



**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE  
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,  
WAITAKERE, ON TUESDAY, 10 APRIL 2007 COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 13 March 2007

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 13 March 2007, including the public excluded minutes as circulated, be taken as read and now be confirmed.



## **PART B - REGULATORY / ENFORCEMENT**

### **4 LEGAL UPDATE (AS AT 30 MARCH 2007)**

#### **INTRODUCTION**

The following is a list of legal actions in respect of matters which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes. References to Council's District Plan were not included in previous reports but will be included separately under the Environment Court heading in all future reports.

#### **COURT OF APPEAL**

**(Changed)** **Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (April 2006)**

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and they have been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt Harvey to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt Harvey has appealed this aspect of the decision and is proceeding with the appeal. The matter is set down in the Court of Appeal for 14 June 2007 at 10.00 am. The decision on costs from the High Court has been reserved until the matter is heard before the Court of Appeal.

#### **HIGH COURT**

**(Changed)** **Waitakere City Council v C P Brunel and the Cove Limited (December 2006)**

This was an appeal from the Environment Court which arose from the Council serving notice on the respondents of its intention to take land under the Public Works Act 1981. The respondents filed an objection to this notice in the Environment Court. The Environment Court held that the Council could not take land. The decision in the High Court overturned the Environment Court decision and a declaration was made that the Council can now proceed with compulsory taking of the land.

The High Court noted that under the Local Government Act and Public Works Act, the Council, "[is] like the Minister in the case of Crown land, [it] has the primary public responsibility in relation to land acquisition." The Environment Court has not been given the power to select, or to make a decision as to what land is to be acquired by a territorial authority. Its powers extend only to a factual review of the appropriateness of the Council's decision as a means of giving effect to the Council's objectives.

The decision vindicates the stance taken by Council in this matter. A claim for costs for both hearings will be made. However, the property owners filed an application for leave to appeal, which was argued on Monday 19 March 2007. The Judge reserved his decision.

In the meantime, there have been negotiations towards settlement of the purchase of these properties. The negotiations have been successful to date.

**(Changed) C W Williams and others v Waitakere City Council (February 2006)**

Council has been served with seven sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force.

Associate Judge Faire declined the applications in a decision delivered on Thursday, 19 October 2006. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. We are awaiting a decision.

Shortly before Christmas, Council filed requests for further and better particulars in relation to all proceedings. The plaintiffs had until 16 February 2007 to respond to our request; they are now out of time.

**Substantive hearings involving Mr Mawhinney**

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

The judgment of Fogarty J in relation to Council's strike out application was released on 14 September 2006. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim was struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions based on common law duties against local authorities generally.

A substantial costs application in respect of the proceedings from 1999 to date has been lodged with the Court. Further submissions have been sought by the Court from the parties in respect of recent case-law as to higher costs awards. The Court has indicated its decision will be made after 20 April 2007.

**(Changed) Mawhinney and Glorit Subdivision Limited (February 2006)**

A further appeal in the High Court by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Environment Court in December 2005 and Mr Mawhinney's application to be reheard has also been dismissed by Judge Shepherd in the Environment Court.

Both decisions have been appealed to the High Court. The matter has not yet been set down for hearing in the High Court. Mr Mawhinney has lodged security of costs of \$1,500. Subsequently, Glorit Subdivision Ltd has been wound up (see below).

**Debt Recovery proceedings involving Mr Mawhinney**

**(Unchanged) Waitakere City Council v P W Mawhinney (February 2006)**

The Council issued a bankruptcy notice against Mr Mawhinney to recover payment of unpaid costs and disbursements awarded to Council in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney paid the debt and costs of \$3,475 in accordance with the bankruptcy notice. The Council sought indemnity costs against Mr Mawhinney due to additional costs incurred by Council for being forced to make an application for substituted service. This application was heard on 31 January 2007 before Associate Judge Doogue. The decision was reserved.

On 12 February 2007, Associate Judge Doogue delivered his judgment awarding Council full indemnity costs of \$2,598 against Mr Mawhinney, plus Council's disbursements. A bankruptcy notice will be served on Mr Mawhinney for these costs.

**(Changed) Waitakere City Council v Glorit Subdivision Limited (March 2006)**

Council has issued liquidation proceedings against Glorit (P W Mawhinney) Subdivision Limited ("Glorit") for the costs award granted to it earlier of \$14,290.50, plus interest. Glorit and Mr Mawhinney are jointly and severally liable to Council for this debt. The liquidation application was heard on 8 March 2007 and Glorit Subdivision Limited was put into liquidation. The Official Assignee will conduct an investigation to see whether there are any assets in the company for creditors and/or whether Mr Mawhinney has contravened any laws and whether he will be prosecuted.

Mr Mawhinney has avoided personal service of a bankruptcy notice and a joint application for substituted service was prepared with another creditor (Boffa Miskell Limited). Mr Mawhinney was served with the bankruptcy notice by substituted service. Council and Boffa Miskell Limited have sought indemnity costs against Mr Mawhinney.

Mr Mawhinney has made an application to set aside the bankruptcy notice on the basis that he has a counterclaim against Council (which Council strongly denies). Mr Mawhinney's application did not comply with the Court rules, as he did not file an affidavit setting out the allegations against Council.

The application for substituted service was called on 14 February 2007 before Associate Judge Abbott, together with Mr Mawhinney's application to set aside Boffa Miskell Limited's bankruptcy notice. Mr Mawhinney instructed counsel at the last minute, therefore an adjournment was granted to permit Mr Mawhinney's Counsel to prepare.

This matter was heard on 14 March 2007. Mr Mawhinney was not present and no counsel entered an appearance on his behalf. Associate Judge Abbott ordered that Mr Mawhinney pay the outstanding debt to the Council within 14 days or else he will commit an act of bankruptcy.

At the hearing, Council was awarded indemnity costs of \$1,216.88 for a share of the substituted service application. Associate Judge Abbott also awarded indemnity costs for the substantive hearing in Council's favour and an application will be made to the Court to fix these costs.

Mr Mawhinney's barrister has advised that Mr Mawhinney has no liquid assets to pay the debt. Despite this, Mr Mawhinney paid the judgment debt of \$14,290.50 plus costs for the bankruptcy notice on 28 March 2007. Mr Mawhinney's barrister advised Mr Mawhinney wouldn't be paying the outstanding costs for the call (\$535.00) on 14 February 2007 nor the indemnity costs at this stage. Kensington Swan will take further action to recover these costs for Council.

**ENVIRONMENT COURT**

**(Changed) Waitakere City Council v Estate Homes Limited (28 March 2002) (Ranui Station Road)**

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate Home's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004 in Council's favour. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued). Subsequently the Council appealed the Court of Appeal decision to the Supreme Court successfully.

The Supreme Court remitted the matter of compensation back to the Environment Court. The matter was scheduled for a review in the Environment Court chambers on 2 March 2007. The question is whether the compensation should be based on local/arterial road or collector/arterial road; Council has already paid compensation on a collector/arterial road basis. Estate Homes sought leave to call further evidence. The Council opposed the application on the basis that all relevant evidence had been called. The Court determined that a hearing would be required to determine the scope of the jurisdiction referred back to the Environment Court and therefore further evidence could be called. The matter is set down to be heard on 16 April 2007.

**(Changed) Ritchies Transport Holdings Limited, v Waitakere City Council, and Rex Campbell, Section 274 Party (September 2006)**

This is an appeal against an abatement notice issued to the directors of Ritchies Transport Holdings Limited ("Ritchies"). The appeal relates to the requirement of the abatement notice to reduce the buses parked on the boundary, reduce daily traffic movements, undertake mitigation measures in respect of noise and ensure the hours of operation are between 6.00 am and 9.00 pm. The requirements are those set out in the Ritchies resource consent (RMA 991374). The appeal is on the grounds that the business enjoys existing-use rights, that the resource consent does not limit the number of vehicles, the vehicle movements, noise levels and hours of operation. An application for stay was concurrently filed with the notice of appeal. Mr Rex Campbell, a neighbour on the eastern boundary of Ritchies, has joined the proceedings as an interested party.

A judicial telephone conference was held between the parties to consider the application for stay on 27 September 2006. Mr Campbell, the Section 274 party joined the conference by consent. The Court granted the application for stay upon the agreement of all parties, including Mr Campbell, for a three-week period to permit the parties to resolve the appeal. As a result, the appeal has been put 'on hold'. The Council met with the parties on 16 October to resolve the appeals. As a result, the parties agreed for the stay to continue and that Ritchies would lodge resource consent (lodged on 9 January 2007) to address the matters raised in the abatement notice. The Council reported back to the Court on 30 March 2007 that the consent application was being processed, and notification of the application is pending. The Council is still in the process of receiving expert reports in support of the application. The Council will report back to the Court by 30 April 2007 as to progress.

**(Changed) David Paul Leaky v Waitakere City Council (May 2005)  
All Seasons Properties Limited v Waitakere City Council (May 2006)**

These are appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 and 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. The activity is a non-complying activity. The appeals allege that the location of these premises in a residential area will adversely affect the integrity of the District Plan. The Court has made timetabling orders and all parties have exchanged evidence. A hearing was held on 7 and 8 February 2007 and 2 March 2007. The Court has reserved its decision.

**(Unchanged) R & G Britten – 19 Church Street, Swanson (October 2005)**

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Britten's property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. Council sought final orders to require that the Britten's undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

Separately and in parallel, the Council has initiated a mediation process with Mr Britten in an attempt to find an alternate resolution to expedite the matter. As a consequence of that process the parties are working towards concluding an agreement for the completion of remedial work in accordance with the Council resolution at its meeting held on Thursday 20 July 2006.

The enforcement proceedings are now 'on hold', with a further report to the Court required by 31 May 2007 to allow time for the proposed remedial earthworks (etc) to be completed.

**(Changed) Auckland Regional Council v Waitakere City Council (May 2005)  
Waitakere Ranges Protection Society Incorporated v Waitakere City Council (May 2005) ("the Duncan appeal")**

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006, the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

The Council decided to abide by the Court's decision and will call no evidence.

This appeal was heard on 12 and 13 March 2007. Leave was given for the applicant to file closing legal submissions (yet to be received). The Court will reserve its decision.

**(Changed) M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)**

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Incorporated have lodged applications with the Court in support of the Council as Section 274 parties. This appeal was heard on 14 to 16 March 2007.

Leave was given for the Applicant to file closing legal submissions (yet to be received). The Court will reserve its decision.

**Mawhinney Matters**

**(Changed) Perceptus Limited and Swanson Heights Limited v Waitakere City Council, Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v Waitakere City Council**

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney filed his submissions in opposition on 30 January 2007. The Court has placed these matters on hold until mid 2007.

**(Unchanged) Waitakere Resource Consents Limited v Waitakere City Council (December 2005)**

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). The proceedings have recently been reactivated and Council has filed a strike out application with the Court. Mr Mawhinney has filed a notice of opposition. The Court has notified us that it is likely the strike out application will be heard in the week of 30 April 2007.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (Resource Management Act 886/98) have been concluded.

**PLAN CHANGE HEARINGS**

**(Unchanged) Te Atatu Residents' and Ratepayers' Association Incorporated v Waitakere City Council (March 2006)**

These appeals relate to Council's decisions on Plan Change 12 which concerns the Open Space Environment. The appeals have been resolved following mediation and further discussions between the parties. The Court issued a Consent Order on 7 November 2006. Plan Change 12 is now going through the formal process of being made operative in accordance with the First Schedule to the Resource Management Act.

**(Changed) Te Atatu Residents' and Ratepayers' Association Incorporated (TARRA) v Waitakere City Council (2004)**

TARRA appealed the Council's decision on the proposed Plan Change 2. This Plan Change concerns the identification and use of the Harbour View Orangihina park land. The Plan Change identifies the majority of the land as Open Space Environment and a 2.5ha area at the southern end of the park as Marae Special Area. TARRA opposed that identification and use of the land and seeks that the park be identified as distinct Special Area. The Court's decision was released on 1 March 2007. The Court has dismissed TARRA's appeal and confirmed Council's decision, subject to amendments being made to the assessment criteria (as suggested by Sarah Flynn at the hearing) to address ecological concerns, and other matters raised by the Court in its decision in respect of Rule 21.2(a). The Court has directed that Council confer with TARRA and present revised text for the relevant policy and rule to take account of the above matters by Friday, 30 March 2007.

**(Changed) I and Z Farac v Waitakere City Council (March 2004)**

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. The appellants sought to rezone a greater part of the property as 'Living 2 Environment' (as opposed to "Living 4").

Subsequent to discussions and consultant input, the appellants and Council have agreed on the rezoning of part of the subject property from Living 4 to Living 2. Consent documentation is being prepared and will be filed shortly.

## DISTRICT COURT

### **(Unchanged) J and P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)**

Charges have been laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was set down for a first call on 11 December 2006. The matter was adjourned on 22 January 2007 with intimation that guilty pleas may be entered to some of the charges. The adjournment was also requested to permit the defendants to seek expert advice on use of their property and to meet with Council to consider what consent applications were necessary. The matter is set down for a further call over on 2 April 2007.

### **(Changed) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads (August 2006)**

This prosecution relates to the removal of six houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The matter was set down for a first call on 1 December 2006. The Council entered a guilty plea. The other defendants entered guilty pleas on behalf of the company on 12 February 2007 and the charges against the directors personally were withdrawn. The companies will be sentenced in May 2007.

The Council was sentenced on 9 March 2007. It was \$4,800 plus costs. The Judge made some useful comments as to the importance of the prosecution for showing consistent administration of the Building Act.

### **(Unchanged) S and F Lese, S Nuuola - 50 Kelman Road, Kelston (August 2006)**

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was called on 5 March 2007, but was adjourned to 30 April 2007 as the defendants had changed their Counsel and were not ready to enter a plea.

### **(Unchanged) J Bell, G Payne - 3175 Great North Road (August 2006)**

Charges have been laid under the Building Act for removal and replacement of pile foundations without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was called 1 December 2006; the defendants did not appear. The matter is set down to be formally proved on 5 March 2007 prior to sentencing taking place. The defendants again did not come into Court, but the Court has given them one more month to enter an appearance before sentencing. The matter is set down for 30 April 2007.

### **(Unchanged) G and Q Potts - 88 Wiseley Road, West Harbour (August 2006)**

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The matter was called on 15 September 2006. Q Potts intimated a guilty plea but the matter was adjourned for him to seek legal advice. This was called on 5 March 2007. As a result of questions arising from the disclosure of the Council file, the Council and the Potts are going to go through the issues and then the Potts will decide how they wish to plead. The Court adjourned the matter to 30 April 2007.

**(Changed) H K Graham - 11 Karaka Road, Whenuapai (July 2006)**

Charges have been laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. There are also fire safety and insanitary (drainage facilities) issues at the site due to the buildings being used for residential purposes.

A defended hearing was held on 22 February 2007. Due to the complexity of the issues raised, including the inability of the Council to prove all three prongs of the test for "residential use" under the cumbersome District Plan definition, the Court has directed that counsel for the defendant file and serve written submissions by 5 March 2007, and for the Council to file any submissions in reply by 16 March 2007. The Court has reserved its decision.

**(Unchanged) Graham W Gordon - 159A Scenic Drive, Titirangi (October 2005)**

This matter relates to breaches of the Resource Management Act and Building Act. Both matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter will proceed to a jury trial. The Resource Management Act matter was set down to be called on 26 April 2007 for pre-hearing issues to be considered. At the call-over on 26 April 2006, Mr Gordon entered not guilty pleas to all the charges. The matter was set down for depositions on 15 June 2006. In respect of the Building Act matters, a defended hearing was set down for 30 October 2006 to 1 November 2006. The matter was to be heard with other similar offences to which Mr Gordon has pleaded not guilty. However, Mr Gordon was unwell and was not able to attend Court. The matter has been adjourned for a new date to be given by the Registrar for next year. The Resource Management Act charges have been set down for five days at the Auckland District Court before a jury in May 2007.

**(Unchanged) McGuigan Syme Chilcott Ltd, G Pitts, - 71 Riverlea Road, Whenuapai (August 2005)**

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing, as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was called on 19 May 2006 where all but the owner of the site, Mr Engel, entered a guilty plea. As the engineering company McGuigan Syme Chilcott Limited entered a guilty plea, charges against the directors of the company were withdrawn. Sentencing was set down for McGuigan Syme Chilcott Limited, G Pitts and D Owens Builders Limited on 28 September 2006. The matter was heard but a decision was only given in respect of D Owens Builders Limited as the other two parties were seeking to be discharged without conviction. The matters of McGuigan Syme Chilcott Limited and G Pitts will not be determined until 17 April 2007.

**RECOMMENDATION**

That the Legal Update (as at 30 March 2007) report be received.

Report prepared by: Setareh Masoud-Ansari, Contract Solicitor.



## **PART C - ENVIRONMENTAL MANAGEMENT**

### **5 BUILDING CONSENT ACCREDITATION AND OTHER INITIATIVES**

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

The purpose of this report is to inform the Planning and Regulatory Committee of the requirements in terms of accreditation as a Building Consent Authority, as required by the Building (Accreditation of Building Consent Authorities) Regulation 2006 that came into force on 1 February 2007, and outlines other initiatives being undertaken in terms of building consent functions to improve customer service and customer satisfaction.

#### **BACKGROUND**

Significant changes were brought about by the introduction of the Building Act 2004. These changes were driven by the systemic building weather tight issues. The purpose of the new statute was aimed at improving the control of, and encouraging better practise and performance in, building design, regulatory building control and building construction.

These changes resulted in significantly more time required to process consents and compounded with a New Zealand wide shortage of skilled technical people resulting in a national issue of non-statutory processing compliance. Ten territorial authority's in New Zealand currently issue 80% of all consents approved nationally. Waitakere is one of the ten.

From 30 November 2007, only accredited Building Consent Authorities (BCA's) may perform consenting and inspection functions in terms of the Building Act 2004.

#### **STRATEGIC CONTEXT**

Council's consent services provides building and resource consent services for the community and contributes to Council's Urban and Rural Villages and Strong Communities strategic platforms.

#### **ISSUES**

The regulations relating to accreditation set out the standards and criteria that an applicant must meet to be successfully accredited as a building consent authority. The regulations also prescribe the form applicants must use to apply for accreditation.

There are 19 regulations, the most important being that:

- A BCA must have appropriate policies, systems and procedures in writing;
- A BCA must record how it ensures that it implements effective policies, procedures and systems. It must record the key decisions it makes, the reasons for them and the outcomes and actions of these decisions.

BCA's are required to meet 11 of the standards and criteria before 30 November 2007. By this date, Council as a BCA must have:

- Accredited policies, procedures and systems for performing its building control functions (defined as those statutory functions under the Building Act 2004);
- Accredited systems for:
  - i) Ensuring an adequate number of employees and contractors fulfil its building control functions;

- ii) Establishing and assessing competence of employees to ensure that work is allocated to competent employees or contractors;
  - iii) Training employees;
  - iv) Choosing and using contractors;
  - v) Identifying and employing technical leadership;
  - vi) Ensuring that the necessary technical resources and equipment are available.
- Accredited and adequate organisational records (including job descriptions and organisational charts);
  - Accredited and adequate systems for filing applications for building consents.

The regulations also require that a BCA has systems for:

- Assuring the quality of its performance of its building control functions (to be in place by 1 December 2010);
- Ensuring that employees and contractors undertaking technical building control work have appropriate technical qualifications (to be in place by 1 December 2013).

The application for accreditation is a formal process, administered nationally by International Accreditation New Zealand (IANZ). This process includes document review, pre-assessment, corrective actions, on-site assessment (process, systems and technical). Council has been advised that this process takes in the order of six to nine months.

Council has initiated a Building Consent Authority Accreditation project team, headed by a full time experienced Project Manager. This critical project is being supported by and worked on, by a wide array of Council, City Services senior managers and staff (e.g. Counter, Consents, Asset Management, Human Resources and Information Management).

The timelines set are challenging and require that Council's initial application be lodged with IANZ by 28 April 2007.

Nationally, there has been widespread concern regarding the lack of clarity, certainty and timeliness from Central Government and the Department of Building and Housing in respect of accreditation, which would have serious implications for local and central government at both operational and political levels should some territorial authorities not receive accreditation prior to 30 November 2007.

Through the Department of Building and Housing, the Government has recently allocated two resources to the Auckland region to assist in an advisory capacity on application preparation and allocated a funding package for module development of up to \$50,000 per application subject to Department of Building and Housing approval.

The Council has applied for project assistance funding (up to 50K) in order to develop a skills matrix and technical competency framework, which is a requirement of the regulations. This is paid directly to the external contractor and not to the Council. Discussions have also taken place with the seven Auckland region territorial authorities to ensure the funding allocations are used to the best advantage of all without duplication and it has been further agreed to share such information that stems from any work undertaken under the project funding scheme.

The Auckland region is also working as a cluster co-operatively and collaboratively on information sharing where possible.

## Other Initiatives

In late 2006 a Consents Activities Delivery Review and a Case Study Review was initiated to clarify issues relating to the processing of Building and Planning Consents, to determine the extent of these issues, to develop an implementation plan that allows for both quick-fix and longer term enhancements; and to initiate action steps and review progress/improvements.

The implementation plan is currently being worked through and dovetails to some extent with the work being done on accreditation.

As there are a number of sections involved in these 'product' deliveries, this initiative is supported across all spectrums of City Services. Prior to the introduction of recent initiatives, 90% of all applications triggered a letter for amended information.

Recent changes to enhance quality and service delivery are as follows:

- More rigorous pre-lodgement screening of building consent applications (higher threshold of checklist together with initial review by 'technical officer'). This has significantly improved the quality of applications across the counter with the rejection rate escalating. This initiative is supported and advocated by Department of Building and Housing. Rejected applications are not taken in;
- Telephone screening for processing officers in the Central Processing Unit;
- Conditions or notations will not be applied by Council to consents to compensate for deficiencies in consent documentation. This is fundamental to direction by the Department of Building and Housing that the BCA's role is a 'verifier' rather than a 'designer';
- Requests for further information/amendments must be submitted as one document (not piecemeal). This has time/quality benefits for the organisation which are passed onto the applicants and this also serves to reduce costs for applicants by way of 'one processing cycle'. For the existing suspended building consent application a temporary resource has been allocated who will systematically go through the files corresponding to each applicant and owner stating that a response must be received by Council within the month, stating whether they wish to progress with the application or cancel. These will be systematically processed in batches to avoid a bottleneck situation in these areas.

From 1 April 2007 a new policy will be implemented stating that all requests for information will have a timeframe attached of 20 working days. A bring up system with a reminder letter at the end of the 20 days will be implemented. A further final letter will be sent giving 7 days in which to respond or the application will be refused under Section 50 of the Building Act 2004. This process is consistent with Auckland City Council and improvements will be made as it evolves.

- 'Reward the Quality applicant' has also been introduced as part of our processing methodology. Similar to the weighted attribute method for tenders, which rewards quality contractors; this will see dedicated resource applied to process quality consents both received over the counter and from the current backlog. First in first served will no longer necessarily apply. This will also encourage the industry to improve the quality of applications;
- Further concerted efforts to improve staffing levels in line with other comparative territorial authorities;
- Lifting the empowerment of counter staff to process new applications through improved checklists and training;
- Improve business information to enable a more flexible, responsive and targeted response to changes in consent volumes;

- The Director: City Services has set a target of 1 May 2007 to achieve a significant improvement in processing consents to meet the statutory timeframes and minimise delays to applicants.

Due to the high profile nature of the project, it is proposed to provide a progress report to the Planning and Regulatory Committee every two months to enable the Committee to have an overview of improvements and provide feedback on any actions that should be taken.

## **RESOURCES**

There are insufficient Council resources for this project, as it was not anticipated at the time of the preparation of the 2006/2007 Annual Plan. Action has been taken to contract project management services, resources to document processes and operational management of the Central Processing Unit.

Funding for this project is derived from fees and charges and a contribution from the Department of Building and Housing. A report will be submitted to the Long Term Council Community Plan and Annual Plan Special Committee on the resource implications for 2007/2008 arising from the new legislation.

## **CONCLUSION**

The new building regulations require Council to become an accredited service provider and this requirement has put in place a number of major changes for territorial authorities. Essentially accreditation is a legislative mechanism that provides confirmation that the organisation is providing the Community with the necessary capability to ensure safer compliant buildings and improved consumer confidence in the industry.

In addition, a number of initiatives have been undertaken to identify areas for improvement and put in place processes, systems and human resources to deliver on these improvements and achieve high levels of customer satisfaction and on-time performance.

There will be resource issues arising from the new regulations and these will be reported to Council in due course.

## **RECOMMENDATIONS**

1. That the Building Consent Accreditation and Other Initiatives report be received.
2. That a progress report on the Building Consent Accreditation in terms of building consent functions to improve customer service and customer satisfaction be provided to the Planning and Regulatory Committee every two months to enable the Committee to have an overview of improvements and provide feedback on any actions that should be taken.
3. That a report be submitted to the Long Term Council Community Plan and Annual Plan Special Committee on resource implications for 2007/2008 arising from the new Building (Accreditation of Building Consent Authorities) Regulation 2006 legislation.

Report prepared by: Grant Gillard, Group Manager: Regulatory and Tony Miguel, Group Manager: Asset Management



6 **DETERMINATION REPORT - REVIEW OF BYLAW NO 4 (1990) CHAPTER 13 - THE KEEPING OF ANIMALS, POULTRY AND BEES**

**PURPOSE OF THE REPORT**

The purpose of this report is to commence the review of bylaw No.4 Chapter 13:1990 The Keeping of Animals, Poultry and Bees and determine whether a bylaw is the most appropriate way of addressing issues relating to the keeping of animals, poultry and bees in Waitakere City, in accordance with the ongoing bylaw review programme under Section 158 Local Government Act 2002.

**STRATEGIC CONTEXT**

One of Council's Strategic Priorities is "Safe City" aimed at ensuring all major Council programmes consider the general safety of communities. The "Strong Communities" Platform also emphasises support for the health and wellbeing of the City's residents. The bylaw review process and the preparation of an updated bylaw to better manage and regulate issues surrounding the keeping of Animals, Poultry and Bees within the City, are consistent with Council's Long Term Community Plan and strategic priorities. In addition, Council has a statutory duty to review its current bylaw before 1 July 2008.

**BACKGROUND**

A1-A6

The current bylaw is attached at pages A1 to A6. Pursuant to Section 158 of the Local Government Act 2002, all bylaws that were in existence before the Act came into force, must be reviewed before 30 June 2008.

The Keeping of Animals, Poultry and Bees Bylaw was made pursuant to the powers of the Local Government Act 1974 and the Health Act 1956. Section 64 (1) (m) of the Health Act which is still in force, empowers local authorities to make bylaws regulating, licensing or prohibiting the keeping of any animals in the district or in any part thereof.

Section 684 (25) Local Government Act 1974 also gave powers to local authorities to make bylaws for 'Regulating, prohibiting, or licensing the keeping in the district of any animals'. The 1974 provision was repealed by the Local Government Act 2002. Section 146 Local Government Act 2002 now provides a specific power to make a bylaw for '(a) (v) regulating the keeping of Animals, Poultry and Bees'. Two of the general bylaws making powers contained within s.145 Local Government Act 2002 are also applicable, namely (a) to protect the public from nuisance and (b) to protect, promote and maintain public health and safety.

This report concludes that:

- Council has specific legal powers to make a bylaw to manage and regulate the keeping of animals, bees and poultry pursuant to Sections 145 ((a) and (b)) and 146 (a) (v) Local Government Act 2002 and Section 64(1)(m) Health Act 1956.
- A bylaw is the most appropriate way of addressing the perceived problem.

**ISSUES**

**Problem Identification**

The problem to be addressed is how to prevent the keeping of animals, poultry and bees becoming a nuisance to other residents. The outcome sought is a means of ensuring that the keeping of animals, poultry and bees does not create a nuisance and if a nuisance does occur, then Council has appropriate regulatory powers to take relevant action.

In all areas of the city, animals are kept as pets for companionship, pleasure, or as a hobby. For many residents animals provide important social benefits. The vast majority of animal owners are responsible and know what is required to ensure their pets do not create a nuisance. Complaints most often arise regarding noise and odour. These complaints are often related to the number of animals kept on a particular property, their behaviour, the general conditions in which they are kept and location. As the table below shows, roosters are the subject of more complaints than any other animal or bird. In rural areas there are generally fewer complaints mainly because people do not live in such close proximity to each other. Most rural residents acknowledge that the presence or keeping of animals can be part of the attraction of rural lifestyle blocks.

This discussion and the current bylaw do not cover the control and regulation of dogs. Dogs are managed and regulated under the Control of Dogs Bylaw 2004. In addition, Council has no specific legislative powers regarding the wellbeing of animals. That is covered by the Animal Welfare Act 1999 administered by the crown through appointed inspectors and the Police.

The problem identification and option analysis therefore focuses on animal related to 'nuisance' affecting residents.

### **Initial Consultation**

Section 77 of the Local Government Act 2002 requires local authorities in the course of the decision-making process to seek to identify all reasonably practicable options and to assess those options by considering the benefits and costs, community outcome, statutory responsibilities and any other relevant matters.

Whilst formal consultation is not required at this initial stage in the bylaw making process, Section 78 Local Government Act 2002 requires local authorities to give consideration to the views and preferences of persons likely to be affected by, or have an interest in the subject matter at every stage of the process. At this stage, initial consultation has commenced with organisations concerned with various aspects of the bylaw including:

- Council internal consultation - Enforcement and Animal Welfare;
- Bee'z Things Limited;
- Active Manuka Honey Association;
- National Beekeepers Association of New Zealand;
- New Zealand Pork Industry Board;
- Poultry Industry Assoc of New Zealand;
- Auckland SPCA;
- New Zealand Sheep Breeders Association;
- New Zealand Veterinary Association;
- New Zealand Dairy Goat Breeders Association;
- New Zealand Pig Breeders Association;
- New Zealand Kune Kune Pig Breeders Association;
- Pigeon Racing New Zealand;
- Pigeon Racing Federation of New Zealand.

The Dairy Goat Breeders Association confirm that they are not aware of any problems with the bylaw as it stands and would be happy to see it continue in its present form as far as it relates to the keeping of goats. The NZ Pork Industry Board (NZPIB) made useful suggestions to update the current bylaw to bring it in line with new legislation. It would also like to know where pigs are kept in Waitakere so that the Board could ensure they are kept and fed in accordance with the Biosecurity (Meat and Food Waste for Pigs) Regulations 2005 and Animal Welfare legislation.

The Auckland Racing Pigeon Federation would like to see racing pigeons classified separately from poultry. They would also like Council to consider increasing the number of pigeons able to be kept by individuals from 12 to 50. Pigeon Racing New Zealand made the same point regarding number of birds permitted to be kept. They provided a copy of their code of practice and submitted that pigeons do not create a noise problem.

If the Planning and Regulatory Committee determines that a bylaw is the most appropriate means of addressing the problem, these comments and suggestions will be considered further.

In the last 5 years the level of complaints received by Council in relation to the keeping of animals, poultry and bees is as follows:

Principal Complaint	2006	2005	2004	2003	2002	2001
Pigs	2	6	3	4	4	2
Roosters	30	36	37	34	42	40
Poultry	9	15	16	30	16	14
Goats	2	2	3	7	3	2
Cats	16	16	20	20	19	16
Sheep	1	3	5	5	3	5
Cattle	0	0	1	6	0	5
Horse	5	5	4	2	2	8
Parrots	21	7	2	7	3	3
Pigeons	1	3	0	1	2	0
Other birds	2	18	14	7	10	11
Bees	0	5	0	5	0	3
Miscellaneous	2	17	2	3	9	2

The level of complaints suggests that there is a need for regulating the keeping of animals, poultry and bees.

In the District Plan there are no rules in place for living and working areas to govern the keeping of stock, animals, poultry and bees. The keeping of stock in managed, protected, and coastal natural areas is a non-complying activity requiring resource consent.

'Intensive animal farming' is also covered by the District Plan, defined as 'raising animals in artificially controlled conditions including but not limited to pigs, poultry and rabbit farming, substantially within buildings'. It is assessed as a non residential activity. There is only one outright prohibited activity, namely, the farming of mustelids, rodents, wallabies and possums and the farming of deer in deer free areas.

In summary, the District Plan controls farming and commercial type activities and the keeping of certain animals in natural areas. It does not cover the potential nuisance effects of animals kept in residential and working areas. The District plan and bylaw therefore compliment each other.

**The Current Bylaw**

A1-A6

The current bylaw is attached at pages A1 to A6. It was adopted 17 years ago. It is outdated and could benefit from a complete review. The definition sections do not reflect the more extensive range of animals kept within the city today. There are references to repealed legislation and certain clauses are now redundant. For example, the establishment of hospitals for dogs and cats is now managed by the consent process.

The existing provisions relating to the keeping of goats and animals in stables highlights one of the main problems with the existing bylaw, namely, how to distinguish between urban and rural areas because different rules apply to each. It is suggested that this confusion could be substantially reduced by attaching a plan to the bylaw reflecting the various Environments (delineated according to the District Plan) and clearly defining what is permitted in each area. A similar effect occurs in relation to the keeping of roosters, the source of most complaints. It is not clear to residents whether they are permitted to keep roosters or not. The bylaw has not kept pace with development within the City.

The bylaw does not refer to cats at all. A number of complaints are received annually relating to numbers of cats and their nuisance factor. There have been calls from certain residents for a separate cat bylaw. A stand alone cat bylaw was investigated a number of years ago, but was not pursued. The bylaw review process, however, provides an opportunity to consider whether any form of regulation is now appropriate.

### **Option Analysis**

#### **Retain the current bylaw**

There would be no change to the existing rules and no increase in costs. The bylaw in its existing form is no longer relevant or appropriate. It does not adequately address the problem adequately and could be substantially improved to better meet the needs of local residents. Furthermore there is a statutory requirement to review it before 1 July 2008 or it will expire.

#### **Create a new bylaw**

This option allows Council to consider what provisions ought to be made for the better management and regulation of the keeping of animals, poultry and bees within the City and is consistent with Council's Safe City Strategic Priority and Strong Communities Strategic Platform. Operational issues that have already been identified can be addressed. Restrictions can be reviewed to ensure Council is satisfied that the right balance has been found between the interests of animal keepers and the potential for nuisance. There is not likely to be a resource implication because a bylaw is in force now and complaints are acted upon. Enforcement could be made easier, however, with the provision of a map to clarify what is permitted in different areas of the City.

Other Councils in the Auckland region (Rodney, North Shore and Manukau) have either completed reviewing their bylaw relating to the keeping of animals, poultry and bees, or have decided that an updated bylaw is the most appropriate form of addressing the problem. Auckland City intends to commence its review this year.

A review and update of the current bylaw also ensures that Council has complied with its statutory duty under the Local Government Act 2002.

#### **Revoke bylaw and rely on other methods for management and regulation**

If the current bylaw was revoked, Council would need to rely on other less specific tools such as the Health Act 1956 or the current District Plan. The limitations of the District Plan are outlined above. Council's powers under the Health Act 1956 are limited to public health concerns, nuisances relating to unsanitary conditions and the spread of disease by vermin and pests. Neither the District Plan nor the Health Act give Council's sufficient power to address noise nuisance aspect of keeping animals. Without extending the District Plan substantially, or adopting a new bylaw, Council does not have regulatory power to deal with complaints relating to animal behaviour in residential areas that falls short of a human health issue.

In order to ensure animals, poultry and bees are kept in a manner which prevents nuisance and protects and promotes public health and safety, there needs to be an ability to prevent certain activities occurring, to place limitations on location and numbers of animals and for fast, effective enforcement mechanisms which are clearly understood.

## RESOURCES

If Council eventually approves an amended bylaw containing prohibitions and restrictions relating to the keeping of animals, poultry and bees, it is not envisaged that there will be any significant resource implications, although that will depend to a large degree on the contents of the new bylaw. The Compliance Manager will address the Planning and Regulatory Committee further on that point in due course. Resources to carry out the review of the Bylaw are provided for in the Long Term Council Community Plan.

## Conclusions

Council requires an effective method of regulating and managing the keeping of animals, poultry and bees. It is therefore recommended that Council continue to manage and regulate the keeping of animals, poultry and bees by means of an updated bylaw. There are specific legal powers contained within the Local Government Act 2002 and the Health Act 1956 to make a bylaw for this purpose. Bylaws are generally well understood by the public. Enforcement is relatively easy and effective compared with other regulatory options. Given the issues that have been identified, the required outcome sought and the above option analysis, it is submitted that an updated bylaw, finalised after full public consultation, is the most appropriate option.

If the Planning and Regulatory Committee is comfortable with the recommendation that a bylaw is the most appropriate method of addressing the perceived problem, then officers in consultation with interested parties will prepare a draft updated bylaw together with a draft Statement of Proposal and Summary of Information for discussion at a future Planning and Regulatory Committee meeting. If the Planning and Regulatory Committee has any initial comments or suggestions that it would like to see specifically addressed in the draft bylaw, it would be of considerable assistance to receive them now.

## RECOMMENDATIONS

1. That the Determination Report - Review of Bylaw No 4 (1990) Chapter 13 - The Keeping of Animals, Poultry and Bees report be received.
2. That a bylaw is the most appropriate way of addressing the perceived problem, namely the better management and regulation of the keeping of animals, poultry and bees.
3. That Council officers prepare a draft bylaw, with a draft Statement of Proposal and Summary of Information, for consideration and discussion at a future Planning and Regulatory Committee Meeting.

Report prepared by: Denis Sheard, Legal Services Manager and Yvonne Donaldson, Team Leader: Legal Services.



## **7 DETERMINATION REPORT - REVIEW OF BYLAWS NO 4 (1990) CHAPTER 15 - PUBLIC LIBRARIES AND NO 4 CHAPTER 16 (1990) - PUBLIC SWIMMING**

### PURPOSE OF THE REPORT

The purpose of this report is to commence the review of bylaws No.4 (1990) Chapter 15 - Public Libraries and No.4 Chapter 16 1990 - Public Swimming Pools to determine whether bylaws are the most appropriate way of addressing the problems associated with each service/facility, in accordance with the ongoing bylaw review programme under 158 Local Government Act 2002. Both bylaws are being considered together in the same report because of the similarities as outlined below.

## STRATEGIC CONTEXT

Council has a statutory duty to review its current bylaws before 1 July 2008. In doing so, regard is had to Council's strategic platforms and priorities. One of Council's strategic priorities is "Safe City" requiring that in addition to formal occupational health and safety considerations, the general safety of the community is integral to all of the Council's activities. Another priority is "Sustainable Development" requiring all major Council programmes to demonstrate ongoing social, economic, environmental and cultural benefit for current and future communities. The "Strong Communities" platform also emphasises support for the health and wellbeing of the City's residents.

## BACKGROUND

A7-A23

The current bylaws are attached at pages A7 to A23. Pursuant to Section 158 of the Local Government Act 2002, all bylaws that were in existence before the Act came into force must be reviewed before 30 June 2008 or they will expire.

Both the libraries and swimming pool bylaws were made pursuant to section 684 of the Local Government Act 1974, which contained specific provisions for making bylaws to manage and regulate community recreational facilities. The Local Government Act 2002 has not replicated that provision.

This report concludes that:

- Council has no specific legal powers under the Local Government Act 2002 to make a bylaw to manage and regulate public libraries or swimming pools, except in so far as Section 146 (b) Local Government Act 2002 enables Council to make bylaws for the purpose of "(b) managing or protecting from damage, misuse or loss (vi) reserves, recreational grounds or other land under the control of the territorial authority".
- There are also general bylaw making powers contained in Section 145 for the purposes of (a) protecting the public from nuisance, (b) protecting, promoting and maintaining public health and safety and (c) minimising the potential for offensive behaviour in public places.
- If a power exists to make a bylaw, Section 155 Local Government Act 2002 requires the local authority to determine whether a bylaw is the most appropriate way of addressing the perceived problem before commencing the process of making a bylaw. In the case of both libraries and swimming pools, the problem identification and option analysis below, suggests that a bylaw is not the most appropriate method of addressing the problem.

## ISSUES

Section 77 of the Local Government Act 2002 requires local authorities in the course of the decision-making process to seek to identify all reasonably practicable options and to assess those options by considering the benefits and costs, community outcome, statutory responsibilities and any other relevant matters.

Formal consultation is not required at this initial stage in the bylaw review process. However, Section 78 Local Government Act 2002 requires local authorities in the course of its decision making process, to give consideration to the views and preferences of persons likely to be affected by, or have an interest in the subject matter. Initial meetings have taken place internally with the Library and Information Services Manager, and the Manager of West Wave. It is generally understood and agreed, that having regard to the bylaw making powers contained within the Local Government Act 2002, bylaws are not now the most appropriate means of managing these facilities.

### Problem Identification

Libraries are public places owned and operated by Council. They provide a fundamental community service and are strongly aligned with Council priorities to encourage and provide lifelong learning opportunities and all children with good access to recreational and educational materials. The aim is to provide the best library service possible for local residents. To that end, the service must run efficiently, effectively, and respond to the diverse range of community needs. In order to do so, Council requires regulatory tools at its disposal so that appropriate action can be taken to control where necessary unacceptable behaviour, or seek recompense for damage or theft of books and equipment.

The current bylaw is based on the model bylaw from 1972. It contains a long list of offences, gives the Council a power to make 'rules of control', and refers to unauthorised use of membership cards, unauthorised taking and damage to books, unpaid fines, expulsion of offenders and communicable diseases. Council still has power to make a bylaw to cover some of these issues, such as offences which amount to offensive behaviour or nuisance. It would not, however, be able to stretch the general bylaw making powers to cover unpaid fines or the requirement to notify changes of address. The clauses in the current bylaw which still remain relevant and appropriate could be covered by conditions of membership or terms of borrowing for non members. In addition, the general public places bylaw will also apply to libraries and will prohibit behaviour that is offensive or amounts to a nuisance. Trespass orders under the Trespass Act 1980 are also available where removal and/or prohibition on future entry, is required.

Swimming Pools are also public places owned and operated by Council. Westwave is an important community facility and integral to Council's Strong Communities strategic platform which supports the health and wellbeing of the city's residents. West Wave provides leisure facilities that all residents can enjoy and also hosts national and international competitive events. Council strives to ensure the facility operates efficiently and provides a service that best meets the City's needs.

West Wave management need the ability to eject disruptive customers and importantly, take all necessary steps to ensure the health and safety of patrons. The current bylaw dates back to 1972 and contains provisions relating to admission, behaviour generally, cleanliness, and ejection from the premises. Those clauses that still remain relevant and applicable could similarly be provided for by means of membership conditions, conditions of entry, trespass orders and the bylaw provisions relating to public places generally.

Standards New Zealand produces basic Model General Bylaws for local authorities to use in their individual bylaw review programmes. Standards informed all Councils in October 2006 that it intended to withdraw two of the Model General Bylaws from the series, namely, Public Libraries and Cultural and Recreational Facilities. An analysis of these model bylaws had suggested they may now be inconsistent with the bylaw making powers in the Local Government Act 2002. Standards concluded that some of the content of both model bylaws did not meet the legal requirements. In addition, their research revealed that only a small percentage of Territorial Authorities had actually developed bylaws for libraries or cultural and recreational facilities, indicating that those Councils without bylaws had developed other means of dealing with the issues covered in the model bylaws.

A brief review of the other four local authorities in the Auckland area together with Wellington and Christchurch is summarised in the table below:

Authorities	Libraries bylaw	Swimming Pool bylaw
Auckland City	One consolidated Cultural & Recreational Facilities Bylaw 1998. Not reviewed under LGA2002. Includes libraries, swimming pools, art galleries and the zoo.	
North Shore	Libraries Bylaw 2000. Not reviewed under LGA2002	No
Rodney	No	No
Wellington	No - Library bylaw revoked	No
Christchurch	No	No
Manukau	Libraries Bylaw 2006	Recreational and Cultural Facilities Bylaw 2006 (includes swimming pools)

Of those Councils listed above, only Manukau has adopted a Libraries Bylaw and a Recreational & Cultural Facilities Bylaw (covering swimming pools) following a review under the LGA 2002. The Manukau review occurred before Standards New Zealand withdrew their relevant model bylaws.

#### Option Analysis

#### **Update existing bylaws**

- There is a fundamental issue regarding whether or not a legal power now exists to make bylaws to regulate and manage these facilities under the Local Government Act 2002.
- If a power does remain enabling Council to regulate and control at least some aspects of their operation by bylaw (for example protection from nuisance, promoting public health, minimising the potential for offensive behaviour) it does not necessarily follow that a bylaw is the most appropriate means of addressing the problem, given that there are other methods available to do so.
- The current bylaws are based on standard models initially developed over thirty years ago. The current bylaws were adopted in virtually the same form 17 years ago. They have consequently become outdated. If it was proposed to continue regulating these facilities (at least insofar as that is legally possible) by means of bylaws, then the bylaws would need to be substantially rewritten to ensure relevancy, and alternative methods of regulation would be required for those issues that fall outside the general bylaw making powers.
- The Team Manager: Compliance confirms that Field Services have never enforced either bylaw and have not received any complaints which might have led to enforcement action. This suggests that when problems have arisen in the past, Council officers have dealt with those issues without recourse to the relevant bylaw. The Library and Information Services Manager recalls that on two occasions when Council took recovery action for non-payment of outstanding fees (for lost books), the defaulter queried the legal justification for imposing certain charges and the bylaw was relied upon. Terms and conditions of membership would have been similarly effective however.
- A review of 6 other local authorities reveals that only Manukau has adopted a new Libraries Bylaw 2006 and a new Recreational and Cultural Facilities Bylaw 2006 following a review under the provisions of the Local Government Act 2002.
- Standards New Zealand has withdrawn their Public Libraries and Cultural and Recreational Facilities model general bylaws.

## **Revoke bylaws/leave them to expire and rely on other methods for management and regulation**

- Standards New Zealand suggests that if the purpose of a Cultural and Recreational Facilities bylaw is to control and set standards for the operation of Council owned facilities, then that purpose would be best achieved via the development of normal business management controls. Those may include conditions of entry or membership.
- All recreational and cultural facilities whether privately or publicly owned impose conditions on users covering a range of topics including unacceptable behaviour, expulsions, charges, operating times and so on.
- The purpose of a Public Libraries bylaw is to exercise control over the operation of libraries. This purpose is far reaching and at least in part, is outside the scope of the bylaw making powers of the Local Government Act 2002.
- Library use is already largely controlled by means of membership. The terms and conditions of membership are currently stated (on the back of the membership card). At the moment the conditions on the back of the card make reference to the bylaw, this would not however be difficult to change.
- The new Public Places bylaw will include within its definition of public places, 'a place that is under the control of the territorial authority and is open to or being used by the public, whether or not there is a charge for admission'. The new Public Places bylaw, prohibiting unacceptable behaviour and damage to property for example, will also apply to libraries and West Wave.

## **RESOURCES**

If Council resolves to allow these current bylaws to expire by effluxion of time and thereafter rely on business control practices to regulate and manage these facilities, then the changes need to be planned, coordinated and managed. By making the decision now, 15 months before the bylaws would expire under the Local Government Act 2002, Leisure and Library services have time to review their current bylaws and decide what is appropriate to retain, and what is no longer relevant. Regulatory and managerial changes can be fully advertised and new signage and/or membership forms prepared. Legal Services will be able to assist with preparation of the new documentation.

## **Conclusions**

If the Planning and Regulatory Committee is comfortable with the recommendation that bylaws are not the most appropriate method of addressing operational and regulatory issues at West Wave and Libraries for the reasons outlined above, then alternative methods of control will need to be put in place. It is suggested that terms and conditions of membership, together with a Public Places bylaw covering these facilities, and recourse to Trespass Orders where appropriate, is the best way to manage these facilities in the future.

## **RECOMMENDATIONS**

1. That the Determination Report Review of Bylaw No 4 (1990) Chapter 15 Public Libraries and No 4 Chapter 16 (1990) - Public Swimming Pools report be received.
2. That it be noted that neither the general bylaw making power contained within Section 145 Local Government Act 2002, or the specific bylaw making power contained within Section 146 (b) (vi) Local Government Act 2002, permit Council to adopt new bylaws for other than limited purposes, namely, to protect the facilities from damage, maintain public health, prevent nuisance and minimise potential for offensive behaviour.

3. That it be noted that for the reasons outlined in this agenda report, bylaws are not the most appropriate way of addressing the perceived problem; the management and regulation of public libraries and swimming pools within Waitakere.
4. That it be agreed that both libraries and West Wave would be more appropriately managed by means of conditions of membership and other business management controls, supplemented by the new Public Places Bylaw and Trespass Notices for situations where unacceptable behaviour (by both members and non-members) requires regulatory action.
5. That Libraries and Information Services, and Leisure Services now commence a review of their current bylaws and prepare new documentation for membership or borrowing or entry to come into effect when the bylaws expire in July 2008.

Report prepared by: Denis Sheard, Legal Services Manager and Yvonne Donaldson, Team Leader: Legal Services.



## 8 **BYLAW REVIEW PROGRAMME UPDATE**

### **PURPOSE OF THE REPORT**

The purpose of this report is to update the Planning and Regulatory Committee on the progress of the draft Public Places Bylaw, the Bylaw review programme generally, and a proposed review of the Control of Liquor in Public Places Bylaw 2003.

### **STRATEGIC CONTEXT**

One of Council's Strategic Priorities is "Safe City" aimed at ensuring all major Council programmes consider the general health, wellbeing and safety of all the City's residents and communities. The bylaw review programme and specifically the review of regulations concerning the use of, and behaviour in public places specifically, is consistent with Council's Long Term Council Community Plan and strategic priorities. In addition, Council has a statutory duty to review its existing bylaws under the Local Government Act 2002.

### **BACKGROUND**

On 16 February 2007, the Henderson Community Board received a presentation from the Henderson Community Constable Brendon Stewart, updating the Board on crime in the City and initiatives to target tagging, disorderly behaviour in Catherine Place and consumption of alcohol in parks throughout the City. It was resolved:

1. *That the presentation made by the NZ Police be received.*
2. *That a report on the progress of the Public Spaces Bylaw review since 2005 be referred to the Planning and Regulatory Committee."*

159/2007

On 14 March 2007, representatives from the Police met with Council officers to discuss issues relating to the consumption of alcohol in public places within the City and action that could be taken to address the problem. Whilst the Police have powers to arrest for disorderly behaviour and general public order type offences, unless an individual is clearly drunk and disorderly, their powers of intervention are limited with regard to the consumption of alcohol. If Council makes a bylaw under section 147 Local Government Act 2002 to control liquor in public places, the police have powers of arrest, search and seizure pursuant to sections 169 and 170 of the Act. That power to search can be extended to include containers and vehicles.

## ISSUES

Section 158 Local Government Act 2002 requires local authorities to review all bylaws made under that Act no more than five years after the date on which the bylaw was made and all bylaws made by it under the Local Government Act 1974 by 1 July 2008.

As part of the general bylaw review programme the Committee considered two reports regarding a draft Public Places Bylaw in 2006 relating to the Street Trading and Outdoor Dining provisions.

In February 2006, the Committee resolved:

1. *“That the Public Places review of Mobile or Travelling Shops and Hawkers Bylaw 1990 report be received.*
2. *That the parts of the draft Public Places Bylaw attached to this report together with the draft Outdoor Dining Policy be brought back to the Planning and Regulatory Committee together with a draft Street Trading Policy for further consideration in due course.”*

141/2006

In June 2006, the Committee resolved:

1. *“That the draft Public Places Bylaw 2006 - Trading report be received.*
2. *That having considered all possible options a bylaw is the most appropriate mechanism to assist in the regulation of trading in public places.*
3. *That the principles contained within the draft bylaw relating to trading in public places produced at this meeting be approved and included in the complete draft Public Places Bylaw 2006 to be brought back to the Planning and Regulatory Committee for approval in due course.*
4. *That the contents of the draft bylaw have no implications inconsistent with the New Zealand Bill of Rights Act 1990.*
5. *That Council officers finalise the terms and conditions of a Street Trading policy and refer back to Planning and Regulatory Committee for discussion.*
6. *That the principles contained within the draft Outdoor Dining policy also be approved.”*

1007/2006

The aim is to amalgamate those provisions that remain relevant and appropriate in all of the bylaws listed below into one overarching bylaw covering behaviour in and use of, all public places. This it is hoped will have the beneficial effect of removing confusion that may currently exist between bylaws and in some cases duplication or inconsistency. It should also result in a condensed and more easily understandable regulatory document. Those bylaws that it is proposed to amalgamate are:

- No.4 (1990) Ch.4 Mobile or Travelling Shops and Hawkers;
- No.4 (1990) Ch.2 Public Places;
- No.4 (1990) Ch.17 Parks and Reserves;
- No.9 (1990) Beaches and Reserves;
- No.22 (1990) Use of Public Roads;
- No.8 (1990) Barbed Wire Fences.

The process of reviewing and amalgamating five of Council's main bylaws into one document plus at least one other bylaw, involves a considerable amount of research, analysis and consultation. The Auckland Regional Council has also embarked upon a review of its bylaw relating to beaches and parks. It is important that Waitakere's draft bylaw takes into account various aspects of that bylaw to ensure consistency of approach where possible. There are also difficult issues to resolve relating to territorial boundaries particularly regarding part of the beach (the foreshore).

In September 2006 the Committee also considered a determination report relating to bylaw No.18 1990 Cemeteries and Crematoria and No.28 1996 Urupa (Maori Burial Sites). It was resolved (1749/2006) that a bylaw is the most appropriate way of addressing the perceived problem, namely the better management and regulation of Cemeteries and Crematoria within Waitakere.

In the interim period, meetings have taken place with the Urupa Management Komiti and all identifiable interested parties have been consulted on proposed operational changes to the existing bylaws. On 28 February 2007, the Komiti expressed general acceptance and support for a single bylaw, provided that the new bylaw clearly states what the Komiti's decision making responsibilities are with regard to issues relating to the Urupa. A draft bylaw and report were prepared for consideration by the Planning and Regulatory Committee. However, on reflection, most of the clauses in the current bylaws and draft bylaw are operational matters more appropriately contained within a policy document. Once those policy provisions are taken out of the draft bylaw the only clauses that remain and are properly the subject of a bylaw, relate to behaviour generally and possibly disinterment, although this issue is also covered by the Burial and Cremations Act 1964. The most appropriate course is to incorporate the remaining parts of the draft cemeteries and crematoria bylaw into the new general public places bylaw. Some of the general public places provisions will apply to cemeteries, but there will also need to be some additional cemetery specific provisions for example interruption of funeral services and display of items on graves which may cause offence. Contractual matters relating to leasing of burial sites, grave ornamentation, burial times and so on will be contained within a policy document.

It is proposed to bring an update report on the draft public places bylaw to the Committee within the next two months.

A24-A26

In December 2003, Council adopted a Control of Liquor in Public Places Bylaw. A copy is attached at pages A24 to A26. The bylaw imposes a liquor ban on and adjacent to Piha beach between the hours of 5 pm-5 am during holiday periods. There is also provision for Council to prohibit liquor in certain public places during specific events. This provision was used in early 2006 with regard to certain concerts during the summer months.

The Control of Liquor in Public Places Bylaw is not due to be reviewed until the end of 2008. However, problems of anti-social behaviour surrounding alcohol consumption in public places have prompted the Police and community/business associations to request Council to consider a new, extended Control of Liquor Bylaw as a priority. The Police have undertaken to provide Council with statistical evidence of the extent of the problem and how a bylaw may minimise that problem. A report will be presented to the Committee's next meeting by the Safe Waitakere Alcohol Project Leader, for the Committee to determine whether a new bylaw is the most appropriate means of dealing with the problem (a determination report pursuant to Section 155 Local Government Act 2002) and if so, whether the preparation of that bylaw should take priority in the general bylaw review programme.

A27-A29

Attached at pages A27 to A29 for information is an outline of the general bylaw review programme to date. Waitakere started this review process with considerably more bylaws than any other Territorial Authority in the country. Virtually all the existing bylaws were adopted over 15 years ago and based on model bylaws from 1974. Whilst the review process is time consuming and a statutory requirement, it is also a worthwhile exercise. It is enabling Council to carefully consider and rationalise the way in which it fulfils its regulatory functions.

All of Council's bylaws that were in force before 1 July 2003 must be reviewed by the middle of next year. The only exception would be if any bylaws were made entirely under different legislation. The reality is that bylaws that refer to different legislation, such as the Traffic Bylaw and Cemeteries and Crematoria Bylaw also relied on the more extensive powers contained in the Local Government Act 1974. It is not prudent to leave those bylaws that rely (at least in part) on different legislative powers for review post July 2008, because the risk is that the other parts of those bylaws (that rely solely on Local Government Act 1974 powers) will expire on 1 July 2008.

The aim is to review all existing pre 2003 bylaws before April 2008. Given that each bylaw review involves initial analysis, at least four Committee/Council reports, a period of formal consultation and submission hearings, completion of the review programme is dependent upon a number of factors including internal resources, input from other Councils, number of submissions received and hearings required. Priority is therefore being given to those bylaws that are due to expire and are currently relied upon for enforcement purposes.

### **RECOMMENDATIONS**

1. That the Bylaw Review Programme Update report be received.
2. That Council officers prepare a Section 155 determination report regarding a review of the Control of Liquor in Public Places Bylaw 2003 for the Planning and Regulatory Committee's consideration in due course.

Report prepared by: Denis Sheard, Legal Services Manager and Yvonne Donaldson, Team Leader: Legal Services.



## **9 LITTER AMENDMENT ACT 2006**

### **PURPOSE OF THE REPORT**

The purpose of this report is to inform the Planning and Regulatory Committee of the relevant changes to the Litter Act 1979, which were amended by the Litter Amendment Act 2006, and outline options now available regarding infringement notices relating to Litter offences.

### **BACKGROUND**

The Litter Act 1979 provides territorial authorities with certain powers relating to the control of litter. In particular, it provides Councils with powers to appoint Litter Control officers, to require occupiers of private land to clear litter; and to adopt by resolution, infringement notice provisions. The Litter Act 1979 also defines various offences related to littering and specifies maximum penalties for breach.

A30-A32

On 28 June 1995, following public notice, Council confirmed by way of Special Order (2046/95) adoption of the litter infringement provisions contained within the Litter Act 1979 and set out the offences for which an infringement notice could be issued, and the level of fees as attached at pages A30 to A32.

The Litter Amendment Act 2006 recently came into effect amending the Litter Act 1979 Act. The principal changes were:

- increased maximum penalties;

- the offence of depositing litter now carries strict liability, subject to very limited defences, by removing the need for officers to prove intention, (i.e. the offender needs to prove an acceptable defence, as detailed in the Act);
- increasing the maximum fee chargeable on an infringement notice from \$100 to \$400; and
- inserting a new clause 14A which allows territorial authorities to retain the infringement fee received, if the infringement notice was issued by a Litter Control Officer appointed by the territorial authority. Previously, for notices lodged at court, the courts would retain ten percent of the fine.

## STRATEGIC CONTEXT

Part of Council's Zero Waste strategic platform is to produce a clean and attractive city. Appropriate litter enforcement action including the issue of infringement notices, can help combat littering and illegal dumping by acting as a deterrent to further offending, thus complimenting Council's vision.

## ISSUES

Section 13(3) of the Litter Act 1979 requires those territorial authorities who resolve to adopt the infringement notice process, to also specify the nature of the offence and the fee payable in respect of any such offence. In 1995 Council adopted a \$100 infringement fee for all forms of littering except (a) garden waste and (b) allowing litter to escape from a motor vehicle. In those cases, the fee was fixed at \$50. These fees were fixed over 10 years ago. As outlined above the amendment has raised the maximum fee available on an infringement notice to \$400. The issue now to be determined is whether Council wishes to leave the infringement fees at \$100 and \$50, raise them to a new level up to the maximum of \$400 or introduce a sliding scale of fees. Matters to consider are as follows:

- The substantial increase in penalties across the range of offences, coupled with the introduction of strict liability for certain matters, signals an intention to seriously address the problem of litter. The new clause enabling Councils to retain infringement notice fees could be seen as an acknowledgement that the financial costs associated with the enforcement and administration of this act should not fall on local Councils and ultimately ratepayers.
- In the more serious cases of depositing litter in public places or on private land without the consent of the occupier, Council would not normally proceed by way of infringement notice. The more appropriate course of action would be to take the matter to court. The maximum penalty the court can impose for depositing litter has been significantly increased by the act to \$5,000 up from \$500 in the case of an individual and \$20,000 up from \$2,000 in the case of a body corporate. Where that litter may endanger any person or cause physical injury, the fine has increased for an individual from \$750 to \$7,500 and/or 1 month imprisonment. For a body corporate the increase is from \$3,000 to \$30,000.
- Litter infringement notices are limited to situations where an appropriate officer observes a person committing an infringement offence (or has reasonable cause to believe such an offence is being or has just been committed by that person), and issues a notice immediately, or sends it to the offender's address.
- Infringement notices generally therefore cover the less serious instances of littering, for example dropping a bus or parking ticket, cigarette butt, or food wrapper. In considering whether it is appropriate to raise the level of infringement fees at this time, the Planning and Regulatory Committee will note that the fee has not been increased for 10 years; an increase may act as a stronger deterrent against offending; and is in line with Council's strategic platforms and priorities. On the other hand, there is a risk that raising the infringement fee up to 400% for minor instances of littering may be viewed as revenue gathering given that Council will now retain the fees received. At the time of writing, no other Auckland territorial authorities have moved to increase their infringement fees.

- Waste Minimisation officers consider that Council should adopt the maximum level of fees chargeable on infringement notices now available together with a 'sliding scale' of fees, so that a lesser fee can be imposed for the least serious offences. A sliding scale will allow the fee to more closely fit the offence, so that a dropped receipt would be distinguished from a discarded fast food meal or a bag of household waste dumped at the side of a road. It needs to be acknowledged that a certain amount of subjective interpretation could lead to challenges over which fee band a particular offence has been placed in or whether the officers' discretion has been exercised reasonably.

## **RESOURCES**

No additional resources are required.

## **CONCLUSION**

The fees for a litter infringement offence have not been increased for a decade. An increase in fees would provide greater disincentive to littering and also be in line with Council's strategic direction regarding litter. The Planning and Regulatory Committee has delegated authority to develop policies and oversee regulatory functions relating to litter and it is for the Planning and Regulatory Committee to decide whether to increase the fees and if so, the appropriate level of increase.

## **RECOMMENDATIONS**

1. That the Litter Amendment Act 2006 report be received.
2. That in accordance with Sections 13(2A) and (3) of the Litter Act 1979 public notice be given of Council's intention to increase the litter infringement fee to \$400 or other such sums as considered appropriate, such notice shall specify the proposed new fees for each litter infringement offence.
3. That a report be brought back to the Planning and Regulatory Committee at least 14 days after public notice of Council's intention to increase the litter infringement fee has been given.

Report prepared by: Robert Menzies, Waste Minimisation Officer.

