



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a Meeting of the Planning and Regulatory Committee will be held on:-

DATE: **Tuesday, 12 February 2008** **TIME:** **9.30 am**

VENUE: **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

to consider the business as set out herein and to take any necessary action connected therewith.

30 January 2008

Ngareta Delamere
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8552

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	DQ	Battersby, JP
	MFP	Chan, JP
	LA	Cooper, JP
	AK	Corban, OBE, JP
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell

Mayor RA Harvey, QSO, JP (ex officio)
Deputy Mayor (ex officio)

(Quorum 5 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 12 FEBRUARY 2008, COMMENCING AT 9.30 AM**

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AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 12 FEBRUARY 2008, COMMENCING AT 9.30 AM

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 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



4 CONFIRMATION OF MINUTES

Meeting Minutes - 11 December 2007

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 11 December 2007, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 JANUARY 2008)

GLOSSARY

Land Valuation Tribunal	(LVT)
Ritchies Transport Holdings Limited	(Ritchies)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Environmental Health Officer	(EHO)
Auckland Regional Public Health Service	(ARPHS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)

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 (WCC), North Shore City Council and Rodney District Council (RDC) (April 2006)**

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. The decision has recently been released in favour of Carter Holt. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter left is resolution of costs. Council is waiting on final orders from the Court. Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process Council has prepared and presented submissions on the supplementary order paper to the Waste Management Bill which submissions address the necessity for a new definition of waste.

HIGH COURT

(Unchanged) **WCC v C P Brunel and the Cove Limited (December 2006)**

Council sought to acquire land under the Public Works Act 1981 for a carpark at the Westpark Marina boat ramp. The owners objected and the High Court eventually declared that the Council could take the land. The property owners' application for leave to appeal was heard in the High Court on 19 March 2007. Leave was declined.

Negotiations to purchase the properties have been completed and the Council now owns the land, but with some minor compensation issues unresolved, including the costs issue. Hopefully the outstanding issues can be resolved with minimal disagreement.

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. A decision is not now expected before March 2008.

(Changed) C W Williams and others v WCC (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 and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of S40 Public Works Act 1991. An application for leave to appeal to the Court of Appeal was heard on 28 November 2007 and granted by Williams J. Security for costs on the appeal has been lodged with the Court and a tentative hearing date of 24 April 2008 has been allocated.

(Changed) Lovelock v WCC (July 2007)

This matter is in respect of an appeal of a rating valuation by Lovelock to the Land Valuation Tribunal (LVT).

Notwithstanding Lovelock's appeal being dismissed by the LVT, Council's concerns are in relation to a number of incorrect statements made about Council's responsibilities in relation to ratings valuations. These statements may become a precedent for future ratings valuations. Accordingly, council has applied for a Judicial Review of the LVT's decision in relation to these statements. Judicial Review proceedings will clarify Council's responsibilities. The matter will be argued on Tuesday, 4 November 2007.

The Court's Judgment was received on 20 December 2007. Council's position was upheld, and the Court made a declaration that the LVT's position in this case was wrong.

Substantive hearings involving Mr Mawhinney

(Changed) Mawhinney and Glorit Subdivision Limited v WCC (February 2006)

This matter related to 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.

Mr Mawhinney's appeal was heard in the High Court before Venning J on 7 December 2007. Judgment was received just before Christmas and the appeal was dismissed on all grounds. A costs application has been lodged this month and we are waiting for a reply from Mr Mawhinney. We have sought an 'above scale' award of \$13,320 in respect of the appeal hearing.

Debt Recovery proceedings involving Mr Mawhinney

(Unchanged) WCC v P W Mawhinney (February 2006)

WCC continues to pursue a claim for indemnity costs of \$2,491.00 incurred on obtaining substituted service of a bankruptcy petition on Mr Mawhinney. All other costs awards in favour of the Council in respect of this matter have been paid.

(Unchanged) WCC v Glorit Subdivision Limited & Mawhinney (March 2006)

On 14 February 2007, Council was awarded costs of \$480.00 (for an appearance by counsel in Court) and costs of \$1,216.87 (for Substituted Service) of 14 March 2007. Council made a final application for indemnity costs for the steps required to oppose Mr Mawhinney's application to set aside bankruptcy notice.

On 6 November 2007, Associate Judge Abbott awarded Council further costs of \$3,345.50 and also helpfully considered Council's costs awards for this matter into a global figure of \$5,042.37 so all three costs awarded can be enforced as a single award.

Council has made demand on Mr Mawhinney requiring payment of the award. If payment is not received a bankruptcy notice will be served on Mr Mawhinney for payment of the award.

ENVIRONMENT COURT

(New) Hall v WCC (November 2007)

This is an appeal against the WCC's decision to grant resource consent to subdivide a property at 587 West Coast Road into two lots. The property is within the Oratia Structure Plan. The appellant was the applicant for consent and would like the removal of three conditions from the consent. These conditions relate to financial contributions, undergrounding of power and telecom services, and removal of certain buildings within 6 months of grant of consent. The appellant would like these conditions removed from the consent.

The Environment Court has issued standard track directions and it has been directed to mediation. It is likely that mediation will occur early next year, if not late December. A notice of reply has been drafted.

(Unchanged) WCC v Estate Homes Limited (28 March 2002) (Ranui Station Road)

Councillors will recall that this matter has been to the Supreme Court, to resolve the attempts made by Estate Homes to argue that it should be fully compensated for the costs it incurred building Marinich Drive. The Supreme Court ruled that the only issue for determination was whether Estate should be compensated at a local or collector road standard and remitted the matter back to the Environment Court which heard argument on Monday 28 May and delivered its decision on 15 June 2007. No further evidence was called. The only evidence before the Court was that the appropriate standard was a collector road. Notwithstanding, the Court has held that a local road would suffice. Council has not been able to resolve the issue, and Matthew Casey QC has filed a further appeal seeking the Court's clarification of this matter, as Council believes that the correct standard is a collector road. This appeal is due to be heard in February 2008.

**(Unchanged) Auckland Regional Council (ARC) v WCC (May 2005)
Waitakere Ranges Protection Society Incorporated (WRPS Inc.) v Waitakere City Council (May 2005) (the Duncan appeal)**

An appeal by the ARC and WRPS Inc. 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 ARC and WRPS Inc. 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 called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision.

(Unchanged) M and C Brickell, W Ashton and L Schwab v WCC (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 (RMA) against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The ARC and WRPS Inc. 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. The hearing resumed on 23 May 2007 to hear the evidence of a witness for one of the Section 274 parties who was not available during the March hearing. The hearing has now been completed. The Court has reserved its decision.

(Unchanged) WCC v R and 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 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.

Mr Britten has been granted resource consent to undertake the remedial works. The remedial work will begin until this summer.

The Court has directed that the matter is to remain on hold with a further report due 2 May 2008.

(Changed) Ritchies Transport Holdings Limited, v WCC, 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, joined the proceedings as an interested party.

The application for stay was granted in 13 October 2006 following a judicial conference. In the interim, Ritchie's lodged an application for resource consent to extend the scope of their activities. As a result of the consent process taking longer than anticipated, Mr Campbell found that he was no longer satisfied that the stay could continue without conditions. The matter was called into Court on 31 January 2008 by Mr Campbell to determine the appropriateness of the stay continuing whilst the resource consent was being determined. Mr Campbell took issue with the level of noise, traffic and fumes emanating from the Ritchie's depot. Mr Campbell agreed for the stay to continue whilst the Council processes the resource consent to address the matters raised in the abatement notice subject to two conditions. Firstly, that Ritchie's cease using the workshop between 9pm and 6am, and secondly, that no buses are parked within 10 metres of the eastern boundary on the Ritchie's property where those buses are going to be used between 9pm and 6am. Ritchie's agreed to these conditions and the Council will abide by the Court's decision.

The stay will stay in place pending the outcome of the resource consent hearing. The council is to report back to the Court within 28 days of the decision on the consent decision being notified. The resource consent hearing is scheduled for 18 and 19 February.

(Unchanged) WCC v RDC (April 2007)

An appeal and S274 notices were filed by WCC regarding decisions by RDC on the Rodney Proposed District Plan regarding future urban development issues. A pre-hearing conference occurred on 27 and 28 June 2007, at which time the Court directed a case management process going forward. This involves workshops and mediations from August 2007 with a hearing scheduled (if required) for 2008. The Court intends to resolve all outstanding appeals in respect of the Rodney Plan by the end of 2008.

WCC's appeal has been resolved by consent order. The appeal concerned a decision by RDC which addressed WCC's concerns but which had not been properly worded in changes to the Rodney District Plan text.

WCC's officers have attended workshops and mediations on matters regarding which WCC has a section 274 interest.

(Unchanged) The Tree Council and the Sunnyvale Protection Society v WCC (June 2007)

An appeal against Council's decision to grant subdivision and land use consent to Sunshine Boulevard Limited for a 56 unit medium density residential development at 25-27 Awaroa Road and 20 Sunnyside Road, Sunnyvale. A notice of reply has been filed.

A Court assisted mediation occurred on 19 September 2007, at which agreement in principle was reached subsequently, the parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under S116 RMA to allow the partial commencement of the consent (removal of some vegetation and initial earthworks). A further consent order will be sought once the applicant has revised its development plans in accordance with the mediated agreement.

(Unchanged) WCC v ARC, IMF v ARC Council and NZ Steel v ARC

This is an appeal regarding ARC's decision to grant resource consents to WCC for the discharge of stormwater and wastewater for the Hobsonville Peninsula, Waiarohia Stream, Totara Creek and New Lynn East catchments. The appeals seek changes to some of the consent conditions. It is expected that WCC's issues can be resolved through mediation/negotiation. A mediation to address all appeals is scheduled for 16 October 2007. A further mediation date has been requested to progress this matter.

(Changed) Action Against Theme Park v WCC and R Karpuk v WCC (August 2007)

Appeal opposing the Council's decisions to grant resource consent to A and S Nogueira to establish and operate a theme park (including entertainment rides and a private zoo) at 74-80 Candia Road, Swanson. Notices of reply have been filed and served.

The Court has set a timetable for evidence exchange in February and March 2008. A hearing fixture will be set down for a date after 14 April 2008. In the meantime, however, the parties have required a mediation take place as soon as possible.

Mawhinney Matters in the Environment Court

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

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 filed an application to strike out the appeals. The Court has reserved the decision pending the outcome of the High Court appeal by Mr Mawhinney against striking out on a similar matter (See above).

(Unchanged) **Waitakere Resource Consents Limited v WCC (December 2005)**

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the RMA. 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. Council's strike out application was heard before Judge Whiting and Commissioner McConalley on 6-7 September 2007. Various aspects of Mr Mawhinney's appeal were abandoned during the hearing. A decision is awaited on the remaining elements.

(Unchanged) **Abacus Developments Limited and Mawhinney v WCC (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

Local Government (Auckland) Amendment Act Plan Change Appeals

(Changed)
A1-A3 From this month the legal update will set out the appeals against Plan Changes 13 to 18. The appeals will be set out in a summary format as to who the appellants are and which plan changes have been appealed. There are currently 27 appeals. Further reports will be provided as time goes by. These appeals are set out as Annexure 1 to this report at pages A1 to A3 of this agenda.

A1-A3 In addition to appeals on Council's Plan Changes 13-18, Council has filed an appeal regarding some decisions on ARC Change 6 to the Auckland Regional Policy Statement. Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with Council's appeal. A list of parties to the PC6 appeals is attached at pages A1 to A3 to this agenda. Progress reports will be included in further legal updates in due course.

DISTRICT COURT

(New) **T Shepherd and AHC Reuben-Shepherd – 137 Simpson Road, Henderson Valley (January 2008)**

This matter is in relation to an abatement notice issued under the RMA by Council in August 2007. The abatement notice required the defendants to remove significant

numbers of disused vehicles, machinery, and miscellaneous metal and other objects from the property.

The use of the property by the defendants contravenes Council's district plan amenities rules. The defendants have not complied with the abatement notice, namely that they have not removed any of the specified articles and vehicles from the property.

Informations have been filed with Waitakere District Court, and the matter has been set down for a first call at the Auckland District Court on 10 March 2008.

(New) JS Choi – 163 Brighams Creek Road, Whenuapai (January 2008)

This matter relates to a breach of the district plan in that the defendant undertook earthworks on his property in excess of what is permitted under the General Natural Area Rules.

The illegal earthworks were discovered in 2004. Council granted retrospective resource consent for the earthworks. The resource consent lapsed in March 2007. Council's resource monitoring officers inspected the property in July and discovered that the resource consent had not been implemented, namely that the defendant had not complied with the conditions of the consent, or undertaken the work required to regularise the illegal earthworks. Further, the council discovered that more earthworks had recently been undertaken on the property.

Council has been in negotiations with the defendant and his lawyer over the matter, and required immediate measures for soil and silt control to be implemented. The defendant has engaged engineers to advise him. The Council also issued an abatement notice on 18 December 2007 giving the applicant one month to comply. We are advised that the defendant has signed contracts to undertake the required soil and sediment control work.

The Council has filed informations in relation to the illegal earthworks with the matter set down for a first call on 18 February 2008.

(New) RJ Dyas – 211 Laingholm Drive, Laingholm (January 2008)

This matter relates to charges laid for substantial unauthorised building works at the property. The works include internal structural works and significant structural changes to the basement area.

All the building works discovered were not in accordance with a building consent.

Council filed informations on 30 January 2008. The matter will appear on 31 March 2008.

(New) V Kumar, S Patel, K Willering, S Chandra, Podoko Steel Frame Structures Limited (and Directors) – 9-11 Aetna Place, Henderson (January 2008)

This matter relates to the Mitre 10 Mega store currently under construction at Henderson.

The owners of the property are a Trust of which Patel and Chandra are trustees. Mr Kumar is the owner of several Mitre 10 franchises of which the mega store is one.

A building consent application was submitted to Council in three stages. The third stage related to the construction of mezzanine offices, and was not previously approved under the primary consents granted by Council.

Despite not having a building consent, the owners commenced building this third stage which consisted of a steel framed mezzanine, two staircases, external aluminium window, and associated plumbing, drainage and ventilation. Council discovered the breach in October 2007 and meetings between the parties have resolved the regulatory

issues. A Certificate of Acceptance has been granted for the works that were either completed, or partially completed without consent.

Council laid informations against the following parties for the unauthorised building works on 30 January 2008:

- Chandra and Patel – Trustee/owners of the property;
- Vinod Kumar – Authorised Representative and franchise holder;
- Kris Willering – Supervising Engineer;
- Podoko Steel Frame Structures Limited – The steel framing fabricator;
- Glen and Marion Tasker – Directors of Podoko Steel Frame Structures Limited.

Statutory defences do not appear to be available to any of the parties involved. Mr Kumar has been the company representative and spokesman throughout the project, while the owners of the site are the applicants for building consent. The other parties (including the engineer) have had a direct involvement in the building works in one form or another.

The first call date for this matter is 31 March 2008.

(Changed) GM Garland – 82 Woodlands Park, Titirangi (November 2007)

Council has laid informations in relation to unauthorised building works that include the development of the basement/garage of the dwelling into a habitable space. The works have not been carried in otherwise in accordance with a building consent.

The matter has been adjourned for a plea to be entered to 18 February 2008.

(Unchanged) Metlifecare Pinesong – 48-72 Avonleigh Road, Green Bay

Charges have been laid under the Building Act 2004 for building work undertaken without consent. The building work relates to a partial re-cladding of 20 houses owned and operated by Metlifecare Pinesong Limited as retirement village where the occupants have a lifetime lease of the properties. The building work was undertaken by Apsec Construction. Both parties are being prosecuted. The matter is set down for a first call on 17 December 2007.

(Changed) DS and AM Axmann – 62 Ferry Parade, Herald Island (September 2007)

Informations have been served on Mr and Mrs Axmann in relation to the construction of a 35m² carport on the site. The works were undertaken without building consent, and charges have been laid under S40 and S168 of the Building Act 2004. The Council sent two Notices to fix requiring the Axmanns to either remove the structure, or apply to the Council for a Certificate of Acceptance (COA) for the unauthorised works. The Axmanns did not comply with Council's requirement within the time granted.

Mr and Mrs Axmann have applied for a COA to regularise the works. The Court has granted a further adjournment to 18 February 2008 for plea to be entered.

(Changed) D Fermah/Sunnyvale Property Trust Limited – 59A Awaroa Road, Sunnyvale (September 2007)

Mr Fermah is in the process of developing the above property. Infringement notices were issued pursuant to the RMA in relation to inadequate sediment controls on the site, and illegal vegetation removal in an area designated as "Restoration Natural Area", in breach of the district plan, and resource consent conditions.

Mr Fermah was given an opportunity to comply with the requirements of his resource consent and remediate the site, as well as providing Council with landscape, and weed

control plans. He did not comply within the timetable offered, nor did he pay the infringement fees.

Mr Fermah requested a hearing in relation to the infringement notices. Under the Summary Proceedings Act 1957, and the RMA, the Council must apply for a hearing on behalf of the defendant.

The Court has directed that disclosure be made by Council prior to the next call over date on 10 March 2008.

(Unchanged) K Poulton and L Lyons – 45 Whatipu Road, Huia (October 2007)

This matter is in relation to the felling of approximately 25 native trees on the above site, and also on neighbouring sites including a Council owned reserve known as “Marama Plantation”, without resource consent. The trees included Rimu, Kauri, Rewarewa, and Kanuka. A number of the trees were in excess of 30 years old.

The property is located in the “Protective Vegetative” zone in Council’s District Plan. The owners have admitted felling the trees, and charges have been laid under s. 9 and s. 338(1) of the RMA. The Council undertook a survey of the site and an arborist’s report to confirm the position of the trees felled, the age and health of the trees, and the species felled.

The Council laid informations on 3 October 2007. The matter was transferred by consent to the Auckland District Court, for a first call on 11 February 2008.

(Changed) S and ST Zaidi – 97 Luckens Road, West Harbour (August 2007)

Charges have been laid under the Building Act in relation to unauthorised building work on the property. The unauthorised work consists of the conversion of a dwelling into two flats and includes the laying of a concrete slab, removal of sub-floor foundations and piles, and the installation of a kitchen sink, toilet and shower and associated plumbing and drainage. All works were undertaken without a building consent, and not in compliance with the building code. A notice to fix was issued in respect of the unauthorised works instructing the Zaidi’s to apply for a building consent to remove all the unauthorised work, and reinstate the work in accordance with the building code.

Mr Zaidi appeared on 29 January 2008. Council has withdrawn the charges against Mrs Zaidi due to her lack of involvement substantiated by affidavit, and amended the particulars to reflect the scope of the works undertaken by Mr Zaidi.

Mr Zaidi pleaded guilty to undertaking unauthorised building works, and sentencing has been set down for 18 February 2008.

(Unchanged) Hong Chen – 15 Ayrton Street, Te Atatu South (August 2007)

This relates to unauthorised building works being undertaken at the property which included the construction of front and rear lean-to attached to the dwelling, unauthorised plumbing and drainage, the installation of windows and the construction of sub-floor framing and foundations. The building works required a building consent, and are not in compliance with the building code.

Charges have been laid by Council under the Building Act in relation to the unauthorised works and in relation to Hong Chen’s failure to comply with two separate notices to fix issued by Council in March and May 2007.

The first call on this matter was 11 October 2007. Ms Chen entered a guilty plea in relation to the unauthorised building works, and not guilty pleas in relation to the notice to fix offences.

The matter has been set down for a defended hearing on 19 February 2008 in relation to Ms Chen's failure to comply with Council's two Notices to Fix.

(Changed) G Yuan and J Wang – 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home and is known as "Abbey Heights Rest Home". Ms Yuan and Mr Wang (Trustees of the Family Trust which owned the property) built a conservatory on an existing deck, and installed a shower enclosure and vanity in the staff room without a building consent. The deck area/conservatory is used as the rest home's dining room. Any building works undertaken on a building intended for public use requires a building consent, or the public should not have access to that area.

Council instructed the owners to cease using the conservatory area as a public area, and laid charges in relation to the unauthorised work, failure to comply with the notice to fix, and failure in permitting the use of the premises by the public where no building consent has been issued.

Ms Yuan sold the operation in late August 2007. The new owners have been instructed to cease using the conservatory as a dining area and to close it to the use of residents. We understand the new owners have complied with Council's instructions. The Council has also referred the matter to the Ministry of Health.

Council laid informations in relation to the following offences:

- Unauthorised Building Works;
- Failure to comply with Council's Notice to Fix; and
- Failure to cease using the conservatory for public use as instructed.

The matter has now been set down for a defended hearing on 3 April 2008.

Charges laid against the Professional Trustee, Mr Wang, have been withdrawn.

(Changed) N and KG Bishop, AR Kiff and DR Jordan – 15 Williams Road, Hobsonville (August 2007)

This matter is in relation to the unauthorised re-cladding in a Monotec exterior cladding system, of a minor household unit on the property. Council has laid charges under the Building Act against the following parties: The owners, the builder and the contract plasterer.

The unauthorised works consisted of the removal of exterior cladding, the removal and reinstatement of windows and joinery, and the installation of a Monotec exterior cladding system without building consent.

Further charges were laid in respect of the plasterer who failed to comply with a "stop work" directive given by a Council Officer.

The owners have yet to apply for a building consent for work yet to be completed.

We appeared on the following dates in relation to each of the defendants:

- **N Bishop** – Mr Bishop entered a guilty plea on 17 December 2007. Sentencing has been set down for 28 February 2008;
- **DR Jordan** – Mr Jordan entered a guilty plea on 19 December 2007. Sentencing has been set down for 28 February 2008;
- **AJ Kiff and A J Kiff Limited** – Mr Kiff appeared on 17 December 2007 and pleaded not guilty to charges of Unauthorised Building Works, and failure to comply with instructions by Council to cease work. The matter has been set down for a defended hearing on 3 April 2008.

(Unchanged) Nick and L's Food Bar – 1A/264 Swanson Road, Henderson (August 2007)

Charges have been laid by Council under the Food Safety Bylaw 2005 in respect of the proprietor's failure to display a food grading certificate as required by the bylaw. The matter is serious in that the proprietor received a "D" grading from Council's Environmental Health Officer, and was observed displaying a photocopy of a previous "B" grade certificate. On investigation, the proprietor had kept coloured photocopies of the "B" certificate. The officer removed these from the store. The proprietor continued to obscure the food grading certificate with a flag outside the store.

Mr Shun appeared in Court on 15 October 2007 without his interpreter. The matter was adjourned to 17 December 2007 so that a Court interpreter could be appointed by the Court.

Mr Shun then applied to the Court to have the matter heard on 29 October 2007 as he was leaving New Zealand for China. Mark Casey appeared for the Council. Mr Shun informally requested name suppression which the Council opposed. No formal application to the Court for name suppression has been made and the matter has been adjourned to 12 February 2008 for a plea to be entered.

(Changed) Swiss Royal Heights Butchery (Betscharts Butchery) – 138-144 Royal Road, Massey (August 2007)

This matter relates to a certificate for food premises under the Health (Registration of Premises) Regulations 1966, the Food Hygiene Regulations 1974, and the Food Safety Bylaw 2005.

The proprietor is a manufacturing butcher who manufactured, packed and distributed high-risk ready-to-eat poultry and meat products from the premises.

After an inspection of the premises by Council's Environmental Health Officer (EHO), the premises were downgraded to "D" because of Council's concerns about food safety. The Proprietor applied for a renewal of a food premises certificate required under the regulations, and Council declined to grant the renewal. The Auckland Regional Public Health Services (ARPHS) also removed the Designated Officer Approval (DOA) required for all food premises trading. The food premises certificate expired on 30 June 2007. Council's decision was appealed which would have allowed the appellant to continue operating as if a food premises certificate were in place had it not been for the withdrawal of the DOA.

A fixture was granted by the Court for the matter to be heard on 19 November 2007.

The appellant sought to discontinue the proceedings on 16 November 2007 because it is no longer operating from the premises.

The Council filed a memorandum seeking costs against the appellant with the Court on 26 November 2007.

On 24 January 2008, the Court awarded costs in favour of the Council in the amount of \$7,744.00. This is an unusually high award and reflects the Court's unhappiness at the way in which the appellant has conducted his case.

(Changed) P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)

Charges were laid under the RMA and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 7 buildings on the property into sleep outs. The other charges of contraventions of the RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court and an out of court solution is being pursued in respect of issues under the RMA. The defendant applied for a determination from the

Department of Building and Housing (DBH) in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH appointed an investigator to look into this matter. That report has now been received by the Council along with a draft determination. The draft determination accepts that there are 7 unauthorised sleep outs on the property. The matter has yet to be set down for sentencing. It is expected that it may be early April.

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

This matter relates to breaches of the RMA and Building Act. When the matters were called on 31 March 2006 at the Waitakere District Court Mr Gordon has pleaded entered not guilty to both charges. The RMA matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter is to proceed to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007, as a judge was not available the matter was unable to proceed and is now set down for a jury trial on 18 February 2008. The Building Act charges have been set down to be heard by a judge alone in the week of 25 February 2008.

Mr Gordon has been assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This is a result of Mr Gordon refusing to obtain legal representation. This should enable the matter to proceed without Mr Gordon seeking further time to consider the matter of legal representation.

(Unchanged) M and D Gladwin - 45 Kay Road, Swanson (April 2007)

Charges have been laid under the RMA for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200 m² were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without a resource consent. The matter was called on 3 September 2007 where the informations against D Gladwin were withdrawn and M Gladwin reserved the right not to enter a plea until 11 February 2008. The Court was informed that the Gladwin's intended to apply for retrospective resource consent to regularise the breach so as to mitigate the offending.

(Unchanged) Hobsonville Residential Developments Limited and Treecare Services Limited - 18-28 Banning Way, Hobsonville (Limeburners Bay) (April 2007)

Charges have been laid under the RMA against the developer and contractors for doing earthworks of approximately 2.49 hectares, undertaking vegetation clearance, and doing work in scheduled archaeological site without resource consent in contravention of the General and Managed Natural Area and Heritage Rules of the District Plan. The matter was called on 3 September 2007 where the parties reserved the right to enter a plea. The Court permitted the parties further time to consider the matter. The matter was called on 24 October and guilty pleas were entered by the companies. In the interim, the Council is continuing to work with the developer in the preparation of their subdivision and development application. Sentencing will take place on 11 February 2008.

(Unchanged) W L Garrett - 7 Sarona Avenue, Glen Eden (April 2007)

Charges have been laid under the RMA and the Building Act 2004. These charges relate to the breach of an abatement notice, undertaking earthworks (to excavate the basement of an existing house of approximately 256 m², and build two retaining walls of 3-5 metres each) without resource consent, and in contravention of the General Natural Area Rules. Charges under the Building Act relate to doing building work without building consent in contravention of S40(1), and non-compliance with a notice to fix in contravention with S168(1) of the Building Act. The building work related to: the building of the retaining walls, alteration of the foundations and the drainage system of the house, the removal of structural walls, and the re-cladding of the exterior of the house. Mr Garrett entered a

guilty plea to the charges of undertaking building work without consent and earthworks without resource consent on 12 November 2007. Sentencing will take place on 11 February 2008.

(Changed) R Brooky – 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act 2004 for non-compliance with a notice to fix for work undertaken to re-clad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter is set down for 20 August 2007 for the defendant to plead. When the matter was called on 20 August the defendant pleaded not guilty. The matter was set down for a one day on 9 November with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November, the Court had not allocated adequate time and considered that because Mr Brooky had not served summonses on his witnesses the Court ought to set the matter aside until 2008; particularly because Mr Brooky is a lay litigant. The Court has set the matter down for hearing on 6 March 2008.

(Unchanged) R Narayanaraja, P Ramasubramanian, S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed. Mr Hosaini entered a guilty plea on 15 October and charges against P Ramasubramanian were withdrawn. The other entered not-guilty pleas. These matters are set down for a half day hearing on 9 April 2008.

Leaky Building Claims

(Changed) Claims statistics are as follows:

- (a) Claims currently being handled are 31
 - High Court: 3
 - District Court: 3
 - WHRS/WHT 25
- (b) Number of claims for Waitakere City as at 30 January 2008, which may include some consents processed by building certifiers, was 338. This is an increase of 1 since 30 October 2007.
- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.
- (d) The latest High Court claim relates to a property at 4 Keeling Road, and is a block of 22 units. The other defendants include James Hardies and the architect. The builder, and other contractors, has not been identified. The claim is presently for \$1.7M consisting of remedial work, plus \$220,000.00 general damages (\$10,000.00 per unit), loss of market value, fees, interest and costs.

RECOMMENDATION

That the Legal Update (As at 30 January 2008) report be received.

Report prepared by: Mary Davenport: Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

6 REVIEW OF BYLAW NO.4 (1990) CHAPTER 13 – THE KEEPING OF ANIMALS, POULTRY AND BEES

GLOSSARY

Resource Management Act (RMA)

PURPOSE OF THE REPORT

The purpose of this report is to progress the review of bylaw No.4 Chapter 13:1990 The Keeping of Animals, Poultry and Bees in accordance with the ongoing bylaw review programme under s.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

A4-A9

The current bylaw is attached at pages A4 to A9. 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 bylaw making powers contained within Section 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.

On 10 April 2007 the Planning and Regulatory Committee considered a report which concluded that Council has specific legal powers to make a bylaw to manage and regulate the keeping of animals, bees and poultry, and that a bylaw is the most appropriate way of addressing the perceived problem. It was resolved;

- 1. That the Determination Report - Review of Bylaw No4 (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.*

(580/2007)

ISSUES

In all areas of the City, animals are kept as pets for companionship, pleasure, or as a hobby. 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. Roosters are the subject of more complaints than any other animal or bird.

There are limitations on the scope and extent of this bylaw;

- Neither the current bylaw nor any proposed replacement bylaw will cover the control and regulation of dogs. Dogs are managed by the Dog Control Act 1996 and the Control of Dogs Bylaw 2004.
- 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. It is not Council's role to regulate the living conditions and general welfare of animals. Those issues are not the proper subject of a Council bylaw. It is only where the manner in which animals are kept amounts to a nuisance or a health issue (as currently defined by the Health Act 1956) that Council can and should intervene.
- The District Plan controls farming and commercial type activities and the keeping of certain animals in natural areas. Those matters are therefore also outside the ambit of a new bylaw.

The problem to be addressed is how to prevent the keeping of animals, birds and bees becoming a nuisance and ensuring that if a nuisance does occur that Council has appropriate regulatory powers to take action.

The current bylaw is outdated and has been overtaken by legislative change. Certain issues have also been identified as matters that should be considered in the review process.

The first issue is that rules relating to animal keeping are currently linked to whether the property is considered to be situated in an urban or rural area. These definitions are now somewhat unclear. What was rural at the time the bylaw was adopted in 1990 is not necessarily 'rural' in any sense of the word now. Officers responsible for enforcing the bylaw suggest that the restrictions should be linked to District Plan definitions. The idea being that Council approval would be required to keep certain animals anywhere other than in areas defined as 'Countryside Environment' or 'Open Space'. This change of area classification will raise issues of existing use rights. Some animal keepers may be in areas defined as rural now, but may not be within the "Countryside Environment". This problem could be addressed by giving those people who are keeping animals in these locations (but not creating a nuisance or generating complaints), Council consent to continue. That would of course have significant resource implications for Field Services given the number of residents who would be required to apply for consent, or establish an existing use.

The question is whether Council wishes to regulate to that degree and whether it actually prevents nuisances occurring by doing so.

Another problem with the idea of linking permitted animal keeping to the Countryside Environment and Open Space under the District Plan is that a large part of the Waitakere Ranges is defined as Open Space but is also 'natural protected area'. That will cause confusion for residents if certain types of animal keeping are permitted as of right under the bylaw, but restricted under the District Plan.

The second issue for consideration relates to cats. Requests are received occasionally for Council to regulate the keeping of cats through a bylaw. Problems arise when cats living on a particular property cause a nuisance for neighbours and in extreme cases, a health issue. There is now the opportunity to consider regulating the number of cats permitted on a property without the consent of Council.

It is submitted that the number of cats kept on a property is not the actual problem. The problem is to ensure Council has sufficient regulatory power to take appropriate action when cats are or are likely to become a nuisance or a threat to health. It is not central to the question of nuisance how many cats are on a property or where that property is situated (with regard to District Plan definitions).

Consideration has been given to the possibility of making changes to the District Plan instead of promulgating a new bylaw, as a better way of regulating and enforcing the keeping of animals in all parts of the City. The advice from the Group Manager: Planning and Community, was that it was not clear that such a change to the District Plan would satisfy the requisite test of being 'the most appropriate means of addressing a significant adverse environmental effect'. Council would need to be confident that the keeping of animals above certain thresholds in certain locations would create adverse effects on the environment.

If Council did not adopt a new bylaw it would still have powers under Sections 16 and 17 of the RMA and Section 23 Health Act 1956. Section 16 of the RMA imposes a duty on every occupier to adopt the best practicable option to avoid unreasonable noise. Most complaints received regarding the keeping of animals and birds relate to noise. Section 17 provides powers to issue enforcement orders or abatement notices in respect of anything that "is or is likely to be noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment". The Health Act 1956 Section 23 gives Council power to 'abate any nuisance or condition' likely to be injurious to health or offensive.

There are therefore three ways to deal with the problems of nuisance caused by keeping animals, birds and bees in the City, these are:

- (a) Let the bylaw expire and rely on other legislative powers as outlined above to deal with nuisances. There would be no resource implications, but it may not be every circumstance that could adequately be dealt with under the RMA and Health Act.
- (b) Promulgate a short concise bylaw that makes it an offence to keep any animal bird or bee that causes a nuisance, or is likely to become offensive, a threat to health or dangerous. This option actually serves the purpose and addresses the problem. There should be no significant resource implications because officers would simply be responding to complaints and investigating whether a nuisance exists in the same way that complaints are handled now. Under Section 162 Local Government Act 2002 Council can apply for injunctive relief for any breach of the bylaw and/or prosecute. In order to take legal action however, Council will be dependent upon those neighbours that experience and complain about the nuisance giving sworn evidence (and in some cases oral evidence in Court) if necessary.

- (c) The maximum intervention option would be a bylaw that in addition to an all encompassing nuisance clause as outlined above would also incorporate an approval regime and a registration programme for existing use rights. This would have major resource implications for Field Services and also require some form of elected member oversight in the form of a hearings committee, providing a right of appeal from the compliance manager's decisions regarding approvals. In addition to the resource implication, it is questionable whether this level of regulatory intervention is necessary, or valid.

On the basis that the Committee has already determined that a bylaw is the most appropriate means of dealing with the problem, the decision now is whether the Committee prefers option (b) or option (c) above.

FORM OF NEW BYLAW

The reason for having a bylaw governing the keeping of animals, birds and bees is to give Council the ability to deal with nuisances created by the keeping of animals, birds and bees. The next step is for the Committee to decide what level of regulatory intervention it considers appropriate.

A10-A12

Two draft bylaws have been prepared and are attached. Both simplify and update the existing bylaw drafted over 17 years ago. The bylaw attached at pages A10 to A12 reflects option (b) a short minimum regulatory bylaw. The draft bylaw attached at pages A13 to A18 reflects option (c) the maximum intervention alternative. It is for the Committee to determine which option it prefers.

A13-A18

Option (b) consists of an extended definition of nuisance but limits regulatory intervention and control to a minimum, as contained within clause 6.

Option (c) makes all other clauses subject to clause 6 (the nuisance provision) but also provides that written Council approval is required to keep certain animals, birds and bees on any land other than that identified as Countryside Environment or Open Space in the District Plan. Provision is made at clause 12 for existing use rights.

The current bylaw has more than two pages on pig keeping. The need for specific bylaw regulation relating to pig swill and so on has been largely overtaken by the Biosecurity (Meat and Food Waste for Pigs) Regulations 2005. The New Zealand Pork Industry Board (NZPIB) monitors and supports pig farmers and promotes the Animal Welfare (Pigs) Code of Welfare 2005, a code issued under the Animal Welfare Act 1999.

As regards to birds, the current bylaw allows (without Council approval) 12 head of poultry but no rooster on any property less than 2000 square metres in an urban area. The draft option (b) bylaw does not set any limits on numbers or location but gives Council power to seek injunctive relief and/or prosecute if a bird or birds cause a nuisance, become offensive, or a threat to health or is dangerous. The draft option (c) repeats option (b) but also maintains the current bylaw position namely no person shall without approval keep more than 12 birds or any rooster on any land other than Countryside Environment. Thus an approval process would be required.

IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990

The proposed bylaw must meet the legal standards of reasonableness and cannot be inconsistent with the freedoms protected and affirmed in the NZ Bill of Rights Act 1990. It is not considered that either proposed bylaw impacts on any of the protected freedoms or unnecessarily interferes with the rights protected by that Act.

SPECIAL CONSULTATIVE PROCEDURE

The Committee determined on 10 April 2007, that a bylaw is the most appropriate way of addressing the perceived problem namely the better management and regulation of animals, birds and bee keeping to adequately deal with nuisances.

A19-A26

It is for the Committee to decide which draft bylaw attached to this report is the most appropriate form of bylaw. If the Committee is comfortable that there will be no infringements of Bill of Rights issues, the next step is to forward the proposed bylaw to Council for approval and then submit it for public consultation in accordance with the Special Consultative Procedure as defined in the Local Government Act 2002. For that purpose, Council is required to adopt a Statement of Proposal and Summary of Information, drafts are attached at pages A19 to A26. Copies of the existing bylaw and preferred draft bylaw will also be attached to the Statement of Proposal. Submissions received as a result of the consultation process will be heard by this Committee on dates to be arranged in. A final report in relation to the proposed Bylaw will be returned to the following Council meeting, with amendments as appropriate arising from the consultation process.

RECOMMENDATIONS

1. That the Review of Bylaw No.4 (1990) Chapter 13 - The Keeping of Animals, Poultry and Bees report be received.
2. That Council officers be granted authority to make formatting and editorial changes to the draft bylaw, to ensure consistency with the format of other Council bylaws reviewed under the Local Government Act 2002.
3. That it be recommended to Council that;
 - (a) Having considered the possible options, a bylaw is the most appropriate mechanism to assist in the regulation and management of animal, bird and bee keeping in the City;
 - (b) For the reasons given in this report, the draft form of bylaw produced at this meeting and referred to as option (b) or (c) amending and updating the existing bylaw, is the most appropriate form of bylaw to achieve Council's objectives;
 - (c) The draft bylaw has no implications which are inconsistent with the New Zealand Bill of Rights Act 1990;
 - (d) The statement of proposal and summary of information attached to this report is approved in principle. Council officers are authorised to make any necessary editorial and format changes and to implement the Special Consultative Procedure as set out in Section 83 Local Government Act 2002;
 - (e) The Planning and Regulatory Committee will hear any submissions arising from the consultation, with a final report in relation to the proposed bylaw to be brought back to Council for final decision.

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

