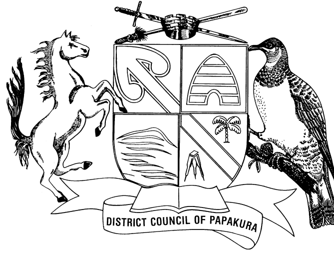

NOTICE OF MEETING OF THE

39TH COUNCIL MEETING

I hereby give notice that the 39th Council meeting of the 7th Papakura District Council is to be held on:

<u>DATE:</u> **Tuesday 25th May 2010**

<u>TIME:</u> **4.00 P.M.**

<u>VENUE:</u> **Council Chambers**
35 Coles Crescent
PAPAKURA

T Stratton
CHIEF EXECUTIVE OFFICER

MEMBERSHIP:

Chairperson — His Worship the Mayor (Calum Penrose)
Deputy Chairperson — Clr Goldsmith

Clr Auva'a
Clr Catchpole
Clr Conroy
Clr Jones
Clr O'Connor
Clr Piggott
Clr Pringle

(Quorum 5 members)

(The reports and recommendations contained in this Order Paper are not necessarily Council Policy and should not be taken as Council Policy, or opinion)

PAPAKURA DISTRICT COUNCIL

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PAPAKURA DISTRICT COUNCIL

AGENDA FOR THE 39TH MEETING OF THE PAPAKURA DISTRICT COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, 35 COLES CRESCENT, PAPAKURA ON TUESDAY 25TH MAY 2010 COMMENCING AT 4.00 P. M.

1. APOLOGIES

2. PERSONAL

3. CONFIRMATION OF MINUTES

(a) That the Minutes of the 38th Council Meeting held on Tuesday 27th April 2010 be confirmed.

4. APPROVAL OF RECOMMENDATIONS

5. MINUTES – TE ROOPU KAITIAKI O PAPAKURA

(a) That the Minutes of the Te Roopu Kaitiaki O Papakura Meeting held on Tuesday 20th April 2010 be received. (Attachment No.1)

6. DEPUTATIONS

7. PRESENTATIONS

8. MAYOR'S REPORT

9. ITEMS FOR DECISION

(a) PROPOSED GREAT SOUTH ROAD RESTRICTION ON DISPLAYING VEHICLES FOR SALE

REPORTING OFFICER: **Graeme McCarrison**
Director Regulatory Services

ATTACHMENT: **Clause 7 Papakura District Council Parking and Traffic Bylaw 2009**
Map showing restriction

(Attachment No. 2)

PURPOSE OF THE REPORT

The purpose of this report is for Council to approve the imposition of a restriction of displaying vehicles for sale along Great South Road.

BACKGROUND

The Papakura District Council Parking and Traffic Bylaw 2009 (Bylaw) provides for Council to impose, via publicly notified resolution, restrictions or prohibitions regarding the use of a road. Under Clause 7.1 of the Bylaw the displaying of vehicles for sale on roads is one of the activities that Council may restrict.

NARRATIVE

Along Great South Road, mainly in Takanini between Graham Street and Beaumaris Way, there have been problems with motor traders using the street to display vehicles for sale. This activity has been the subject of a few complaints from a number of the existing established car sales yards. Currently the main grouping of cars is displayed in the section of Great South Road between Graham Street and Walter Strevens Drive where there is no parking restriction.

The display of vehicles generally causes the following effects:

- Loss of on-road parking that supports business, staff parking and for residents' visitors
- Traffic safety issues in that the cars cause drivers to be distracted; slow the flow of traffic; potential purchasers stepping into the traffic while checking out a vehicle
- The vehicles visually degrade the streescape with the large hand-made signs displayed.

To ensure Council can control this activity and to stop the cars moving to a different part of Great South Road without restrictions, it is proposed to place a restriction along Great South Road from Takanini to Drury, see the attached map.

The restriction would only be enforced, ie signed, in the areas where there is currently a problem. Signage would be moved to problem areas as they occur. This reduces the cost and visual pollution from the signage.

The sign would be standard signs with the wording "No displaying vehicles for sale".

CONCLUSION

Currently there is an issue with the display of vehicles for sale on Great South Road mainly in Takanini. The Bylaw under Clause 7.1 provides for Council by way of publicly notified resolution to restrict or prohibit the display of vehicles. It is recommended that Council prohibit the display of vehicles along Great South Road, see the attached map.

RECOMMENDATION

1. That the information be received.
2. That Council, by public notification under Clause 7.1 of the Papakura District Council Parking and Traffic Bylaw 2009, impose a prohibition on the displaying of vehicles for sale along Great South Road in accordance with the attached map.

9. ITEMS FOR DECISION

(b) RATES REVOLT PETITION

REPORTING OFFICER: **Erin Clarke**
Policy Advisor

ATTACHMENT: **Copy of "Notice of Rates Dispute with Papakura District Council" provided by Ms Penny Bright**

(Attachment No. 3)

PURPOSE OF THE REPORT

The purpose of this report is to follow up on the deputation made by Penny Bright at Council's last meeting and to seek Council direction on its response to her call for Council endorsement of a rates revolt in opposition to the Auckland "Supercity".

BACKGROUND

On 27 April 2010, Council heard a deputation from activist Penny Bright. In her deputation Ms Bright asked Council to endorse a rates revolt as a means to overturn the advent of the new Auckland Council. The mechanisms in place with regard to the setting up and running of the Council Controlled Organisations (CCOs) and the overall water structures in the region were also cited as reasons for Council to recommend a rates revolt to its ratepayers.

Having heard the deputation, Council requested that the issue come back for its consideration via a report.

NARRATIVE

The mechanism of a rates revolt to make a protest at changes to governance is something that has been used in other situations where citizens wish to make their displeasure with "government" known. The action itself is an example of civil disobedience and while relatively benign at the likely low participation levels, could create an unfortunate precedent. As part of the request, Ms Bright has requested that any penalties resulting from non-payment of rates in these circumstances and/or rates recovery action be suspended.

While endorsement of actions of civil disobedience are purely political matters for elected members, endorsing a rates revolt and approving the proposed actions in relation to suspending penalties and rates recovery action should be considered both in light of any future impacts and considering fairness to those people who have fully complied with meeting their rates obligations. Suspension of penalties has the potential to encourage non-payment of rates in the future are well as passing the costs of any deficit in funding on to compliant ratepayers. Council endorsement of a rates revolt would also be an extraordinary action – if the Council considered it was a form of protest that it agreed with and that was likely to be successful it could simply not strike the rates and therefore not raise any revenue (or continue to operate).

CONCLUSION

Council heard a deputation from Ms Penny Bright at its meeting on 27 April 2010, where she requested Council consider endorsing and recommending to its ratepayers a rates revolt for a variety of reasons relating to the impending changes to Auckland governance. Council requested that the issue be brought back via a report

for its consideration and now need to determine a position on the request. While an endorsement or otherwise of the sentiments expressed by Ms Bright is a matter for members to provide direction on, it would be highly inappropriate for the Council to endorse a rates revolt or to undertake to let people off any penalties associated with such action.

RECOMMENDATIONS

1. That the information be received.
2. That Council decline its support for a "rates revolt" in opposition to the formation of the Auckland Council or for the suspension of any penalties or rates recovery action associated with any such "rates revolt".

9. ITEMS FOR DECISION

(c) ATTENDANCE AT LGNZ CONFERENCE AND 23RD ANNUAL GENERAL MEETING

REPORTING OFFICER: **Riya Seth**
Democracy Services Officer

ATTACHMENT: **Registration Form**

(Attachment No. 4)

PURPOSE OF THE REPORT

The purpose of this report is to approve the attendance of elected members at the 2010 Local Government New Zealand (LGNZ) Annual Conference and delegate an elected member as representative to vote at the LGNZ Annual General meeting.

NARRATIVE

The 2010 LGNZ Conference takes place this year in Auckland from Sunday 25 July to Wednesday 27 July and the Annual General meeting will be on 28 July.

It has been the practice of recent years for up to two elected members and the CEO to attend this conference when it involved out of Auckland costs. This level of attendance has been provided for in the LTCCP. Because it is a local venue this year there is sufficient budget for a greater number of elected members to attend the conference if they wish to do so.

As part of the Conference involves the AGM of LGNZ it is necessary for Council to appoint one person as the presiding delegate to exercise its vote. The meeting rules also allow for the appointment of an Alternate Delegate who is able to vote on behalf of Council should the presiding member be absent from the AGM.

CONCLUSION

Council is asked to approve elected member attendance at the 2010 LGNZ Conference and to appoint a presiding delegate and alternate for the Annual General Meeting.

RECOMMENDATIONS

1. That the information be received.
2. That Council approve the attendance of elected members at the LGNZ Annual General Meeting 2010.
3. That Council appoint x to act as its presiding delegate and as the alternate delegate at the LGNZ Annual General Meeting 2010.

9. ITEMS FOR DECISION

(d) PROPOSED REGULATORY FEES AND CHARGES 2010/11

REPORTING OFFICER: **Graeme McCarrison**
Director Regulatory Services

ATTACHMENT: **PDC Schedule of Fees and Charges 2010/11**

(Attachment No. 5)

PURPOSE OF THE REPORT

The purpose of this report is to seek Council's approval of the proposed Schedule of Fees and Charges for 2010/11 (excluding dog fees and charges).

BACKGROUND

Regulatory Services is predominantly funded by the users of these services (the user pays policy). The proportionate split between public and private funding varies between each of the activities in Regulatory Services. As a consequence it is important for the fees and charges to be reviewed annually to ensure that Council is recovering the cost of providing the services fairly and reasonably.

The draft Regulatory Services budget is dependent on cost recovery of services related to consent and licence applications. To achieve the draft budget, revenue needs to increase by the rate of inflation as signalled in the LTCCP 2009-2019 for the 2010/11 year. Under the LTCCP revenue generated by fees and charges was projected to increase by 3%.

The LTCCP Committee at the meeting of 2 March 2010 resolved:

2. *That the Committee recommend to Council the proposed increases in the fees in the proposed Schedule of Fees and Charges 2010/11 without consultation, excluding the resource management fees.*
3. *That the proposed Schedule of Fees and Charges 2010/11 related to the Resource Management Act 1991, be consulted on by a special consultative procedure of the Local Government Act 2002. That the submission period be open between 8 March and 7 April 2010.*

The animal control fees and charges have been approved by Council.

NARRATIVE

The resource management fees and charges were put out for public submission between 8 March and 7 April 2010. No submissions were received on the proposed fees and charges for 2010/11. A couple of minor corrections need to be made to the Schedule, these are as follows:

On Page 18 change:
The Annual District Plan Updating Service:
- Electronic Update Service on CD $25
- Full Hard Copy Service $150

Hearing Costs Actual Cost

The Auckland Transition Agency (ATA) will be introducing a schedule of fees and charges that apply from 1 November 2010 through to 30 June 2011. Details of the fees are not public at this point. Auckland City Council is proceeding with their proposed increase in fees.

The revenue generated by the 3% increase in the fees is required to meet the revenue projections set out in the LTCCP 2009-2019 for the 2010/11 year.

CONCLUSION

The Regulatory Services budget as set out in the LTCCP 2009-2019 for the 2010/11 period is dependent on a 3% increase in the fees and charges. Public consultation on the resource management fees and charges resulted in no submissions being received. A couple of minor alterations to the Schedule are recommended.

RECOMMENDATION

1. That the information be received.
2. That the Council approve the proposed Schedule of Regulatory Fees and Charges 2010/11 as attached.

9. ITEMS FOR DECISION

(e) KARAKA CENTRE LTD. – RATES OBJECTION/REMISSION REQUEST

REPORTING OFFICER: **D McIntosh**
Management Account

ATTACHMENT: **Excerpt Rating Policy**
Letter KCL requesting review/remission
Letters Ellis Gould in support of request

(Attachment No. 6)

PURPOSE OF THE REPORT

This report presents an objection from Karaka Centre Ltd (KCL) (letter dated 4 May 2010) in relation to rates on properties located at 43 Hingaia Road & 47 Harbourside Drive, Hingaia on the basis that they have been incorrectly assessed for the 2008 and 2009 rating years. Alternatively, KCL are seeking remission of rates for these sites under the policy “Remission of Rates for Re-zoned Rating Units in the Business Rating Group Pending Development”.

BACKGROUND

The sites concerned are located on land zoned as mixed use in the District Plan. This zoning allows for both residential and business use. The land was re-zoned from rural to mixed use following a plan change occurring prior to the commencement of the 2006/07 rating year.

Council’s rating policy primarily associates properties with rating groups based on the zoning of the land. The rating policy is specified in the Long Term Council Community Plans (LTCCP) adopted by Council and forms a complete description of how rating will be applied in accordance with statutory provisions.

Rating for mixed use zones was included in the rating policy in the 2006-2016 LTCCP as part of the business rating group. At this time there were no mixed use zones in the District, but were anticipated.

For the KCL sites (following the rating policy applicable at the time):

- for the years up to and including 2005/06 the properties were rated within the rural rating group being rural zoned land.
- for 2006/07 and subsequent years the properties have been rated in the business rating group; the land being zoned mixed use and not being used for residential purposes.

NARRATIVE

The letter from KCL makes an application for a re-assessment of rates charged, or alternatively a remission of rates on the properties. It should be noted that these options are not mutually exclusive and are both considered independently below.

1. Re-assessment of Rates

   KCL propose that the rates have been incorrectly calculated based on errors in the rating information database and/or rates records. This forms the basis for an objection to rates records under section 29 and/or 39 of the Local Government (Rating) Act 2002 (LGRA).

The key element determining the rating of a site is the rating policy rating group associated with the property. As noted in the background above the land was zoned rural up to the 2006/07 year and mixed use from the 2007/08 year onwards. The appropriate rating groups for these periods are rural and business respectively. KCL have suggested that the residential rating group should have applied rather than the business group for the years 2007/08 onwards. Under the rating policy the only basis for such a shift is if the site is used for residential purposes in which case the property would move to the residential in business zones rating group. As the sites were not used for residential purposes such a change is not possible and therefore they must remain in the business rating group.

The properties were charged at the rates applying to the assigned groups for the years concerned, no errors have been identified in applying the rating policy, and the rates are considered correct. There is therefore no basis for an amendment to rates under section 40 or 41 of the LGRA.

2. Remission of Rates

   KCL have also sought a remission of rates under the remission policy "Remission of Rates for Re-zoned Rating Units in the Business Rating Group Pending Development".

   This policy was adopted in the 2009-2019 LTCCP and became effective for the rating year 2009/10 onwards. The policy was introduced specifically recognising the compounding effect of increased rates charged on recently rezoned land and the significantly deteriorating economic conditions at the time, which reduced the short term opportunity for progressing development of the land. Council had previously provided no rating concessions to developers, considering that the significant capital gains, accessed through land development, offset the short term higher rating charges pending realisation of the gain.

   A remission has already been granted to KCL under this policy for the 2009/10 year.

   As neither this policy or a functional equivalent existed in years prior to 2009/10 there is no provision for Council to provide any rates remission on this basis.

The review of KCL's request has not identified any grounds for the re-assessment of adjustment to the rates charged in prior years.

KCL, in their letter, have noted Council's stated policy objective of ensuring the rate take is spread equitably and fairly and with each ratepayer making a reasonable contribution. They have also made reference to the range level of services received by the sites and drawn comparisons with a neighbouring property regarding rates charged relative to revenue generated.

These are points well recognised by Council and regularly debated during rating policy reviews. The legislative framework under which rating policy is specified is as a property value based tax. This does not completely correlate rates charges with income of the ratepayer or services consumed. Councils are therefore obliged to approach fairness and equity at a broad level in policy setting while recognising that there will be ratepayers who, based on their particular circumstances, will identify relative unfairness compared to other ratepayers.

It should also be noted that a significant factor driving the level of rating on the properties concerned has been the significant increase in land value resulting subsequent to the re-zoning of the underlying land during 2005/06. While the 2006 District revaluation produced overall increases of 191% for business zoned land, the combined value of KCL sites increased by 859%. This significantly greater level of increase compared to the district average results in a greater share of the rating burden falling on the affected properties. The same effect has impacted developers in other areas of the district over recent years (eg Takanini), both in the periods leading up to and following re-zoning, and is a side-effect of high levels of property value appreciation.

CONCLUSION

The objection by KCL to rates charged on properties at 43 Hingaia Road and 47 Harbourside Drive has been considered but no evidence has been identified which would indicate that rates have been applied other than in accordance with Council's rating policy adopted in LTCCPs for the rating years concerned. There is therefore no basis for amendment of rates on the grounds of incorrect rating.

The alternative request for remission of rates has also been considered, and while remission was granted in 2009/10 under a policy first introduced for that year in the 2009-19 LTCCP, there are no remission policies in the previous LTCCP which would apply for prior years in the circumstances concerned. No further rates remissions are therefore possible.

RECOMMENDATIONS

1. That the information be received.
2. That Council note that rates have been assessed on properties at 43 Hingaia Road and 47 Harbourside Drive within the Business rating group in accordance with adopted rating policy for the years 2006/07 through 2009/10 and there are no grounds for amendment under the provisions of section 40 or 41 of the Local Government (Rating) Act 2002.
3. That Council note that while remission of rates under the policy "Remission of Rates for Re-zoned Rating Units in the Business Rating Group Pending Development" was granted on the properties for the 2009/10 year, as the policy was first adopted in the 2009-2019 Long Term Council Community Plan no retrospective remission is possible for prior rating years.

9. ITEMS FOR DECISION

(f) DUMAS PLACE FOOTPATH

REPORTING OFFICER: **Tony Kay**
Director Infrastructure Management

ATTACHMENT: **PDC letter 8 October 2009**
PDC letter 28 April 2010
Erceg letter 30 April 2010
PDC letter 4 May 2010
Locality plan

(Attachment No. 7)

PURPOSE OF THE REPORT

The purpose of this report is to outline the circumstances associated with a developer's desire to build a footpath on Council's road reserve and to obtain Council's direction on this matter.

BACKGROUND

Mr Tony Erceg, a local developer, wishes to construct a footpath on Dumas Place from Chichester Drive to the Dumas Place turning head. Mr Erceg requested in late 2009 that Council approve his request (firstly) to build a footpath and (secondly) when that was declined, allow him to build the footpath. Council officers disagreed regarding the need for this footpath and formally advised Mr Erceg of Council's position.

Since that time, several meetings have taken place involving Mr Erceg, various elected members and Council's Director of Infrastructure Management.Written communications have recorded views and intentions of the parties over the intervening period to date.

Mr Erceg has continued to want to build the footpath despite Council advice that firstly the footpath is not presently warranted and secondly that the topography of the area and the obstruction of a lighting pole make the construction of a footpath unable to achieve a compliant build.

In April 2010, Council was informed that Mr Erceg had, on his own initiative, excavated and commenced preparation for footpath construction. Council required that this be stopped.

Various proposals were offered to Mr Erceg to attempt to reach a compromise where by the footpath could be constructed. Council is also in the pre-lodgement phase for an adjacent development which if it were to proceed would require a watermain and a footpath to be constructed in the same vertical location.

NARRATIVE

In 2009, Mr Tony Erceg approached Council and requested Council construct a footpath on the north east side of Dumas Place. This was investigated by Councils Transport and Roading Asset Manager who re-confirmed the prevailing positionn i.e. there is no demand as:

i. An adequate footpath exists on the south west side of Dumas Place
ii. There are physical impediments with the construction:

iii. a power pole (streetlight pole) would need to be relocated off the alignment of the footpath
iv. the topography does not readily allow a fit with our standard cross fall requirements. Considerable earthworks would accordingly be required.

These points were conveyed to Mr Erceg in a letter of 8 October 2009.

Mr Erceg did not accept Council's view expressed in the letter and requested a meeting on site be convened by Mayor Penrose. This took place and was attended by Mr Erceg, Mayor Penrose, Councillor Jones and the Director of Infrastructure Management. At the meeting Mr Erceg offered to pay for the construction of the footpath but did not want to accommodate the lighting pole or the topography in his proposal. His solution was to build the footpath where the lighting pole would be approximately 500 mm into the 1400 mm wide footpath and it would be built on the existing slope. This outcome would produce crossfall on the path that is unacceptable due to steepness and is well outside the construction requirements of Council's Development Code.

The lighting pole remaining in location and obstructing the usage of the footpath is also unacceptable. Over the last half decade, Council has worked closely with CCS Disability to provide infrastructure that provides equal amenity for all users. Having a lighting pole located within a footpath of 1400 mm width is an amenity impediment to all users.

Mr Erceg would not accept Council's requirements and he was verbally advised by the Director that approval for him to build a footpath at this location was not given.

Nothing further was heard from Mr Erceg on the matter. In late April 2010, Council's Development Engineers received a report from the engineer designing an adjacent development at the 'Whitehouse' that work was being undertaken in Dumas Place that would compromise the design for delivering services to the proposed development. The situation was immediately investigated and resulted in a letter being sent to Mr Erceg on 28 April 2010 reiterating the history, requiring the works to cease and the site to be restored.

This letter promoted a further request for a site meeting, again convened by Mayor Penrose. This meeting was attended by:

- Mr & Mrs Erceg
- His Worship the Mayor, Councillor Auva'a
- Director of Infrastructure Management
- several neighbours (at Mr & Mrs Erceg's request)
- apologies were received from Councillor Jones.

The meeting discussed the history and issues relating to the proposed construction. It can be noted that some progress had been made; Mr Erceg recognised the need for a compliant crossfall for the footpath. His solution was to regrade the slope up above, however, this construction activity would itself require two further situations to be investigated and resolved. Removing earth from the slope would steepen the slope. This action would need to prove that the slope was not excessive for mowing operations which are incorporated in Council's maintenance of the adjacent reserve. Secondly, Mr Erceg advised that under the slope to be recut, the services of power, gas and Telecom were located. In these circumstances, these utility providers would require their services to be identified before any work over their location was carried out and minimum cover above the service (the ground depth over the service) was maintained. If this was compromised, other solutions would need to be agreed.

As no clear agreement could be reached it was agreed that Mr Erceg would put his request in writing and describe, by way of a sketch, the work he intended. This was received on Friday 30 April 2010 with an urgent response requested. The Director Infrastructure Management responded that, given the number of issues to be resolved, approval could not be given in the timeframe requested and therefore the request was declined.

In the course of investigating and considering Mr Erceg's request of 30th April, it became obvious that Mr Erceg had carried out construction work (excavation for the footpath) without either a mandatory road opening notice or an approved temporary traffic management plan and presumably had not implemented temporary traffic management.

Reconsideration of the situation by Council's Transport and Roading Asset Manager has also eventuated. In order to find resolution, the Transport and Roading Asset Manager has reviewed the 2010/11 programme for street lighting with a view to getting the Dumas Place streetlight relocation on the forward year's programme. However, this decision would not be made ahead of the expected application for subdivision consent in relation to the neighbouring development. Were this development to proceed – the development engineers are signalling a start is intended by the developer at the next construction season (i.e. September/October 2010) -a requirement of approval would be for the developer to fund the relocation of the lighting pole and the construction of the footpath. These works would be undertaken in conjunction with the construction of a 100 mm fire main which is designed to be installed (as the best location) under the footpath location intended by Mr Erceg.

Council's letter of 4 May 2010 noted:

- the logical chronology of construction; i.e. install the fire main and build the footpath after this construction to ensure damage to the path is eliminated and thereby not repeat expenditure
- if the development does not obtain approval to proceed, or does obtain approval to proceed but does not meet the target start of September/October, then, with Council's approval to include the lighting pole in the 2010/11 programme and should Mr Erceg still wish to participate, a joint agreement is proposed to be made between Mr Erceg and Council to undertake the works
- if agreement was reached on the construction of the footpath, Mr Erceg needs to comply with Council's standard requirements (which are fundamental requirements for all works and contractors undertaking work in Papakura District). Broadly these are:
    - compliance with the Health and Safety in Employment Act; this would require as a minimum location of services and their protection; a road opening notice, a temporary traffic management plan be approved and implemented and a site specific safety plan
    - that the work be undertaken in accordance with Council's Development Code and the work at required stages be inspected and agreed suitable to proceed
    - that as built data is provided in order that Council's asset database and RAMM (Road asset and maintenance management) database are updated
    - that all matters be recorded in a formal agreement.

A meeting subsequent to Mr Erceg receiving this letter was held on Tuesday 11 May 2010 where Councillors Auva'a, O'Connor and Jones and His Worship the Mayor reviewed the matter with the Director Infrastructure Management. Direction from this meeting was that Mr Erceg and the Director subsequently get together and attempt to work out a solution.

His Worship the Mayor then arranged and attended a meeting with Tony Erceg and the Director. At this meeting Mr Erceg expressed the view that he did not see the need to comply with services identification, traffic management and council inspection requirements and therefore he would not proceed with footpath. However, the Mayor felt that the matter should be brought to Council.

The following matters are relevant for elected members in considering this situation.

Firstly there is the matter of both the demand for, and timing of a footpath in Dumas Place. As indicated earlier in the report, it is not considered that a public footpath is warranted at this stage. While the footpath may be provided by the Developer, ongoing maintenance will become a cost to Council and needs Council to approve the provision of such a footpath. Timing is also an issue. There is currently a proposal being developed by the Whitehouse for an adjacent development. Initial plans show a fire hydrant main being laid within the area of Dumas Place that Mr Erceg wishes to construct the footpath. It would be imprudent to construct a footpath now that would then most likely need to be disturbed to lay the water main. Someone would need to bear the cost of re-instatement. For long established infrastructure this would normally be the developer but given that there is currently no footpath and the Council would be allowing a footpath to be constructed in full knowledge of the likely consequences, the Whitehouse may well argue that they should not bear the cost of reinstatement.

Secondly there are a number of matters of compliance which are set out below:

1) Council requires its officers comply with and, where necessary, enforce bylaws and codes:
   i) Council's Public Places Bylaw 2008 addresses in cl. 5.1 (a) "A person must not, in any public place, except with prior written permission of Council : Damage, interfere with, destroy or remove in whole or in part any grass plot …."

      In 3.1 (a) of the same Bylaw "Leave any work, hole or excavation in a public place in a manner that could be a danger to anyone entering or using that public place."

      The Public Places Bylaw 2008 specifically addresses "damage to public facilities such as roads, grass verges …."

   ii) Council's Development Code January 2010, provides in addition to responsibilities of all parties involved in any development (the Dumas Place footpath is a 'development') that 'work' shall not commence upon the engineering construction of the development (cl.1.4.3 (c)) before "The Engineer has subsequently approved the engineering drawings specifications and calculations for the specific work."

   iii) Council has set as a standard in order to meet its lawfully required obligations as a Road Controlling Authority, compliance with the Code of Practice of Temporary Traffic Management and Road Opening Notice based on Auckland Regional Combined Local Authorities.

These standards are validated through Papakura District Council's representation with the Code of Practice for Working in the Road.

2) As the employer, Council is required to comply with the requirements of the Health and Safety in Employment Act. Accordingly, we must check that all matters of possible harm are eliminated, isolated or minimised. In the normal course of construction undertaken by Council, the work specification would detail requirements, predominantly through the contractor's health and safety plan and normally through a specific site safety plan.

3) There are various legislation and related codes of practice covering utility services and compliance in regard to working over or around these services. For example Vector Gas, after the mandatory uplifting of as-built plans, the holder would then be in no doubt of their obligations. A notation is affixed to the as-built plan:

   WARNING! Special conditions apply for high pressure gas pipeline. A permit is required for any excavation within 2 metres of this pipeline.

   This notice is attached to the as-built service plan for Dumas Place Papakura. It appears that the pipeline is less than 1 metre away from Mr Erceg's excavation. In other words, the footpath excavation has created a non-compliant and potentially risky situation.

4) In the ordinary course of carrying out Council's maintenance and construction on roads, situations of unlawful excavation, design absences and compliance, do not arise as a contract is in place covering all compliance and consequences. Many matters are specific, for example, the NZ Standard 3910 : 2003 that provides the general terms and conditions for building and civil engineering construction, requires the contractor to search for and to protect all buried services.

Council has never given, nor has it been asked to, allow non-compliance with its standards and bylaws. There is a legislated requirement on matters of health and safety. Council does not permit non compliance in the execution of its physical works and hence, there can be no deviation permitted in this situation to build the Dumas Place footpath.

CONCLUSION

Council was approached by Mr Tony Erceg to build a footpath at the north east location of Dumas Place. When Council declined Mr Erceg offered to build at his cost the footpath. However, he will not accept the compliance conditions required by Council.

Council direction is now sought as to whether Mr Erceg should be allowed to build a footpath in Dumas Place. It is strongly recommended that should Council agree to allow Mr Erceg to continue to build the footpath that the following conditions apply:

- Mr Erceg must meet all standard Health and Safety practices as would normally apply to any Council contractor including Traffic Management and the Code of Practice for Working in the Road.
- The specification and construction of the footpath must meet standard Council requirements for a public asset, as would be expected of any other developer.
- All buried services in the location must be identified and protected as required by Council of any other contractor

- Should the Whitehouse development proceed then any costs of reinstatement that the Whitehouse can legitimately argue should not be theirs, be borne by Mr Erceg.

RECOMMENDATIONS

1. That the information be received.

2(a) The Mr Erceg not be permitted to construct the Dumas Place footpath and be requested to reinstate the work already undertaken.

OR

2(b) That Mr Erceg be permitted to construct the Dumas Place footpath subject to an agreement with the following conditions:

   a. Mr Erceg must meet all standard Health and Safety practices as would normally apply to any Council contractor including Traffic Management and the Code of Practice for Working in the Road.
   b. The specification and construction of the footpath must meet standard Council requirements for a public asset, as would be expected on any other developer.
   c. All buried services in the location must be identified and protected as required by Council of any other contractor
   d. Should the Whitehouse development proceed then any costs of reinstatement that the Whitehouse can legitimately argue should not be theirs, be borne by Mr Erceg.

3. That should an agreement be entered into then the lighting pole be relocated at Council's cost.

10. ITEMS FOR INFORMATION

(a) PLAN CHANGE 15 TAKAKNINI STRUCTURE PLAN – PREHEARING MEETINGS

REPORTING OFFICER: **Nathanael Savage**
Senior Policy Planner

ATTACHMENT: **RMA extract cl8AA**
List of submitters
Letter – D Newman 3 May 2010

(Attachment No. 8)

PURPOSE OF THE REPORT

The purpose of this report is to inform Council of the approach being taken by officers for Plan Change No.15 Takanini Structure Plan Area 6 (PC15) in:

- Responding to Requests from submitters for pre-hearing meetings.
- Seeking pre-hearing meetings with submitters.

BACKGROUND

PC15 was notified on 9 December 2009 with submissions closing on 26 February 2010; 98 submissions were received. The further submission period covered 7 April 2010 to 23 April 2010; multiple further submissions were received, however no new parties entered the process as further submitters.

An indicative timetable has been circulated to all submitters advising them of a potential hearing in November 2010 and that the recommended decision of the hearing committee would be considered by the new Auckland Council. Technical reports have been commissioned / are soon to be commissioned to provide assessment of some submission issues.

Clause 8AA of the First Schedule of the Resource Management Act 1991 (RMA) establishes a formal process for the resolution of disputes prior to plan change hearings. A copy of this clause is attached.

In summary this provision allows Council to hold formal pre-hearing meetings to attempt to resolve issues with submitters. Any party, including Council, may ask for pre-hearing meetings to be held between Council and submitters; however neither party is obliged to accept any pre-hearing meeting request.

Should such a meeting be held a report must be produced by the Chair of that meeting. This report must identify those matters with which the parties are in agreement and / or disagreement, and may include the nature of evidence to be called at the hearing by submitters, the order of evidence to be heard and a proposed timetable for the hearing. Without prejudice evidence presented at the meeting is not to be included in the report. The hearing committee and Council must have regard to this report in making its decision.

NARRATIVE

Pre-hearing discussions vs Clause 8AA pre-hearing meetings

To avoid added costs and complications arising from misinterpreted submissions (when preparing the planner's report and during the hearing process) it is sometimes necessary for Council officers to contact plan change submitters prior to hearings to clarify their issues, relief sought and / or information requests. When this happens it is usually as a result of the submitter either:

- Being unfamiliar with the role and functions of the Council, District Plans, the plan change processes and how to compile a submission; or
- The submission containing matters prepared by a technical expert.

In responding to such submissions with a technical component the reporting officer may need to commission an expert to provide an assessment of that matter. The technical aspects of the submission must be clearly understood to enable the reporting planner to commission this work and provide an informed assessment and recommendation to the hearing committee.

These types of discussions are invariably held on a without prejudice basis and sometimes involve meetings between party experts. These interactions are not made under the formal Clause 8AA dispute resolution provisions under the RMA because such formal reporting is generally unnecessary given the purpose of the discussions. The purpose of these discussions is one of clarification and not resolution and/or narrowing the scope of submission issues.

When there is the potential for parties to reach agreement on submission issues and a clear benefit in reaching agreement, generally Council officers would suggest requesting or agreeing to requests from submitters for a formal Clause 8AA pre-hearing meeting (and report). These are considered on a case by case basis and while there are additional time / financial costs involved in such formal reporting potential benefits could include:

- Less evidence required for hearing (time / cost savings for submitter and Council).
- Negotiated solutions prior to Council's decision may avoid costly and time consuming appeals to the Environment Court.

When there is limited or no potential for parties to reach an agreement Council officers do not recommend requesting or agreeing to requests from submitters for a formal Clause 8AA pre-hearing meeting (and report). Council and submitters are under no obligation to agree to requests for such meetings.

Attached is a table identifying the submitters to PC15 and those that have requested a pre-hearing meeting. Council officers believe there is no immediate need to meet with these submitters under the formal Clause 8AA process at this time. Instead, Council officer will be meeting with Manukau City Council (MCC), New Zealand Transport Agency (NZTA), Watercare Services Ltd (Watercare), Auckland Regional Council (ARC), and Auckland Regional Transport Authority (ARTA), on a without prejudice basis, to clarify the technical aspects of some of their submission issues to assist in further technical reporting.

When the outputs from the technical reporting and assessment is available, if there appear to be grounds for agreement with submitters Council officers would consider meeting further with those submitters to establish whether an agreement on issues under the Clause 8AA process could be achieved. If the outputs and assessment of technical reports are not supportive of issues raised by submitters then there would be no benefit in meeting with the submitter. The technical reporting and assessment (Planner's Report) would be provided to the submitter in due course, prior to the hearing.

With respect to the letter attached from Mr Newman requesting, among other matters, pre-hearing meetings with him and other submitters the view of Council officers is that it would be premature to meet with these submitters without the outputs from further technical reporting and that no meeting will be agreed to at this time.

It is important to note that this report does not canvass the issue of requests for independent mediation as part of the Clause 8AA process generally however these requests should also be considered on a case by case basis and recognise the costs versus benefits of making such a commitment.

CONCLUSION

Council has been receiving requests for pre-hearing meetings for PC15. Council officers see no need for formal Clause 8AA meetings prior to the availability of further technical reports that have been commissioned / are to be commissioned shortly.

Council officers will be meeting, on a without prejudice basis, but not under the formal Clause 8AA process, with MCC, NZTA, Watercare, ARC and ARTA to clarify the technical aspects of some of their submission issues to assist in further technical reporting.

Once the outputs from technical reports have been received and assessed Council officers may agree to (or seek) formal Clause 8AA pre hearing meetings with submitters where there is the potential to reach agreement.

RECOMMENDATIONS

1. That the information be received.

11. NOTICES OF MOTION

12. CONFIDENTIAL

(a) LAND PURCHASES FOR ROADING UPGRADES – 507 – 561 GREAT SOUTH ROAD

(b) HINGAIA SPORTS FIELDS UPDATE MAY 2010

(C) THE FUTURE OF ACCENT POINT, THE LIBRARY AND MUSEUM

RECOMMENDATION

1. That Council move into public excluded session. The general subject matters to be considered, the reasons for passing this resolution in relation to each matter and the specific grounds under S 7(2) i of Local Government Official Information and Meetings Act 1987 are:

Item	Reason	Grounds
12(a) Land Purchases for Roading Upgrades – 507 – 561 Great South Road	To enable Council to carry on, without prejudice or disadvantage negotiations (including commercial or industrial negotiations).	S 7 (2) i
12(b) Hingaia Sports Fields Update May 2010	To enable Council to carry on, without prejudice or disadvantage negotiations (including commercial or industrial negotiations).	S 7 (2) i
12(c) The Future of Accent Point, the Library and Museum	To enable Council to carry on, without prejudice or disadvantage negotiations (including commercial or industrial negotiations).	S 7 (2) i