





**AGENDA ITEM FOR A MEETING OF THE COUNCIL TO BE HELD IN THE CIVIC CENTRE,  
6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON 29 JUNE 2005**

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**TE ATATU BOATING CLUB INCORPORATED**

**PURPOSE OF THE REPORT**

The purpose of this report is to inform Councillors of a decision by the Chief Executive Officer acting under delegated authority, to file an application in the High Court in Auckland for an injunction to restrain Te Atatu Boating Club Incorporated ('the Boating Club') from taking any steps to enforce a decision to terminate the tenancy of Waitakere Outrigger Canoe Club on a portion of the Boating Club's land at Bridge Avenue, Te Atatu South. Those proceedings were filed in the High Court on Wednesday, 15 June 2005 and served on the Boating Club on that day. In accordance with normal procedures, the Chief Executive Officer has also signed an undertaking as to damages.

**BACKGROUND**

The Boating Club occupies land bordering the Whau River at Bridge Avenue Te Atatu South. The land is reclamation and is comprised in two titles:

- Lot 1 DP 92355 which is 6624m<sup>2</sup> in area on which is located the club house and slipway ('the club house land');
- Lot 1 DP 133949 is 1.69ha in area on which is located the boat parking and storage areas ("the balance land").

A4

A plan of this land is attached at page A4.

The club house land was transferred by the Council to the Boating Club in 1992 at a full market value. The Boating Club had previously leased the land from the Auckland Harbour Board (subsequently from the Council) and paid a market rent. The purchase price paid effectively bought out the lease. The balance land was transferred in 1997 at a price of \$1.00 in recognition of the expenditure, in money, time and effort made by the club and its members in the reclamation of the land.

Each parcel of land was sold subject to a Memorandum of Encumbrance in favour of the Council.

- The club house land is subject to a covenant that the Boating Club will at all times *"ensure that adequate pedestrian and vehicular access is made available to the public ...to enable the public to utilise any jetty boat ramps and refilling facilities established and maintained by the club"* on that land. It is believed that this covenant may reflect similar provisions in original Harbour Board lease.
- The encumbrance over the balance land includes a covenant by the Boating Club to preserve free public access across the balance land for the purpose of *"launching and retrieving of boats from any ramp or other authorised launching facility"* and then goes on to provide that the Boating Club will give *"continued support to other water based sport and recreation entities, not incompatible with the club's own use"*. This encumbrance also provides that on a proposed sale, or in the event of a winding up or dissolution of the Boating Club, the Council will have *"the first option to re-acquire the land at nil consideration"*. This provision makes it clear that the Boating Club's ownership of the balance land was not intended to be absolute but rather that its ownership is in the nature of what may loosely be described as a 'custodial' relationship on behalf of the Council.

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Part of the balance land is occupied by Waitakere Outrigger Canoe Club under a lease. This area is marked Waitakere Outrigger Canoe Club on the plan attached at page A4. Waitakere Outrigger Canoe Club pays a rental of \$1,500 per annum. Part of the area occupied by Waitakere Outrigger Canoe Club is legal road.

Approximately 12 months ago the Boating Club indicated that it wanted Waitakere Outrigger Canoe Club to vacate the balance land. A suggestion made by Waitakere Outrigger Canoe Club that it relocate within the balance land and upgrade another slipway at the southern end of the site was rejected by the Boating Club. Its published reason for asking Waitakere Outrigger Canoe Club to go was a complaint that growing activity from both clubs had led to congestion that made the yard ramp and pontoons far too crowded. A notice was given to Waitakere Outrigger Canoe Club in November 2004 requiring that it vacate the site by 15 May 2005.

When Waitakere Outrigger Canoe Club was unable to resolve its dispute with the Boating Club it referred the matter to the Leisure Services Manager. Following correspondence from the Council, the Boating Club agreed to defer action for one month and to meet with Waitakere Outrigger Canoe Club at a 'mediation' chaired by the Leisure Services Manager. That meeting took place on 24 May 2005 but was unsuccessful. The Boating Club was intransigent in its position, although the reasons for its action are now said to be the need for additional boat/tractor storage and for storage of furniture and other goods in the shed on the Waitakere Outrigger Canoe Club site.

Waitakere Outrigger Canoe Club has attempted to find other suitable alternative accommodation without success. The Boating Club site offers all tides access and pontoons for launching. All other sites are affected by tides and unusable for various periods before and after low tide. There was a prospect of a temporary (during the winter only) arrangement with a rowing club but it has been unable to locate any permanent and satisfactory alternative premises. There is therefore a risk that Waitakere Outrigger Canoe Club may become homeless and if that occurs, it will be a great deal more difficult for the club to survive, let alone thrive.

Waitakere Outrigger Canoe Club has 110 full members and over 100 other members of both genders and all ages. It owns six, 6 person canoes and about 15 other single and 2 person canoes. Waitakere Outrigger Canoe Club says that the growth area of the sport in recent times has been with junior members, which comprise over half the membership of Waitakere Outrigger Canoe Club. This is consistent with the potential growth of the sport in recent times. Over 2,000 paddlers attended the Secondary School Championships in Rotorua. Waitakere Outrigger Canoe Club has a close association with schools in West Auckland, several of which use Club facilities and canoes.

Waitakere Outrigger Canoe Club is the only outrigger canoe club in West Auckland. It is the largest of 15 clubs in the Auckland Region and also the most successful in local, national and international competitions.

## ISSUES

Questions surrounding the foreshore and public access to waterways are generally contentious issues at the present time. The boat ramps and the pontoons on the Boating Club's land are valuable assets. Wherever such assets exist there is always a demand for space for vehicle manoeuvring, boat parking and boat storage. Potential for conflict between users of the site in those circumstances is inevitable. The position adopted by the Boating Club appears to be that the uses by its members (it needs to be noted that some members of Waitakere Outrigger Canoe Club are also members of the Boating Club) should take priority over potential use by Waitakere Outrigger Canoe Club or by other water based sporting entities. The terms of the Memorandum of Encumbrance however, require a different approach.

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At the present time, apart from Waitakere Outrigger Canoe Club there appears to be only one other water based sporting entity with a presence on the balance land. The Piha Surf Club has surf boats in one of the storage bays depicted on the plan. It is not known whether the Surf Club is the tenant of the storage bay or is simply able to use the bay by arrangement with a member of the Boating Club. (There is anecdotal evidence that historically other surf clubs stored equipment on the site but were squeezed out by the Boating Club some time during the 1980s.) Waitakere Outrigger Canoe Club advises that it has been on the site since 1992, long before the sale of the balance land in 1997, and that it is only in recent time that its relationship with the Boating Club has deteriorated. If the Council does not enforce the terms of the encumbrance at this stage, it may not be able to reassert its rights at a later time.

It is the view of officers that Council's interests would be best served by the Boating Club continuing to accommodate bodies such as Waitakere Outrigger Canoe Club within the balance land. Currently, the Boating Club charges Waitakere Outrigger Canoe Club a rental, which appears to be fairly commercial rental, and which provides some return on investment to the Boating Club. If the Boating Club remains intransigent about accommodating other water base sporting entities Council might, as an alternative to enforcing the encumbrance, consider using its powers under the Public Works Act 1981 to acquire all or part of the balance land so that it can control and manage competition between all water based sporting entities (including the Boating Club) which might wish to have storage facilities in this location in close proximity to the publicly accessible boat ramps. This would not however, be considered to be a preferred outcome, because of the time, trouble and expense that would be involved in implementing that solution. It is however noted that assessing a value of the land to be taken under the Public Works Act 1981 would be an 'interesting' exercise, given the terms of the encumbrance relating to the sale of any part of the balance land for the designation of the balance land on a winding up or dissolution of the Boating Club (i.e. the requirement to transfer the balance land at nil consideration).

One further issue has arisen as a result of investigation of the circumstances relating to Waitakere Outrigger Canoe Club and that relates to the location of the western boundary of the balance land at the Bridge Avenue frontage. As will be seen from the plan, the playground and recreation area developed in that locality is partly within the boundary of the Boating Club land and partly on esplanade reserve. Irrespective of a resolution of the dispute in relation to the terms of encumbrance there will need to be some rationalisation of the boundaries of the esplanade reserve and the balance of the Boating Club's land.

## **CONCLUSION**

It is recommended that Council approve the Chief Executive Officer's actions in commencing injunction proceedings. The matter received its first call-over on the morning of 16 June 2005 and the next call-over date is set for 7 July 2005. In the meantime, the Boating Club must file affidavits by 30 June and Council must file affidavits in reply by 6 July 2005. Pending call-over on 7 July 2005, the status quo is preserved and Waitakere Outrigger Canoe Club can remain on the site.

The Boating Club has instructed counsel (Jeremy Atkinson) since filing of the injunction proceeding and once the Boating Club's legal advisers have an understanding of the issues, there may be an opportunity for further discussions to explore an acceptable basis for settlement of the matter without the need for further resort to the litigation process.

## **RECOMMENDATIONS**

1. That the Te Atatu Boating Club Incorporated report be received.
2. That the action of the Chief Executive Officer in authorising the issue of injunction proceedings against the Te Atatu Boating Club Incorporated, and the giving of an undertaking as to damages, be approved.

**AS**

3. That officers be directed to endeavour to find a suitable basis for a negotiated settlement of the differences between the Council and the Te Atatu Boating Club Incorporated, so as to avoid the need for further litigation if possible.
4. That officers enter into negotiation with the Te Atatu Boating Club for rationalisation of the boundaries between the Boating Club's land (Lot 1 DP 133949) and the adjoining esplanade reserve (Lot 89 DP 39914).

Report prepared by: Denis Sheard, Manager: Legal Services.





**THIS AGREEMENT is made on**

**PARTIES:**

1. **WAITAKERE CITY COUNCIL ("WCC"); and**
2. **TE ATATU BOATING CLUB INCORPORATED ("TABC"); and**
3. **WAITAKERE OUTRIGGER CANOE CLUB INCORPORATED ("WOCC").**

**ENCUMBRANCES**

1. It is agreed that Memorandum of Encumbrance D204198.2 over Lot 1 on DP133949 (CT 79A/523) and Memorandum of Encumbrance C406326.2 over Lot 1 DP 92355 will be discharged and a new encumbrance registered against both parcels. The new encumbrance will include the following:
  - a) In relation to lot 1 DP 133949 only, covenants to like effect as clauses 2(g) (which relates to mortgages and assignments) and 2(h) (WCC's right of repurchase if TABC is wound up) of Memorandum of Encumbrance D204198.2;
  - b) In relation to lot 1 DP 92355 only, covenants to like effect as clause 2(d) (public use of slipways jetties and refuelling facilities) of Memorandum of Encumbrance C406326.28.2, but without the second proviso relating to dinghy lockers;
  - c) In relation to all the land, covenants by TABC to comply with its statutory obligations and the district plan in relation to use of the land and to use its best endeavours to keep any necessary consents and approvals for the use of the slipway, jetties and refuelling facilities current at all times.

**LICENCE TO WOCC**

2. It is agreed between TABC and WOCC that WOCC may have a licence to occupy exclusively the area currently occupied by it on the north-western corner of Lot 1, DP133949 (excluding the shed on that land) for a period of one year (with rights of renewal) subject to the payment of a licence fee and compliance with other conditions agreed between them.
3. The licence fee is to be fixed at \$2000.00 per annum payable by monthly instalments in advance. The fee may be amended by agreement between TABC and WOCC from time to time subject to the understanding between them that it shall at all times be less than the amount that would normally be charged on a commercial basis. This concession reflects TABC's historical obligation under Memorandum of Encumbrance D204198.2 "to offer continued support to other

water-based sport and recreation entities, not incompatible with the [TABC's] user" and the fact that part of the land occupied by WOCC is legal road presently vested in WCC. If WOCC by agreement with TBC relocates to a different site within the boundaries of the TABC land the concessionary arrangements will not apply. In the event of disagreement between TABC and WOCC as to the quantum of the licence fee they will mediate. If they do not achieve agreement at such mediation they will refer the issue to an independent arbitrator.

4. The licence fee will cover both the occupation of the agreed area of land by WOCC and the use by WOCC of TABC's northern boat ramp and associated facilities.

#### **BOUNDARY ADJUSTMENT**

5. It is agreed that the parties will undertake a mutual boundary adjustment in the north western corner of the TABC land so that that the legal boundaries between the TABC land, the adjoining esplanade reserve (lot 89 DP 39914) and Bridge Avenue are located on the fence lines shown on the plan prepared by Cato Bolam dated June 2005 (Job no. V18439). TABC acknowledges that the septic tank serving the adjacent toilet block will be located within the stopped road to be transferred to it and that an easement for the use and maintenance of that tank in favour of WCC will be registered at the time the land is transferred to TABC.
6. The parties will do all things and sign all documents necessary to give effect to the proposed boundary adjustment with all due speed and diligence

#### **CONDITIONS**

7. TABC acknowledges that the terms of this agreement have been negotiated by WCC officers who do not have delegated authority to bind the Council to the agreements recorded above. Accordingly:
  - a) This agreement is conditional upon the Council, or one of its committees with delegated authority, resolving to approve the terms of this agreement
  - b) The implementation and settlement of the boundary swap agreed in clause 5 is conditional upon, as a condition precedent, the Council completing a stopping of the relevant part of Bridge Rd pursuant to Part XXI of the Local Government Act 1974.

#### **DISCONTINUANCE OF THE PROCEEDINGS**

8. Upon the satisfaction of the condition in clause 7(a) WCC will file a notice of discontinuance in respect of proceeding CIV 205-404-3150 in the High Court.

#### **COSTS**

9. In respect of costs:



a) Each party will bear their own costs in respect of the High Court proceedings.

b) WCC will meet the costs of preparation and registration of discharges of the existing Memoranda of Encumbrance and the registration of the new Memorandum of Encumbrance, but each party will meet their own costs in relation to partial and execution of those documents.

c) WCC will meet survey costs in relation to the boundary adjustment and the costs of preparation and registration of any easement required in relation to the septic tank serving the public toilet facility. Each party will meet their own costs in relation to the transfer of the land areas to be swapped in any costs incurred upon the issue of new certificates of title for their respective land holdings.

EXECUTED at Auckland this 16<sup>th</sup> day of August 2007 by the parties:

WAITAKERE CITY COUNCIL

BY:

CEO

TE ATATU BOATING CLUB INCORPORATED

BY:

WAITAKERE OUTRIGGER CANOE CLUB INCORPORATED

BY:

All

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Local Authority Waitakere City  
 Comprised in CT NA 79A/523

Areas and measurements are subject to survey

**SCHEDULE OF AREAS**  
 Road to be Stripped

Shown	Adjoining	Area
Section 1	Lot 1 DP133949	218m <sup>2</sup>
Section 2	Lot 1 DP133949	66m <sup>2</sup>

Land to be Acquired  
 for Land Purpose Esplanade Reserve

Shown	Description	CT	Area
Section 3	Pt Lot 1 DP133949	NA79A/523	2309m <sup>2</sup>

Revision	Description	Name	Date
1	Submitted	NC	05/05
2	Design	IV	08/07
3	Checked	JV	08/07
4	Approved		

Client  
**Waitakere City Council  
 & Te Atatu Boating  
 Club Incorporated**

Client  
**Waitakere City Council  
 & Te Atatu Boating  
 Club Incorporated**

Drinking Title  
**Road to be Stripped and  
 Land to be Acquired**

Original Scale 1:500  
 Original Size A2  
 Date August 2007  
 Cad Reference DWG26600  
 Directory J:\26600\ccad

Revision No A2  
 Sheet No S1  
 Job No V26600

