

**AGENDA FOR AN ORDINARY MEETING OF THE COUNCIL TO BE HELD IN THE
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 30 JULY 2003 COMMENCING AT 5.30 PM**

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1 OPENING PRAYER

Pastor Peter Alpe from the Apostolic Church Movement will say the Opening Prayer.



2 APOLOGIES



3 CONFIRMATION OF MINUTES

Ordinary - Wednesday, 25 June 2003

Special - Monday, 30 June 2003

Ordinary - Monday, 14 July 2003

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Council held on Wednesday, 25 June 2003, the Special Meeting held on Monday, 30 June 2003 and the Ordinary Meeting held on Monday, 14 July 2003, as circulated, be taken as read and now be confirmed.



4 URGENT BUSINESS

Section 46A(7) and (7A) 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 item is a minor matter; 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, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Council resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

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



PART A - CONFIRMATION OF SPECIAL ORDER

5 GENERAL BYLAW NO. 4 - 1990 - AMENDMENT NO. 6, 2003

A1

The Council on Wednesday, 25 June 2003 resolved by way of Special Order to Amendment No. 6, 2003 General Bylaw No. 4 - 1990. The Special Order was publicly notified on Monday, 7 July 2003 and Monday, 21 July 2003 in accordance with Section 716B of the Local Government Act 1974. At the time of the agenda printing 1 submission had been received (generally in support) refer attachment at page A1.

The Special Order resolution is now submitted for confirmation:

GENERAL BYLAW NO. 4 - 1990 - AMENDMENT NO. 6, 2003

The Waitakere City Council acting in pursuance and exercise of the powers and authorities conferred upon it by the Local Government Act 1974, the Bylaws Act 1910 and all other powers and authorities in any way enabling it **HEREBY CONFIRMS BY WAY OF SPECIAL ORDER**, to amend General Bylaw No. 4 1990, as follows:

1. Short Title

The short title of this Bylaw shall be the Waitakere City Council General Bylaw No. 4 1990, Amendment No. 6, 2003.

2. Commencement

This amendment shall come into force on Monday, 1 September 2003.

3. Amendment

Clause 244 is hereby revoked and the following new clause substituted:

244 Street Numbering of Buildings

244.1 Every building shall at all times be marked with the number allocated to that building by the Council pursuant to s.319B of the Local Government Act 1974.

244.2 If at any time the Council (in exercise of its powers under s.319B of the Local Government Act 1974) alters the number of a building, the marking must be altered to comply with that change within one calendar month of written notification of the change being given by the Council to the owner or occupier of the building.

244.3 Building marking shall be comprised of characters which:

(a) Subject to clause 244.4, comply with the specification in clause 244.5.

(b) Are affixed or placed in a position which is readily visible from the street to which the building has frontage and either:

(i) upon a post, fence, gate or letterbox located immediately adjacent to the street boundary or

(ii) if there is no such post, fence, gate or letterbox, upon the building itself.

244.4 Nothing in clause 244.3 shall be construed as requiring the marking which existed on 31 May 2003, and which complied with this Bylaw at that date, to be changed or replaced prior to 31 July 2005.

244.5 Building marking shall comply with the following:

(a) residential building shall be marked with characters which are:

(i) not less than 50mm in height and 30mm in overall width (except for the number "1" or the letter "l").

(ii) Made out of lines not less than 3mm in width.

- (b) all other building shall be marked with characters which are:
- (i) not less than 75mm in height and 40mm in overall width (except for the number "1" or the letter "l").
 - (ii) Made out of lines not less than 5mm in width.

244.6 Building marking shall be maintained in good legible and visible condition at all times. Any marking which is covered up or obscured shall be immediately uncovered. Any marking which is obliterated or defaced shall be immediately replaced.

244.7 Responsibility for compliance with this clause lies with the owner and occupier for the time being of any building but the fact that the owner of a building is not the occupier of that building shall not be a defence to a conviction for an offence against this Bylaw.

244.8 Any person who neglects for one month after written notice to mark a building in accordance with this part of this Bylaw commits an offence.

4. Affixing of the Seal

That the Common Seal of the Waitakere City Council be affixed to such documents as may be necessary to give effect to the Special Order and be attested as soon as practicable by any two of the following:

- Mayor, or Deputy Mayor or Councillor;
- Chief Executive, or the Acting Chief Executive in his absence;
- Director: Corporate & Civic Services.



PART B - REPORT OF THE MAYOR

The report of the Mayor will be circulated under separate cover with this agenda.



PART C - TE TAUMATA RUNANGA AND COMMUNITY BOARDS REPORTS

6 TE TAUMATA RUNANGA

I NOHO TE TAUMATA RUNANGA KOMITI MANE, TE KAU MA WHA O HONGONGOI 2003

YOUR COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON MONDAY, 14 JULY 2003

MATTERS CONSIDERED

*1-4
Part C*

Your 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 1 to 4 in the supplement labelled Part C.

NGA TAKE E WHIRIWHIRIA

E whakatau ana Te Taumata Runanga i nga take i whakamanangia i te ture he whakaahua o nga tuhi kua tona ki nga mema o te Kaunihera.

Your Committee Recommends:

That the report of the Ordinary Meeting of Te Taumata Runanga held on Monday, 14 July 2003 be received.

Te Warena Taua
CHAIRPERSON



7 NEW LYNN COMMUNITY BOARD

THE BOARD SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON MONDAY, 30 JUNE 2003

MATTERS CONSIDERED

*5-7
Part C*

The Board 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 5 to 7 in the supplement labelled Part C.

The Board Recommends:

That the report of the Ordinary Meeting of the New Lynn Community Board held on Monday, 30 June 2003 be received.

EG Francke
CHAIRPERSON



8 **WAITAKERE COMMUNITY BOARD**

THE BOARD SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON TUESDAY, 1 JULY 2003

MATTERS CONSIDERED

8-13
Part C

The Board 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 8 to 13 in the supplement labelled Part C.

The Board Recommends:

That the report of the Ordinary Meeting of the Waitakere Community Board held on Tuesday, 1 July 2003 be received.

CA Shepherd, JP

CHAIRPERSON



9 **MASSEY COMMUNITY BOARD**

THE BOARD SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON WEDNESDAY, 2 JULY 2003

MATTERS CONSIDERED

14-17
Part C

The Board 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 14 to 17 in the supplement labelled Part C.

The Board Recommends:

That the report of the Ordinary Meeting of the Massey Community Board held on Wednesday, 2 July 2003 be received.

RF Jessopp

CHAIRPERSON



10 **HENDERSON COMMUNITY BOARD**

**THE BOARD SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING
HELD ON THURSDAY, 3 JULY 2003**

MATTERS CONSIDERED

*18-22
Part C*

The Board 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 18 to 22 in the supplement labelled Part C.

The Board Recommends:

That the report of the Ordinary Meeting of the Henderson Community Board held on Thursday, 3 July 2003 be received.

HM Jones

CHAIRPERSON



PART D - REPORTS OF THE CHIEF EXECUTIVE

11 26TH AUSTRALASIAN TRANSPORT RESEARCH FORUM - ATTENDANCE BY ELECTED MEMBERS

PURPOSE OF THE REPORT

The purpose of this report is to inform Councillors of the 26th Australasian Transport Research Forum and to ascertain participation by Elected Members.

ISSUES

A2-A8

The 26th Australasian Transport Research Forum is to be held in Wellington on 1-3 October 2003. The conference covers a broad range of the themes which are of relevance to Council including travel demand management, travel planning, sustainable transport and provides feedback on a number of experiences from both within New Zealand and overseas. The programme covers all modes of transport - trains, buses, walking, cycling, and private motor vehicles. Details on the conference and a draft programme of speakers are attached at pages A2 to A8.

It is anticipated that some Elected Members would find the content and interaction with other local authority Elected Members and experts of significant benefit, and therefore may wish to attend.

Elected member attendance is provided for under the Council's "Policy for Overseas Travel and Conference Attendance by Elected Members". It is estimated that the total cost arising from the attendance of each Elected Member would not exceed \$2,000. This figure includes travel allowances, accommodation and conference registration fees. The Council provided a budget in the 2003/2004 Annual Plan for Elected Members' attendance at training opportunities, seminars and conferences and that fund can be utilised for this conference

In reaching a decision on whether any Elected Members should attend the conference, the policy requires that the following matters should be considered:

- is the travel and or attendance in line with Council's policy direction or operational requirements?
- availability and location of funds?
- is the travel or attendance necessary or beneficial to the extent of the cost?
- is the most appropriate representative being sent?

It is considered that attendance at the conference would be consistent with the Council's policy direction and operational requirements. There is a need for a number of Elected Members to maintain and enhance their knowledge of transport issues and in order to effectively advocate for sustainable transport options on behalf of Waitakere City and to fulfil their statutory obligations in terms of city-wide transport assets. The Council would need to determine the most appropriate representatives.

RECOMMENDATIONS

1. That the information be received.
2. That the Council nominate required Elected Member(s) to attend the 26th Australasian Transport Research Forum, to be held in Wellington between Wednesday, 1 October and Friday, 3 October 2003.

Report prepared by: Glenda Lock, Project Manager: Transport Projects.



12 LOCAL GOVERNMENT ACT 2002 - DELEGATIONS TO OFFICERS

PURPOSE OF THE REPORT

The purpose of this report is to inform Councillors of three key changes made in the Local Government Act 2002 (LGA02) to Council's ability to delegate powers and functions to officers and to recommend action in respect of those three matters. The Chief Executive has commissioned a general review of existing delegations, which is scheduled to be reported to the August Council meeting. It is considered appropriate to deal with these matters independently of that review.

ISSUES

The Local Government Act 1974 prohibited delegation of a range of matters including the power to institute proceedings in the High Court, other than injunction proceedings (s 114 Q(1)(c)) and "the powers and duties conferred or imposed on the local authority by the Public Works Act 1981" (s 114Q(1)(f)). Neither of these delegation prohibitions is repeated in Local Government Act 2002. However, as Councillors are aware, a new delegation prohibition is introduced by Local Government Act 2002, restricting the ability to warrant enforcement officers under both Local Government Act 2002 and the Building Act 1991. This report will deal with each of these three issues in turn.

HIGH COURT PROCEEDINGS

The amendment to the law as a consequence of Local Government Act 2002 is both sensible and practical. Currently the Chief Executive and the Director: Corporate & Civic Services may commence proceedings in the District Court, the Environment Court and the Court of Appeal without an approval from the Council. The inability to commence an appeal in the High Court without prior reference to the Council (albeit with reporting after the event) is anachronistic.

The need to appeal to the High Court almost commonly arise in two circumstances:

1. An appeal on a point of law from a decision of the Environment Court and
2. An appeal on penalty in respect of prosecution in the District Court.

Appeals need to be commenced within 20 working days of the Court's decision. Commonly this will not correspond conveniently with the Council's meeting cycle. In addition, in complex matters the 20 working day period may not be long enough for Council to be able to fully assess its position. The ability to lodge an appeal "pro forma" is an important tool in protecting the Council's position.

PUBLIC WORKS ACT 1981

It is not proposed that there be any delegation of Council's power to acquire land under the Public Works Act or to determine the circumstances in which land is surplus and should be sold. Councillors will however recall that there are some limited discretions under s40 which permit the Council to avoid its offer back obligations under the Act, and also some discretion in respect of sale process under s42 once a decision to sell has been made or an offer back has been declined. These decisions rarely need to be taken on an urgent basis, but invariably turn upon legal advice. In those circumstances it is felt that such decisions may properly be delegated to the Chief Executive Officer, with the responsibility to ensure that appropriate advice is received before a decision is made.

WARRANTING OF ENFORCEMENT OFFICERS

Council may no longer delegate the power to warrant enforcement officers. There is however no prohibition against delegation of the power to revoke or suspend warrants under Local Government Act 2002 or the Building Act 1991. It is not difficult to imagine the circumstances where it is appropriate to suspend or revoke a warrant but circumstances may not have yet arisen where termination of employment is justified. The ability to revoke or suspend a warrant of appointment on an urgent basis is both practicable and sensible.

EXISTING DELEGATIONS

There are existing delegations to the Chief Executive and the Director: Corporate & Civic Services in respect of legal proceedings (which include also a reference to High Court proceedings) and to the Chief Executive and the Directors of City Services and Corporate and Civic Services in respect of the appointment of enforcement officers under the Building Act and Local Government Act 2002. Fresh delegations however are required in respect of both of these matters.

RECOMMENDATIONS

1. That the information be received.
2. That the Delegations to Officers - Responsibilities document as it refers to the Chief Executive be amended by deleting delegation 4 (*authority to institute proceedings under urgency*) and delegation 31 (*authority to appoint enforcement officers under the Building Act 1991*).
3. That the Delegations to Officers - Responsibilities document be amended by inserting the following new provisions to the delegations to the Chief Executive:
 - "4 Power to act in the case of urgency for the protection of matters referred to in the Waitakere City District Plan or the Waitakere City By-Laws or to protect the Council's position in any proceedings before any New Zealand court of competent jurisdiction, by appeal or otherwise".
 - "12A Authority to determine all matters acquiring a decision by the Council under section 40(2), section 40(4) and section 42 of the Public Works Act 1991".
 - "12B Authority to suspend or revoke the appointment of any person as an enforcement officer under the Local Government Act 2002".
 - "31 Authority to suspend or revoke the appointment of any person as an enforcement officer under the Building Act 1991".
4. That the Delegations to Officers - Responsibilities document as it refers to the Director: Corporate & Civic Services be amended by deleting delegation 14 (*authority to institute proceedings under urgency*) and the reference to '*Enforcement Officer (Building Control), Sections 76 and 77, Building Act 1991*' in delegation 48.

5. That the Delegations to Officers - Responsibilities document be amended by inserting the following new provisions to the delegations to the Director: Corporate & Civic Services:
 - “14 Power to act in the case of urgency for the protection of matters referred to in the Waitakere City District Plan or the Waitakere City By-Laws or to protect the Council’s position in any proceedings before any New Zealand court of competent jurisdiction, by appeal or otherwise”.
 - “48 Authority to suspend or revoke the appointment of any person as an enforcement officer under the Building Act 1991”.
6. That the Delegations to Officers - Responsibilities document as it refers to the Director: City Services be amended by deleting the reference to ‘*Enforcement Officer under the Local Government Act 1974 and the Building Act 1991*’ in delegation 80.
7. That the Delegations to Officers - Responsibilities document be amended by inserting the following new provisions to the delegations to the Director: City Services:
 - “80A Authority to suspend or revoke the appointment of any person as an enforcement officer under the Local Government Act 2002 and the Building Act 1991”.

Report prepared by: Denis Sheard, Legal Services Manager.



13 TE ATATU MARAE - TENURE OPTIONS

PURPOSE OF THE REPORT

The purpose of this report is to advise Council of recent discussions in relation to Land Tenure Option 3 with the Te Atatu Marae Coalition Trust, through the Te Atatu Marae Advisory Group (hereafter the “Advisory Group”), and to recommend a way forward in relation to these issues.

BACKGROUND

A9

In response to work by the Advisory Group, staff were requested to give further thought to tenure issues in relation to the Te Atatu Marae. A presentation was made to a joint meeting of the Advisory Group and the Te Atatu Marae Coalition on 21 May 2003, discussing the various options and putting forward a tentative proposal as to the preferred course. This was done on the clear understanding that the views expressed were not mandated by Council resolution but were considered views which would form the basis for recommendations to be made to Council. At the conclusion of the meeting the Te Atatu Marae Coalition Trust was invited to consider each of the options presented to it and to indicate its preference. A response has now been received (on 16 July 2003), and is attached at page A9.

STRATEGIC CONTEXT

One of the purposes of local government under the Local Government Act 2002 (LGA 02) is to promote the social, economic, environmental and cultural wellbeing of communities, in the present and for the future. Within the framework of Local Government Act 2002, Council has adopted a Long Term Council Community Plan that incorporates a Treaty of Waitangi principle which over-arches all of Council's strategic platforms and activities. Together with the Local Government Act 2002, this guides Council to provide opportunities for Maori to contribute to local government decision making, and services that meet the cultural, social, environmental and economic needs of communities. The provision of support for Maori to establish Marae to facilitate community wellbeing fits within this framework.

In addition, Council has also adopted a Marae support policy that specifically identifies that Council will support an Urban Marae at Te Atatu.

ISSUES

Tenure Options

There are three potential tenure solutions for the proposed Marae. Each solution will be discussed in turn.

Fee Simple Ownership

Under this option, Council could subdivide the land to be occupied by the marae and transfer it to the body with the responsibility for construction, development and operation of the marae. The land could either be gifted or sold. A subdivision consent under the Resource Management Act 1991 would be required. Since this would amount to a disposal of land held for a public work, it would be necessary to investigate the extent to which, if any, an offer back obligation arose under s40 of the Public Works Act 1981.

This proposal was put forward as being the least attractive option from the Council's perspective. It was felt that the proposal for transfer of outright ownership would founder if an offer back was required and was unlikely to find Council or community support given the strategic nature of the site and the desire to provide for public access to Harbourview as a whole.

Lease Or Licence

This is the tenure option which had been at the forefront of thinking until the commencement of this work. A licence would probably not be acceptable to the proposed funders of the marae, assuming security for the lending or granting of monies was required. Commercial lenders commonly require security of tenure by way of lease prior to the advance of money. Grant organisations usually require some form of long-term security in relation to facilities towards which grants are made. A lease of the land usually carries with it a right to exclude the public, but leases of publicly owned land commonly prescribe circumstances where public access is to be allowed. If the lease is for a term of more than 35 years a subdivision consent will be required.

If the land is leased for the purposes of a marae, it is the view of staff that an offer back obligation under s40 of the Public Works Act 1981 (PWA) would not arise. Prior to 30 June the land was held for the wide variety of purposes set out in the Local Government Act 1974 (LGA 74), generally relating to recreation and community development. Specifically, Council was authorised to grant a lease to a body or group of persons “whose object or principal object is the recreation enjoyment education or instruction of the public or the promotion of any form of culture or the improvement or development of amenities for the public”. Under s189 Local Government Act 2002 Council may compulsorily acquire land under Public Works Act 1981 in respect of anything which it was “empowered to undertake construct or provide immediately before 1 July 2003”. It follows that either the use of this land for a marae was already within the contemplation of the s601 purposes for which the land was held, or that it represents a change to a use which is of itself a public work by reference to s601 (LGA 74).

One of the advantages of a lease structure is the ability of Council to closely control uses occurring upon the land. If it transpires over time that the provisions of the lease are out-moded, then they can be varied by agreement. However the law of landlord and tenant is somewhat arcane. Enforcement of lease provisions can often give rise to difficulty, and certainly give rise to friction between landlord and tenant. It can be argued that the rather “heavy handed” control of a lease structure is inappropriate to the proposed marae.

If a lease was the preferred tenure option, the terms, conditions and rental would be dealt with in terms of Council’s Community Lease Policy, guided where appropriate by the Marae Support Policy.

An alternative leasing structure considered was the possibility of, rather than holding the marae site in fee simple ownership in Council with a lease granted under Local Government Act 2002, classifying the marae site as a Local Purpose (Marae) reserve under the Reserves Act 1977 and then leasing the premises pursuant to s61(2A) of the Reserves Act 1977. The disadvantage with this proposal is the current uncertainty as to whether or not a lease under s61(2A) of the Reserves Act is subject to the Public Bodies Leases Act 1969 (PBLA). The staff view is that the Council, as a leasing authority under the Reserves Act, remains bound by Public Bodies Leases Act 1969. If that is correct, then tendering of the lease would be required if it was proposed to have a term greater than five years. It is common for Councils to strive to avoid the application of Public Bodies Leases Act 1969 to leases because of the antiquated rent review procedures and the tendering requirement. Public competition for the lease is more suited to maximising financial return, but does help to achieve the wider Council or community objectives, which are of primary importance in this case.

Maori Reservation

A10-A27

The final option considered was a Maori Reservation under Te Ture Whenua Maori Act 1993 (Maori Land Act 1993). Part 17 of that Act contains provisions for the establishment of Maori Reservations. Regulations under the Act (Maori Reservation Regulation 1994) deal with issues relating to the charter of trustees of Maori Reservations. Attached at pages A10 to A27 are copies of ss338-341 of the Act and the Regulations.

Further detailed advice will be needed in respect of the fine detail of a tenure proposal involving the use of Maori Reservations. In broad outline however:

- (a) A reservation may be held for the common use and benefit of the people of New Zealand (s340).
- (b) The Council may request the Maori Land Court to vest the land as a Maori Reservation for that purpose under s338.

- (c) It is envisaged that that request may impose conditions such as identifying the names of initial trustees for approval by the Court, confirming the reversion of the land in the Council in the event that it ceases to be used for marae purposes (see also s338(9)), perhaps enabling the Council to exercise some residual control over the appointment of trustees, putting forward a draft charter under the regulations for approval and perhaps placing some control over the ability of trustees to lease under s338(12).

This tenure option is likely to be acceptable to lenders or grant funders as it provides a high level of certainty. Moreover the great benefit of this proposal is that it involves the use of a tenure mechanism specifically designed for the ownership of land for Maori communal purposes. The trustees' primary accountability is to the Maori Land Court, which has responsibility for the future stewardship and conduct of the trustees within the broad framework of the original request for vesting made by the Council. If at any time the land ceases to be used for a marae then it returns to Council ownership, in fee simple (s339(9)).

The vesting of the land in trustees for these purposes does not constitute a subdivision under RMA (s11(1)(c)). It is however moot whether the proposal to vest land in trustees under this Act might somehow constitute a disposal of surplus land thereby triggering the operation of s40 Public Works Act 1981. In the brief period available since receiving advice from the Te Atatu Marae Coalition Trust that it favoured the Maori Reservation option, it has not been able to reach a concluded view as to whether there is an issue here. Further work is required in relation to this issue, and it may be desirable, should Council opt for this way forward, to grant tenure to the body that will develop the Marae by way of lease, until all issues related to finalising the reservation are clarified and/or resolved.

District Plan

If the chosen tenure option is a lease or licence, then Council can regulate activities on the land by the lease or licence contract irrespective of how broadly expressed the District Plan terms may be. The variation to the District Plan which has been notified appears to proceed on the assumption that while control is exercised under the lease or licence, District Plan rules which allow scope for future uses is both appropriate and desirable. The definition of marae activities in the special areas section of the Plan is extensive and means "*the use of land for whare nui (wharepuni) or meeting house, carved or otherwise; whare karakia (place of prayer/worship); whare kai (dining hall), kaauta (cookhouse/kitchen); tangihanga, hura kohatu, hui-a-iwi; kaumatua housing (housing for the elderly); employment facilities; places of learning - including pura pura (pre-school), kohanga-reo (language nests), kurakaupapa (schools for older children), takanga wanaga (advanced learning institutions); healing and health services; tangi hanga; and Residential Activities subsidiary to the foregoing.*" It will be apparent from this definition there are some activities which Council might consider inappropriate to the Te Atatu Marae site.

If the Maori Reservation option is chosen as the preferred tenure option, further work will be needed to harmonise the controls (if any) on the restrictions on use in the request for reservation and the relevant rules in the District Plan. One way this issue might be approached is to permit a wide range of activities within the confines of the buildings to be constructed in accordance with an approved concept plan, but to provide for a notified planning process for activities outside that broad range but within the buildings; and additional buildings or any other activities.

Development Phase

Any discussion of tenure options tends to focus on the best long term structure having regard to funding requirements, achievement of management and governance goals and other community objectives. It is however important not to lose sight of the need to ensure that the development concept approved by the Council is carried through to completion. What is required is something in the nature of a “performance guarantee”.

In the private sector a common technique to ensure such outcomes is the use of a short term licence or lease to enable development of the site which only matures to the agreed long term tenure option at a point in time when either the development is fully complete or at least has reached the point where everybody is satisfied that it will be completed. It is recommended that this technique be employed in the case of the Te Atatu Marae development. The recommendation is underscored by the diffidence expressed earlier in relation to the position under s40 as a consequence of vesting under Te Ture Whenua Maori Act. In this case the deferment of the chosen tenure will be until the development is completed or legislative clarity is obtained, whichever last occurs.

Comment

The staff view is that a Maori Reservation under the Te Ture Whenua Maori Act is the best long-term tenure option for the Te Atatu Marae. This option also enjoys the support of the Te Atatu Marae Coalition.

As an interim measure, until the reservation can be finalised, a short-term lease arrangement with the Te Atatu Marae Coalition can be used to facilitate development and fund-raising. Recommendations in this regard are set out below.

Group to Establish Marae

As Council will be aware, there are two groups wishing to work with Council to establish the Te Atatu Marae: the Te Atatu Marae Coalition Trust and the Te Atatu Multicultural Marae Society. Council has worked with the Marae Coalition on this project since its inception in 1999, and more formally since early 2002. The Multicultural Marae Society began to approach Council during the course of 2002. Council has previously resolved that it will work with the Marae Coalition to establish the Marae.

The Mayor has initiated a Hui process to endeavour to facilitate the groups working together and to establish where each group is heading in terms of plans. The Advisory Group has also invited Hon. John Tamihere MP, to present work he has done in the community, although this offer has not been taken up to date. At this stage, after ongoing consultation with the Advisory Group and the Chairperson of Te Taumata Runanga, staff can see no reason to alter the manner in which Council is working, and in order to remove any confusion that might exist in the community, suggest that Council restate that it will work with the Te Atatu Marae Coalition Trust to establish the Marae.

RESOURCES

Staff resources are provided for in the Long Term Council Community Plan to undertake the work required for this project.

CONCLUSION

Following work done by the Te Atatu Marae Coalition and the Te Atatu Marae Advisory Group, staff have investigated tenure options for the Te Atatu Marae. It is recommended that a Maori Reservation under the Te Ture Whenua Maori Act 1993 be used as the preferred long-term tenure option, with a short-term lease to be used to enable the development phase to occur.

RECOMMENDATIONS

1. That the information be received.
2. That the Council agree in principle that a Maori Reservation under s338 Te Ture Whenua Maori Act 1993 is the preferred long term tenure option for the proposed marae, and instruct the Chief Executive to commence all necessary actions to give effect to this option.
3. That the Director: Corporate & Civic Services be directed to report to the Council at its October meeting, following discussions between the Te Atatu Maori Coalition Trust and the Te Atatu Marae Advisory Group, with a final recommendation as to the form of request for vesting the Maori Reservation, recommendations for nomination as trustees, a draft trustees' charter and a proposed interim leasing structure pending completion of the development and clarification of legislative effect of vesting the land as Maori Reservation.
4. That the Council confirms its decision to continue to work exclusively with the Te Atatu Maori Coalition Trust as the body which will develop the Marae for finalisation of arrangements in respect of the proposed marae, in the hope and the expectation that the Trust will enjoy the unqualified co-operation and support of other interested Maori groups within Waitakere City for a project which is intended to benefit all of the people of the City.

Report prepared by: Denis Sheard, Legal Services Manager, and Ross McLeod, Director: Corporate & Civic Services



14 WAITAKERE SPORTS COMPLEX - PROGRESS UPDATE AND REQUEST FOR GRANT DISBURSEMENT

PURPOSE OF THE REPORT

To provide an update report from the Waitakere Sports Complex Development Board and seek Council's approval for the disbursement of budgeted funding including funding from Sport & Recreation New Zealand (formerly the Hillary Commission).

BACKGROUND

The most recent project update was made to Council at its Ordinary meeting on 30 April 2003, when Council made a number of decisions, namely:-

- that the Development Board be advised that the provisional sum of \$750,000 net of GST for the incorporation of architectural and sustainable design elements be approved for contribution to the project, subject to confirmation of the 2003/2004 Annual Plan budget;

- that the parties to the Charter be advised that at the request of the Development Board Council is prepared to allow the All Weather Athletics Track at Waitakere Stadium to be contracted for construction by the Waitakere Regional Sports Trust subject to Council approving by prior resolution the final design and terms of contract, utilising the sum of \$1.1m to be approved within the 2003/2004 Annual Plan budget for that purpose;
- that subject to invoice a further \$2.0m be authorised to be advanced as a grant for payment into the Sports Complex Project Trust Fund towards contracted expenditures, and a further \$2.95m be authorised to be so paid as a grant on or about 30 June 2003 providing all disbursements from the Trust fund are applied to the project in strict accordance with the payment procedure identified and another update report is made to the June 2003 Council meeting.

The Annual Plan budget 2003/2004 now approved accords with these decisions. Additionally, detailed correspondence dated 28 May 2003 signed by the Chief Executive provided to Canam Construction Ltd definitive with respect to the total sum, \$11.315m committed by Council towards the overall Sports Complex Project, including the construction of the additional Sports Fields and the All Weather Athletics Track and the payments made to the Waitakere Athletic Club Inc to extinguish prior lease and licence entitlements which impacted upon the Leisure Precinct has been circulated.

However, the Waitakere Sports Complex Development Board elected not to present a further report to the June meeting of Council, and therefore the sum of \$2.95m referenced above has been carried forward into the current financial year and is presently undisbursed, as is the case with the sum of \$800,000 originally obtained from the Hillary Commission previously resolved to be applied towards the construction phase of the Indoor Event Centre component of the *project "subject to sign off on the business plan by the Director: Finance" (3667/2002)*.

CURRENT

A28-A34

A further project update has now been received, attached at pages A28 to A34 and provision has been made for Ross Dallow, Chairperson of the Waitakere Sports Complex Development Board, and Suresh Nagaiya, Engineer to the project, to be present to support and expand upon the Report and review project progress and respond to questions.

Firstly, the Development Board has requested Council approval for payment of the balance of the grant carried forward from the 2002/2003 financial year, \$2.95m (plus GST).

Secondly, the Director: Finance has been provided with a preliminary Business Plan by the Waitakere Regional Sports Trust relating to the future operation of the Indoor Event Centre. This Plan will be refined further over the next few months following the appointment of the Event Centre Manager and as the final construction details and timetable are reconciled.

The Waitakere Regional Sports Trust has provided Council with a tax invoice to uplift the SPARC grant so as to apply funds towards the Event Centre Construction and achieve certainty. Given that the monies will be paid into the Sports Complex Project Trust Account, specifically designated as a contribution to the Indoor Event Centre construction costs, and the fact that the facility is established upon land leased from Council with improvements ultimately reverting without liability for compensation the Director: Finance is comfortable in recommending payment be made at this time.

In accordance with the provisions of the Charter, Council staff will be working closely with the Waitakere Regional Sports Trust as the Indoor Event Centre commences operations to ensure tight controls and to mitigate the need for ongoing Council support towards operational expenditures and precinct management.

RECOMMENDATIONS

1. That the information be received.
2. That subject to provision of the appropriate tax invoice Council authorise payment of a grant in the sum \$2.95m plus GST for payment into the Sports Complex Project Trust Account, such payment being the balance of funding allocated for that purpose in the 2002/2003 financial year and subsequently carried forward and otherwise in accordance with the terms of the Chief Executive's correspondence dated 28 May 2003 provided to Canam Construction Limited.
3. That Council authorise payment of the further grant of \$800,000 plus GST as sourced originally from the Hillary Commission into the Sports Complex Project Trust Account as a contribution to the Indoor Events Centre construction costs, subject to the final Business Plan being submitted to the Director: Finance prior to the Centre becoming operational.

Report prepared by: Graham Wakefield, Contract Executive to the Legal Services Manager and approved by Andrew Pollock, Director: Finance.



15 WASTEWATER CONTRACT BETWEEN WAITAKERE CITY COUNCIL AND WATERCARE SERVICES LIMITED

PURPOSE OF THE REPORT

The purpose of this report is to obtain Council's approval to enter into contract with Watercare Services Limited for bulk wastewater collection, treatment and disposal, for a period of two years.

BACKGROUND

Negotiations for a bulk wastewater contract have been under way since August 2002. The negotiations are being undertaken by the Local Network Operators (Metro Water Limited, Manukau Water, United Water International Pty Limited and Waitakere City Council) and Watercare Services Limited.

Progress reports on the contract negotiations have been submitted to the Finance and Operational Performance Committee on a regular basis, with the latest report being on 7 July 2003.

Contract negotiations have now been completed to a point where the negotiating team are making recommendations to the Local Network Operators Boards and Councils.

STRATEGIC CONTEXT

The Council's Strategic Plan for the three waters aims to establish Waitakere as a centre of innovative water management. One of the success measures towards meeting this objective is that we have avoided dry weather overflows during normal operation of the local and regional networks.

The proposed bulk wastewater contract sets out levels of service, including environmental performance, and through the pricing tariff it is aimed to encourage the reduction of wastewater flows. Thus the framework of the bulk wastewater contract will be aligned with the Council's strategic direction.

ISSUES

A35-A42 The contract negotiations have now been concluded and the overall scope and issues included in the contract are detailed at pages A35 to A42.

The key issue is the tariff and its impact on Council. As previously reported to the Finance and Operational Performance Committee and the Long Term Council Community Plan and Annual Plan Special Committee, there will be a cost increase to Waitakere City for bulk wastewater services provided by Watercare Services Limited for the reason that the current tariff has not been reviewed since 1991.

The Local Network Operators are proposing a tariff that is based on polluter pays and area of benefit principles. In the long term, this is seen as the fairest way of allocating wastewater costs, but it is likely that there will be a need for a transition period to enable work to be completed on measuring equipment, calibration tariff modelling and to minimise the impact on customers.

Existing Tariffs

At present Watercare calculates the cost of wastewater services as follows:

- the total income requirement for Watercare is established through its Funding Plan;
- income from trade wastes is deducted from the total income requirement; and
- the remaining balance is funded by the Local Network Operators, calculated as a pro-rata charge based on 50:50 population and rateable capital value.

This method of allocating costs has not been revised by Watercare since 1991 and results in changes to Local Network Operators as set out in table 1.

| Local Network Operators | Current Tariff Split (2002-2003)* | Current Costs \$million |
|---|--------------------------------------|----------------------------|
| Metro Water Limited (Auckland City Council) | 53.09% | 47.23 |
| Manukau Water (Manukau City Council) | 27.91% | 24.84 |
| Waitakere City Council | 15.06% | 13.40 |
| United Water (Papakura District Council) | 3.94% | 3.51 |
| TOTAL | 100.00% | 88.98 |

Table 1 - Current Watercare Services Limited Bulk Wastewater Tariff

* Based on 1991/92 Population figures and Ratable Capital Value

However, using the current formula is fundamentally flawed as the census population figures do not represent wastewater volumes for the following reasons:

- wastewater flows comprise domestic water (population related) non-domestic water and infiltration and inflow (not population related);
- population figures do not include transient population such as students and visitors, this would trend to higher populations for Auckland City and reduce the impact on others; and
- capital rateable value has no correlation whatsoever with wastewater flows,

Proposed Tariff

The existing tariff does not represent the actual demand, or future demand for bulk wastewater services.

A new pricing formula is proposed to address this issue as follows:

Cost of Service = Long Run Capacity Cost + Short Run Marginal Cost + Levels Of Service Cost.

The costs are then calculated by analysis of the capital and operating costs in Watercare Services Limited 's Wastewater Asset Management Plan. In summary these are calculated as follows:

- Long Run Capacity Cost reflects future capital works required to service growth in the Local Network Operators catchment and are based on required peak capacity;
- Short Term Marginal Cost represents the cost of providing bulk wastewater services for annual flows; and
- Levels of Service Cost is related to serviced population and upgrading of existing services to meet environmental and public health standards.

PROPOSED TARIFFS

A number of options have been considered by the Local Network Operators and these are detailed in tables 2, 3 and 4 below:

| Tariff | Auckland | Manukau | Waitakere | Papakura | TOTALS |
|------------------|----------|---------|-----------|----------|--------|
| New Tariff (\$M) | 43.18 | 27.47 | 15.72 | 3.59 | 89.95 |
| Existing (\$M) | 47.47 | 24.99 | 13.87 | 3.62 | 89.95 |
| \$ Change (\$M) | -4.29 | 2.47 | 1.85 | -0.03 | 0.00 |
| % Change | -9.0% | 9.9% | 13.4% | -0.9% | 0.0% |

Table 2: Tariff Option Excluding Watercare's Wastewater Containment Project

| | Auckland | Manukau | Waitakere | Papakura | TOTALS |
|------------------|----------|---------|-----------|----------|--------|
| New Tariff (\$M) | 39.67 | 29.75 | 16.76 | 3.76 | 89.95 |
| Existing (\$M) | 47.47 | 24.99 | 13.87 | 3.62 | 89.95 |
| \$ Change (\$M) | -7.80 | 4.76 | 2.90 | 0.14 | 0.00 |
| % Change | -16.4% | 19.0% | 20.9% | 3.9% | 0.0% |

Table 3: Tariff Based on Population Only

| Tariff | Auckland | Manukau | Waitakere | Papakura | TOTALS |
|------------------|--------------|--------------|--------------|--------------|--------|
| New Tariff (\$M) | 46.73 | 25.17 | 14.72 | 3.33 | 89.95 |
| Existing (\$M) | 47.47 | 24.99 | 13.87 | 3.62 | 89.95 |
| \$ Change (\$M) | -0.74 | 0.18 | 0.86 | -0.30 | 0.00 |
| % Change | -1.6% | 0.7% | 6.2% | -8.2% | 0.0% |

Table 4: Recommended Tariff Option

OPTIONS

The options available to Council are as follows:

- accept the proposals put forward by the Local Network Operators; or
- reject the proposals developed by the Local Network Operators.

If Council chooses to reject the proposals, then Watercare Services Limited will be entitled to update the method of charging to Council based on the previous formula and this will see an increase cost to Council of the same order as the new proposed tariff. As well, the proposals have been adopted by the other Local Network Operators and thus Council will have limited negotiating power to promote any other alternatives.

Therefore, it is recommended that the proposed new tariff be adopted for the following reasons:

- it reflects the true long term cost of wastewater collection, treatment and disposal, and will eventually reduce demand on wastewater systems;
- it promotes economic efficiency; and
- it is the best negotiated alternative to the current charges imposed by Watercare Services Limited.

RESOURCES

The proposed tariff allows for a three year transition period so it will have no impact on the 2003/2004 Annual Plan, and have a limited impact on the 2004/2005 Annual Plan.

The 2003/2004 Annual Plan includes funding for bulk wastewater services based on the assumption that the new tariff will not apply in 2003/2004. Provision has been made in the Long Term Council Community Plan for the likely impact of the new tariff.

| | LTCCP Budget \$ | New Tariff |
|------------------|--------------------|------------|
| 2003/2004 | 13,860,770 | 13,865,413 |
| 2004/2005 | 13,861,840 | 14,293,194 |
| 2005/2006 | 14,161,910 | 14,794,579 |

CONCLUSION

Proposals for a bulk wastewater collection, treatment and disposal contract with Watercare Services Limited have been negotiated between Council representatives included in the Local Network Operators and Watercare Services Limited.

The proposals are at a stage where they can now be considered by Council. The key feature being the impact of the new wastewater tariff on Council and the negotiating team considers that it has achieved the best possible outcome for Council, taking into account the need to update the wastewater method of charging, which have not been revised since 1991.

The proposed contract and tariff will provide economic efficiency and promote sustainable management of wastewater by introducing flow base charges.

Accordingly, it is recommended that the Council accepts the negotiated contract.

RECOMMENDATIONS

1. That the information be received.
2. That the Chief Executive be given delegated authority to enter into an agreement with Watercare Services Limited for the supply of bulk wastewater collection, treatment and disposal for a period from 1 July 2003 to 30 June 2005, at an estimated value of \$28,158,000 plus GST of \$3,519,750, totalling \$31,677,750.

Report prepared by: Tony Miguel, Group Manager Asset Management.

HV O'Rourke
CHIEF EXECUTIVE



PART E - CONFIDENTIAL ITEM

16 TECHSCAPE LIMITED - APPOINTMENT OF DIRECTORS

This item 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, Techscape Limited - Appointment of Directors.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation of the 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 each of the matters. | Ground(s) under Section 48(1)(a) for the passing of this resolution. |
|--|---|---|
| <ul style="list-style-type: none"> • Techscape Limited - Appointment of Directors | <p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> • protect the privacy of natural persons, including that of deceased natural persons. | <p>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.</p> |

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)(a) 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 matter will address information regarding applicants for appointment as Directors of Techscape Limited.*



PART F - STANDING COMMITTEE REPORTS

17 CITY DEVELOPMENT COMMITTEE

YOUR COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON THURSDAY, 3 JULY 2003

MATTERS CONSIDERED

1-7
Part F

Your 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 1 to 7 in the supplement labelled Part F.

Your Committee Recommends:

That the report of the Ordinary Meeting of the City Development Committee held on Thursday, 3 July 2003 be received.

CA Stone

CHAIRPERSON



18 FINANCE AND OPERATIONAL PERFORMANCE COMMITTEE

YOUR COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON MONDAY, 7 JULY 2003

1. WAITAKERE PLAYHOUSE THEATRE TRUST

Your Committee Recommends:

1. That \$225,000.00 be allocated from the Auckland Regional Services Trust Arts Fund to Waitakere Playhouse Theatre Trust, with the allocated sum comprising of \$200,000.00 for refurbishment and \$25,000.00 for the employment of a centre manager.
2. That the funding be approved on the basis that it meets the criteria for allocation from the Auckland Regional Services Trust Arts Fund, and that the theatre is presently the only significant performing arts facility within the City-wide and regional importance.

2. OTHER MATTERS CONSIDERED

8-19
Part F

Your 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 8 to 19 in the Supplement labelled Part F.

Your Committee Recommends:

That the report of the Ordinary Meeting of the Finance and Operational Performance Committee held on Monday, 7 July 2003 be received.

JM Clews, QSO, JP

CHAIRPERSON



19 **ENVIRONMENTAL MANAGEMENT COMMITTEE**

YOUR COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS ORDINARY MEETING HELD ON TUESDAY, 8 JULY 2003

MATTERS CONSIDERED

20-26
Part F

Your 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 20 to 26 in the supplement labelled Part F.

Your Committee Recommends:

That the report of the Ordinary Meeting of the Environmental Management Committee held on Tuesday, 8 July 2003 be received.

PA Hulse

CHAIRPERSON



PART G - PRESENTATION

This presentation will take place at 7.30 pm.

20 **PETER JOYCE**

Mayor Bob Harvey will present a certificate of appreciation to Peter Joyce in recognition of his contribution to Piha and to the West.

21 **WORKING TOGETHER TO MAKE IT HAPPEN**

A short video on organisational change proposed by Waitakere City for inclusion to the New Zealand Society of Local Government Managers Management Excellence Awards.



PART H - PROCEDURAL MATTERS

22 **QUESTIONS**

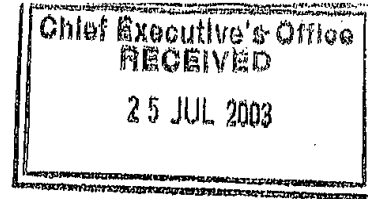
Pursuant to Standing Order 39.2, any member of the local authority may at any ordinary meeting of the local authority at the appointed time, put a question to the Mayor as Chairperson of the local authority, or through the Mayor to the Chairperson of any standing or special committee, or to any officer of the local authority concerning any matter relevant to the role or functions of the local authority concerning any matter that does not appear on the order paper, nor arises from any committee report or recommendation submitted to that meeting.



23 **NOTICE OF MOTION**

Notices of motion shall be in writing by the mover, stating the meeting at which it is proposed that the notice of motion be considered, and shall be delivered to the Chief Executive at least five clear days before such meeting.

Pursuant to Standing Order 28.1 the following Notice of Motion has been received from Councillor Battersby on Friday, 25 July 2003.



Notice Of Motion: Auckland Regional Council Rating

At the Council Meeting to be held on Wednesday 30 July 2003 I propose to move:

"That the Mayor, Councillors and Community Board Members convene a public meeting of residents, ratepayer groups, members of the Regional Council, and local Members of Parliament to discuss the regional rates and to take any necessary action to work with the Region to formulate a more equitable rating method for regional ratepayers".

Preamble.

The Auckland Regional Councils' methods of effecting the regional rates for the year 2003/2004 will cause substantial rate increases to a vast number of ratepayers in Waitakere City. As in other parts of the Auckland region that have already received their rating bill, this will cause considerable stress and rebellious actions such as refusing to pay the regional rates. The transport component is one element of the rate makeup that has created much discussion. Whilst this Council supports the move to a more efficient, integrated public transport system we as a Council and community must work with the Region to resolve a fairer and more equitable way of addressing transport and other issues so as not to cripple our communities and the ability, for a very large proportion of our people, to pay.

Whilst I acknowledge that the Regional rate issue is one not of our making, the communities that we represent will be looking to Councillors to work proactively on their behalf on this matter.

Councillor

Derek Battersby

Derek Battersby
24 July 2003.

*Received 11.20am
24 July 2003*
[Signature]



24 **CLOSING PRAYER**

