am	Discussion Groups
	- Treaty
	- Planning
	- Empowerment
	- Governance
	- Miscellaneous
12.30pm	LUNCH
1.30pm	Report back & discussion
3.00pm	Conclusion
3.30pm	AFTERNOON TEA



ORGANISATIONS

New Zealand Planning Institute (NZPI[®])

The New Zealand Planning Institute is the professional body that represents over 1300 planners nationwide. Most of the members of the Institute are involved in the implementation of the RMA through their work in central government, local government and the private sector.

Local Government New Zealand (LGNZ)

Local Government New Zealand is the national advocacy and representation body of local government throughout New Zealand. This role includes facilitating the delivery of training and information nationally to assist local authorities to meet their statutory corporate responsibilities.

Ministry for the Environment (MFE)

The Ministry for the Environment advises the Government on the health of the environment, and on policies and their impacts on the environment. Areas where the Ministry has significant responsibilities include: resource management; land, air and water quality; waste, hazardous substances and contaminated sites; protection of the ozone layer; climate change and energy efficiency

Sustainable Management Fund (SMF)

This workshop is being presented with assistance from the Sustainable Management Fund. The Ministry for the Environment administer the fund.

PRESENTERS:

Alan Dormer

Alan is an Auckland barrister who has been practising in resource management, planning and environmental law for over 25 years. He has appeared extensively before the Environment Court and its predecessor. Since commencing practise as a barrister 12 years ago he has acted on behalf of over 20 local authorities. In 1997, the then Minister for the Environment appointed Alan to a Reference Group set up to provide the Minister with independent advice on the need for changes to the RMA. Alan is also a member of the Auckland City's Hearings Panel.

Paula Hunter (NZPI)

Paula Hunter is a senior planner with MWH New Zealand Ltd and has over 17 years experience in an extensive range of planning and resource management matters. Paula has specialist knowledge and expertise in statutory planning and in particular the requirements of the Resource Management Act. She regularly appears as an expert witness at Council Hearings and the Environment Court.

John Hutchings

As Strategy Leader, Environment and Infrastructure with Local Government New Zealand, John is responsible for providing advice and leadership on a range of environmental and infrastructural matters. Rounding reforms, biodiversity, climate change, waste minimisation, utilities and RMA compliance costs are a current focus of attention. He has extensive experience in these areas and has also worked at a regional government level.

Laura Hogg

A Policy Analyst, Environment with Local Government New Zealand, Laura is responsible for providing advice and policy input to a range of environmental and social issues concerning local government. These include biodiversity, sustainable development initiatives, reviews of the Building Act and the Public Works Act, public health, energy efficiency, hazardous substances management and climate change.

Kathleen Ryan

The Manager, Northern Regions Office with Ministry for the Environment, Kathleen was responsible for convening and coordinating the Ministry's Rural Issues Working Group and is now responsible for the Ministry's urban issues programme.

Sue Powell

As Manager, Central Regions Unit, with Ministry for the Environment, Sue's work includes looking at and beyond the RMA to achieve sustainable resource management outcomes, and managing issues that impact on environmental legislation.

Cost (incl. GST): \$149.00 per person

Cancellation and Refund Policy

No refunds or invoice credits will be given four (4) working days or less before a seminar. An alternative person can be sent if the original registrant can no longer attend.



NEW ZEALAND
PLANNING
INSTITUTE

Roles & Responsibilities under the Resource Management Act 1991

North Island Series

04 February - 11 March 2002



Ministry for the
Environment
Manatū Mō Te Taiao

LOCAL GOVERNMENT
NEW ZEALAND

REGISTRATION FORM

Complete this form and either

- Post with a purchase order or cheque (made out to the *New Zealand Planning Institute*) to NZPI®, PO Box 52-046, Kingsland, Auckland or
- Fax with a purchase order to NZPI® on (09) 815-2087

A tax invoice will be sent to you in both cases.

Council Name _____

Address _____

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Order No: _____

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Names of Attendees:

PO

1. _____

2. _____

3. _____

4. _____

5. _____

(please photocopy this form for additional names)

Tick the Location you are Attending:

- | | | | |
|---------------------|--------------------------|-----------------------|--------------------------|
| Auckland 04 Feb | <input type="checkbox"/> | Palmerston Nth 28 Feb | <input type="checkbox"/> |
| Whangarei 05 Feb | <input type="checkbox"/> | Gisborne 06 Mar | <input type="checkbox"/> |
| Hamilton 13 Feb | <input type="checkbox"/> | Napier 07 Mar | <input type="checkbox"/> |
| New Plymouth 14 Feb | <input type="checkbox"/> | Rotorua 11 Mar | <input type="checkbox"/> |
| Wellington 27 Feb | <input type="checkbox"/> | | |

Please ensure you have read the cancellation and refund policy in this brochure

Numbers are limited so be in early!

Workshop Content

Ministry for the Environment will outline the role of the Ministry, indicate the Minister's environmental priorities, and key work programmes relevant to local government. The purpose and principles of the RMA, how the legislation functions and key issues for Councilors will also be covered and discussed.

Local Government New Zealand will look at what's working with the RMA and discuss what challenges it holds for Councilors. The politics of the RMA will also be covered.

In the afternoon, the **New Zealand Planning Institute** will focus on the Hearings process under the RMA. Key areas to be covered include: preparation for hearings, the roles of participants, conduct of participants and Councilors, matters to be addressed in decision making and conflicts of interest.

**** All presentations will be interactive ****

Materials Supplied: On the day each attendee will be presented with a folder containing all presentations, a resource kit discussing Councilors' roles and responsibilities and a selection of Ministry brochures and documents.

Programme

08.45 to 9.15am - Registration

- | | |
|----------|--|
| 09.15 am | Welcome |
| 09.20 am | Ministry for the Environment: the environment in context; what the RMA seeks to achieve. |
| 10.50 am | Morning Tea |
| 11.10 am | Local Government New Zealand: The Politics of the RMA: the Good, the Bad and the Sad |
| 12.30 pm | Lunch |
| 01.30 pm | New Zealand Planning Institute: Hearings and Decision Making |
| 03.45 pm | Close |

Workshop Locations and Dates

Auckland	Monday 04 February 2002 Quality Hotel, Logan Park 187 Campbell Road, Greenlane
Whangarei	Tuesday 05 February 2002 Quality Hotel 9 Riverside Drive
Hamilton	Wednesday 13 February 2002 Quality Hotel 100 Garnett Ave
New Plymouth	Thursday 14 February 2002 Plymouth International Hotel Cnr Courtenay & Leach Streets
Wellington	Wednesday 27 February 2002 Quality Hotel, Oriental Bay 73 Roxborough Street
Palmerston North	Thursday 28 February 2002 The Coachman Hotel 134 Fitzherbert Avenue
Gisborne	Wednesday 06 March 2002 The Gisborne Hotel Cnr Huxley & Tyndall Rds
Napier	Thursday 07 March 2002 The War Memorial Centre 48 Marine Parade
Rotorua	Monday 11 March 2002 Millennium Hotel Cnr Eruera & Hinemaru Sts