

NOTICE OF MEETING

DISTRICT PLAN AND REGULATORY COMMITTEE

TO: Penny Webster - Mayor
Crs Gaye Harding (Chairperson)
Michael Goudie
Dave Parker QSM
Grahame Powell
Suzanne Weld
Pat Delich (Alternate)
June Turner (Alternate)
Wayne Walker (Alternate)

The District Plan and Regulatory Committee will meet in the Committee Room, Centreway Road, Orewa on Wednesday, 14 April 2010 commencing at 9.00 a.m.

for: CHIEF EXECUTIVE
Rodger Kerr-Newell

OREWA
7 April 2010

* * * * *

PROGRAMME

<u>Time</u>		<u>Page</u>
9.00 a.m.	Section 357 Objection to Fees Charged for the Processing of a Resource Consent Application to Construct a Retail Box and Earthworks of 2000m ³ at 44 Hamatana Rd, Snells Beach Objector: Andrew Franicevic (Burton & Co) for: Applicant: Dawson Dare Ltd	2
9.30 a.m.	Application for Permission to Ride Horses on Snells Beach – Heather MacKenzie	67
9.40 a.m.	Appeal against Menacing Dog Classification – Alison Eller	71
10.00 a.m.	Appeal against Bark Abatement Notice – Dennis Bell	78

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CONFIDENTIAL

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ITEM NO: 1

APOLOGIES

ITEM NO: 2

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
FROM Laura Christian – Planner
APPROVED BY: Rob Goldsbury – Chief Legal Officer
SIGNATURE

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SUBJECT NOTIFICATION OF NEW APPEAL(S)

<u>NEW APPEAL RECEIVED</u>	
FILE REF: R55537	ADDRESS: 9 Mason Heights, Warkworth
APPLICANT: MHL Limited	APPELLANT: Oracle Racing Limited
APPLICATION DESCRIPTION:	Application for a 66 lot residential subdivision consisting of 33 medium intensity sized lots, 33 high intensity sized lots and earthworks amounting to 44500m ³ with a balance of cut to fill, as well as a boundary relocation with Lot 1 DP 313511.
NOTIFICATION: Fully notified	SUBMITTERS: FOR: 0 / AGAINST: 7 NEUTRAL: 0
REPORTING PLANNER: Laura Christian	RECOMMENDATION: Grant
DECISION MAKER(S): Resource Consent Hearings Panel (Alan Watson, Cr Grahame Powell, Cr Michael Goudie)	DECISION: Granted
APPEAL RECEIVED ON: 31/03/2010	APPEAL REVIEWING PLANNER: To be allocated

9.00 A.M.

ITEM NO: 3

REPORT



TO District Plan and Regulatory Committee

ON 14 April 2010

FROM Erik Oosthuizen – Team Leader

SIGNATURE

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FOR RELEASE Ian Dobson – Manager: Resource Management

SIGNATURE

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SUBJECT **SECTION 357 OBJECTION TO FEES CHARGED FOR THE PROCESSING OF A RESOURCE CONSENT APPLICATION TO CONSTRUCT A RETAIL BOX AND EARTHWORKS OF 2000M³ AT 44 HAMATANA RD, SNELLS BEACH**

OBJECTOR: Andrew Franicevic (Burton & Co) for:

APPLICANT: Dawson Dare Ltd

FILE REF **RMA 50198**

WARD **NORTHERN WARD**

PART A:

LOCATION: 44 Hamatana Road, Snells Beach

ZONES:

Operative District Plan	Industrial 2
Proposed Plan Change 99	Special 20
Proposed Variation 48	Special 20
Proposed District Plan 2000	Mixed Business

ACTIVITY STATUS:

Operative District Plan	Discretionary
Proposed Plan Change 99	Prohibited (under 77C (1) (c) deemed Discretionary RMA 1991)
Proposed Variation 48	Prohibited (see above rule 77C)
Proposed District Plan 2000	Limited Discretionary

TYPE OF APPLICATION: Objection under Section 357 of the Resource Management Act 1991

EXECUTIVE SUMMARY

An objection pursuant to Section 357, relating to the processing fees, was received from Mr Andrew Franicevic (Burton & Co) on behalf of Dawson Dare Ltd in relation to the resource consent application RMA 50198 to construct a 1700m² gross floor area retail box (actual use not identified) which is not an allowable activity in the Operative Plan, exceeds the allowable size of a retail activity in the Special 20 zone, and exceeds the gross floor area permitted for retail in the Mixed Business Zone under the Proposed District Plan 2000, and earthworks of 2000m³ at 44 Hamatana Rd, Snells Beach.

RECOMMENDATION:

That pursuant to Section 357 of the Resource Management Act 1991, subject to additional or contrary information being presented at the hearing, the objection made by Mr Andrew Franicevic, in respect of a request for the reduction of fees arising from the processing of an application to construct a 1700m² gross floor area retail box (actual use not identified) which is not an allowable activity in the Operative Plan, exceeds the allowable size of a retail activity in the Special 20 Zone, and exceeds the gross floor area permitted for retail in the Mixed Business Zone under the Proposed District Plan 2000, and earthworks of 2000m³, be dismissed.

REASONS:

1. It is considered that the resource consent application fees represent the actual and reasonable costs incurred by the Council in processing the resource consent application.
 2. Section 36(3) of the Resource Management Act 1991 provides for the Council to recover the actual and reasonable costs for the processing of Resource Consents and it is the Council's policy to recover these costs from applicants. In this instance there is no evidence that the costs incurred are excessive or unreasonable.
 3. It is considered appropriate for the applicant to incur the costs for the processing of the application. Should any reduction or waiver be made to the invoiced amount, the ratepayer will have to cover these costs.
-

PART B:

1.0 Introduction and Background

- 1.1 The resource consent application was received by the Council on 23 December 2005 for the construction of a 1700m² gross floor area retail box (actual use not identified) which is not an allowable activity in the Operative Plan, exceeds the allowable size of a retail activity in the Special 20 Zone, and exceeds the gross floor area permitted for retail in the Mixed Business Zone under the Proposed District Plan 2000, and earthworks of 2000m³. The proposal infringed a number of development controls and was processed as a prohibited activity.
- 1.2 The application was publicly notified on 13 July 2006 with submissions closing on 11 August 2006. Six submissions in opposition, one in support, and three conditional submissions to the proposal were received. The application was presented to the Council's Resource Consents Hearings Panel on 16 October 2006.
- 1.3 The Hearings Panel made its decision on the outcome and this was released on 21 November 2006.

2.0 Section 357 Objection

- 2.1 An objection pursuant to section 357 (b) relating to the processing fees of the application has been lodged by Mr Andrew Franicevic (Burton & Co) on behalf of Dawson Dare Limited. A copy of the objection is attached as **Appendix 1** to this report.
- 2.2 The first letter of objection to the costs was received by Buddle Finlay (acting for the Council) from David Bigio on behalf of the applicant dated 7 April 2008. A second letter dated 21 April 2008 was received from David Bigio on behalf of the applicant stating that the timeframe given by the Council for receiving a formal objection could not be met. On the 23 April another letter was received from David Bigio on behalf of the applicant (dated 22 April 2008) stating that the invoice should have been sent to 'Dawson Dare Limited' as written on the application form, and not 'Dawson Farms Limited'.

A letter dated 26 June was received by Buddle Finlay from Burton and Co on behalf of the applicant. This letter states that no invoice was issued to 'Dawson Dare Limited' as the invoice was sent to 'Dawson Farms Limited'. The letter states that as such, the 15 working day period prescribed under s.357C of the Resource Management Act has not run, and that no action will be taken until the invoice has been issued to 'Dawson Dare Limited'. A letter dated 10 October also states that the 15 day period has not passed as the invoice issued was the first invoice issued to 'Dawson Dare Limited'.

2.3 The applicant has been provided with a detailed invoice of the processing costs. The outstanding processing charges are further clarified as indicated below:

ITEM	BREAKDOWN	AMOUNT
Administration	<ul style="list-style-type: none"> • A4-Microfilming • Photocopying (A4) • Admin – Receiving of application and file creation • Admin – finalisation of documentation • Advertising costs for hearing • Processing submissions 	1,294.79
Hearing fee		520.00
Planning	<ul style="list-style-type: none"> • Site visit, vehicle running cost, assessment of the proposal and writing of s.94 and decision report, correspondence with the applicant and experts, preparation of notification pack and hearings report, collating information from experts, attending hearing 	8,004.00
Planning peer review		130.00
Independent Commissioner	<ul style="list-style-type: none"> • Reading application details and planner's report, travel, hearing, deliberations, site visit, preparing decision 	4,581.10
Iwi consultation		272.81
Engineering	<ul style="list-style-type: none"> • Site visit, vehicle running cost, assessment of the proposal and writing report/conditions 	390.00
Traffic Engineering and Management Ltd	<ul style="list-style-type: none"> • Reading information and research, assessment, correspondence with Council staff, report, administration 	2,577.38
Transurban	<ul style="list-style-type: none"> • Urban design peer review, correspondence with Council planner, assessment report, attendance at hearing 	2,418.00
Total due		\$20,188.08

3.0 Statutory Requirements

There are two sections of the Resource Management Act 1991 that are relevant to the objection application; section 36 (Administrative charges) and section 357 (Objection to certain decisions and requirements of consent authorities).

Section 357 (B) states that:

*'There is a right of objection,-
(a) for a person required by a local authority to pay an additional charge under section 36(3)to the local authority in respect of that request.*

Section 357 (d) provides that after considering an objection, the Council may dismiss the objection or uphold it either partly or wholly.

4.0 Assessment of Processing Charges

- 4.1 The processing charges for the consent have been examined and it is considered that the charges reflect the average for actions normally taken in the planning assessment. It has been established that resource consents for similar applications for business activities in the 12 months before a decision was made on this consent attracted an average processing fee of \$25,884.39. The charges are therefore considered to be fair and reasonable.
- 4.2 Although the final decision was for refusal, this does not have any bearing on the costs associated with the application. The reporting planner and the other experts needed to assess all of the information submitted with the application in order to reach a recommendation. Similarly at the hearing of the application, the Hearings Panel was under a duty to assess all of the relevant information in order to make its decision. This does not change whether the application is recommended for refusal, and whether the final decision made by the Hearings Panel is for approval or decline.
- 4.3 The Council's planner acted responsibly, fairly and reasonably in terms of deciding what information was and was not relevant to send to submitters. In order for submitters to fully understand the proposal, significant extracts of the application were sent to potential submitters.
- 4.4 A lot of time and effort is required for the preparation of the hearings report to ensure that all points raised by the applicant and the submitters are addressed, that the effects of the proposal are appropriately assessed and that the District Plan documents are accurately referenced. As this was a recommendation to the Hearings Panel, it was required to be accurate in terms of the effects assessed, as well as in regard to the objectives and policies and other relevant documents. The reporting planner was required to read through and summarise all of the submissions received, which can be a time consuming process. The reporting planner also had to collate all of the comments from experts such as the development engineer, the transportation engineer, urban design specialist and comments from the Council's Policy department. This application included a large amount of information due to the complexity of the proposal. The processing planner was required to correspond with the applicant and interested parties throughout the process which contributed to the time spent and the costs involved in processing the application (**Appendices 2 and 3**).
- 4.5 Due to the complexity of the resource consent application and issues discussed through the hearing process, it is submitted that the time spent by the Commissioners in hearing, deciding and reporting the decision in relation to the application was justified. Although the decision was for refusal, this does not affect the amount of time required for the Independent Commissioners to assess and make an informed decision in regard to the application.
- 4.6 Overall, the processing charges for this consent application are considered to be reflective of the average for actions normally taken in the planning assessment. Whilst it is difficult to find a common average for the total costs that would be relevant to this type of application due to the complexity of the proposal, looking at other similar applications the costs of processing the application appear to be fair and reasonable. They are comparable to the costs of major applications assessed around the same time as the application the subject of this appeal:
- Proposal to construct and operate a recreation and entertainment facility with associated vehicle access from East Coast Road, which amounted to \$55,800.
 - Application to establish a 31.5m tall building containing 73 multi-storey apartments, and a commercial/retail complex with associated car parking, earthworks and vegetation alteration in Orewa incurred processing costs of \$64,861.
 - Application in Manly to construct an apartment block for 27 residential units with 7 retail shops on the ground floor and basement car parking, that exceeded the maximum height of 10.5 metres by 4.95 metres and around 3000m³ of earthworks. This application cost a total of \$44,000.

It is submitted that these examples serve to demonstrate that an application such as the present proposal will incur high costs.

4.7 The application required a high level of expert reporting to ensure that all technical aspects of the proposal were addressed and the effects detailed. Experts were required to attend the hearing to understand the concerns relating to the proposal, and to enable them to answer any questions that may have been raised by the Hearings Panel within their area of expertise. If the experts were not aware of all of the issues and concerns it would be difficult for them to understand and answer questions that may have been raised. The Independent Commissioners were required under the Resource Management Act to assess all of the information submitted to them (from the applicant, submitters, and from Council experts) to enable them to give the parties a fair hearing and so that they could make an informed and accurate decision.

5.0 Conclusion

Overall it is considered that the total charge of \$27,451.90 (\$20,188.08 outstanding) is fair and reasonable and represents the actual costs incurred in view of the scale of the application, the involvement of expert witnesses, the hearing of the application, and the notification procedure itself. Although the applicant believed the fees are excessive, no specific reasons for this view have been offered.

However, in correspondence dated 27 February 2009, the applicant's solicitor states:

'Our client objects to the overall approach taken by the Council in relation to the treatment of the land in respect of which the application was lodged, as well as the handling of the application itself.

Our client's proposal was compliant with the Operative District Plan but was rendered non-complying by virtue of a proposed plan change recently put forward by the Council.

It was clear that, in light of the fact that the proposed plan change had made the activity in question non-complying, there was no doubt the Council would decline our client's application' **(Appendix 4)**.

Council responded to these comments by letter dated 12 March 2009, explaining that whilst an application may be non-complying, it does not automatically result in an application being notified or declined and that sufficient information has to be provided to allow the processing planner or the Hearings Panel to make an informed decision **(Appendix 5)**.

The objection has not raised any matters that would result in a change to the fees charged for the processing of this application and it is therefore recommended that objection be dismissed.

APPENDICES:

Appendix 1: Copy of the applicant's objection to the fees under section 357 of the Act

Appendix 2: Copy of the section 93 and 94 report prepared for the proposal

Appendix 3: Copy of the Hearings Report prepared for the proposal

Appendix 4: Copy of letter from Burton and Co. dated 27 February 2009

Appendix 5: Copy of letter from processing planner dated 12 March 2009

9.30 A.M.

ITEM NO: 4

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
FROM Wayne Knightbridge – Animal Control/Bylaws Manager
APPROVED BY Lloyd Barton – Director: Customer Services
SIGNATURE

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SUBJECT APPLICATION FOR PERMISSION TO RIDE HORSES ON SNELLS BEACH – HEATHER MACKENZIE
FILE REF BC/1/1

PURPOSE OF REPORT:

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input type="checkbox"/> Statutory process
<input checked="" type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?) No

FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

Heather MacKenzie has applied for permission to ride her horse on Snells Beach. The level of activity on Snells Beach for significant periods of the year is low. The applicant seeks permission to ride her horse on Snells Beach during these times (see **Appendix 1**).

RECOMMENDATION:

That Heather MacKenzie is granted permission to ride her horse on Snells Beach under the following conditions:

- (a) that the applicant removes and safely disposes of any equine faecal matter that is disposed of by her horse in a public place;**
- (b) that the applicant only rides her horse at low tide at Snells Beach;**
- (c) that the applicant be given permission to ride her horse on Snells Beach on each day between 6am and 9am between 1 December and 15 February, in accordance with (b) above;**
- (d) that the applicant is given permission to ride her horse on any weekday (being Monday to Friday) between 16 February and 30 November each year except during school holidays or when public holidays fall on a weekday (Monday to Friday), in accordance with (b) above;**
- (e) that the applicant rides her horse at Snells Beach in a manner that does not cause a nuisance to other beach users;**
- (f) that while riding the applicant carries on her person a copy of the permission to ride on the beach and presents that permission to any authorised officer on request;**
- (g) that the Council reserves the right to revoke the permission to ride a horse on Snells Beach at any time.**

1.0 Background

Under Chapter 6 of the Rodney District Council General Bylaw 1998, it states 'No person shall permit any stock, including horses to be on beaches adjacent to any urban area, without the consent of the Council or an authorised officer'.

The applicant lives locally and wishes to have the opportunity to ride her horse on Snells Beach.

2.0 Issues

Snells Beach falls within the parameters of an urban beach under the Rodney District Council General Bylaw. As such riding horses is prohibited under the current bylaw except where permission to do so has been granted by the Council.

Several other current exemptions for riding horses on urban beaches have been granted in the Rodney District; these being at Snells Beach, Arkles Bay and Omaha Beach. None of these exemptions have received any justified criticism or complaint from other residents at the three sites.

Snells Beach is a popular beach with visitors to the area. There is an influx of visitors over the summer school holidays and for this reason it is recommended that the applicant be permitted to ride her horse between 6am and 9am daily at low tide during the period 1 December to 15 February.

Should the application be successful, it is recommended that the following conditions be imposed on the applicant:

- (a) that the applicant removes and safely disposes of any equine faecal matter that is deposited by their horse in a public place;
- (b) that the applicant rides her horse only at low tide at Snells Beach;
- (c) that the applicant be given permission to ride her horse on Snells Beach on each day between 6am and 9am between 1 December and 15 February, in accordance with (b) above;
- (d) that the applicant is given permission to ride her horse on any weekday (being Monday – Friday) between 16 February and 30 November each year except during school holidays or when a public holiday falls on a weekday, in accordance with (b) above;
- (e) that the applicant rides her horse on Snells Beach in such a manner that does not cause a nuisance to other beach users;
- (f) that while riding on the beach the applicant carries on her person a copy of the permission to ride on the beach and presents that permission to any authorised officer upon request;
- (g) that the Council reserves the right to revoke the permission to ride a horse on Snells Beach.

3.0 Options

The District Plan and Regulatory Committee has the following options:

- (a) approve the recommendation (as written or with amendments to the conditions); or
- (b) reject the recommendation and apply the current bylaw.

4.0 Conclusion

The applicant provided a reasonable proposal for riding her horse at Snells Beach. She is fully aware of the rights of other beach users. In her letter of application she states: 'as a beach user I recognise the obligation not to harm or offend others using the facility'.

Riding a horse on Snells Beach at low tide and at off-peak periods will not have an adverse effect on other beach users. It is considered that this use is compatible with other beach activity during the proposed times and that the application should be supported.

9.40 A.M.

ITEM NO: 5

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
FROM Wayne Knightbridge – Animal Control/Bylaws Manager
APPROVED BY Lloyd Barton – Director: Customer Services
SIGNATURE

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SUBJECT **APPEAL AGAINST MENACING DOG CLASSIFICATION – ALISON ELLER**
FILE REF DC/9/2

PURPOSE OF REPORT:

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?) No

FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

Alison Eller is the owner of an eight year old neutered male German Shepherd dog named Dudley. Ms Eller has appealed under section 33B of the Dog Control Act 1996 against the classification of her dog as a menacing dog under section 33A (see **Appendix 1**). The Council may either uphold or rescind the classification.

RECOMMENDATION:

That the menacing dog classification under section 33A of the Dog Control Act 1996 against the dog known as Dudley, be upheld.

1.0 Background

Section 33A of the Dog Control Act 1996 states:

'This section applies to a dog that –

- (a) has not been declared a dangerous dog under section 31; but*
- (b) a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of –*
 - (i) any observed or reported behaviour of the dog; or*
 - (ii) any characteristics typically associated with the dogs breed or type.'*

Section 33B states:

- '(1) If a dog is classified as a menacing dog under section 33A the owner*
 - (a) may within 14 days of receiving the notice of the classification, object in writing to the territorial authority in regard to the classification; and*
 - (b) has the right to be heard in support of the objection.*
- (2) The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination must have regard to*
 - (a) the evidence which formed the basis for the classification; and*
 - (b) any steps taken by the owner to prevent any threat to the safety of persons or animals;*
 - (c) the matters relied upon in support of the objection;*
 - (d) any other relevant matters.*

The territorial authority must, as soon as practicable, given written notice to the owner of –

- (a) its determination of the objection;*
- (b) the reasons for its determination.'*

On 12 October 2009, a dog owner was walking her dog past Ms Eller's property in Stillwater when Dudley ran off its property and attacked the other dog in the street. The owner of the dog that was attacked had three children under four years of age with her at the time of the incident. The attack left

two puncture wounds on her dog. The dog owner reported the incident to the Council some two weeks later. She described Dudley's actions as 'charging onto the road towards us'.

The Council's Animal Control Officer (Kathryn Catchpole) conducted an investigation into this matter and spoke to neighbours in the area. One person stated he witnessed Dudley 'came out a couple of times at other dogs'.

On 17 February 2010 Dudley ran off its property in Snells Beach and attacked a dog being walked on a lead. The dog that was attacked was taken to the vet for treatment resulting in \$161 worth of veterinary care.

In both these instances Ms Eller has been very co-operative in paying the vet bills incurred during each attack.

In both cases the owner of the dog that was attacked did not wish to proceed with action against Ms Eller or Dudley.

The Council has a role in protecting the general welfare of the community. In this case two dog attacks some five months apart have been reported to the Council. While Ms Eller said that precautions would be taken after the first attack to ensure it did not happen again, another dog was attacked a short while later in similar circumstances. Under these circumstances the Council is bound to act.

A menacing dog classification requires the dog to wear a muzzle when leaving the property, and if deemed necessary, the dog to be desexed.

2.0 Issues

Dudley is clearly an aggressive dog in certain circumstances. It is unlikely that this aggression can be trained out of a dog of Dudley's age. The only appropriate measure to prevent further attacks is to ensure that Dudley is under adequate control at all times.

The Dog Control Act 1996 has placed greater emphasis on ensuring that people and their animals can go freely about their business without feeling endangered or at risk of a dog attack. Dudley has managed to leave its property and act in an aggressive manner towards other dogs on two separate occasions.

It is likely that a similar situation would give rise to further aggressive behaviour from the dog.

The Council has a duty to ensure that aggressive dogs do not pose a threat to the wider community. In this case classification as a menacing dog will impose the conditions needed to ensure public safety.

3.0 Options

The Council has the following options:

- (a) uphold the menacing dog classification; or
- (b) rescind the menacing dog classification.

4.0 Conclusion

The dog known as Dudley attacked two dogs on separate occasions in a public place. Any controls imposed after the first incident by Ms Eller failed to prevent the latest attack. It is considered that imposing a menacing dog classification on this dog is not only justified but is essential.

Accordingly it is recommended that the menacing dog classification be upheld.

10.00 A.M.

ITEM NO: 6

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
FROM Wayne Knightbridge – Animal Control/Bylaws Manager
APPROVED BY Lloyd Barton – Director: Customer Services
SIGNATURE

A handwritten signature in black ink, appearing to read "Lloyd Barton".

SUBJECT **APPEAL AGAINST BARK ABATEMENT NOTICE – DENNIS BELL**
FILE REF DC/1/1

PURPOSE OF REPORT:

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?) No

FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

Dennis Bell is the registered owner of two dogs, a four year old male German Shepherd named Kahu and a six year old female German Shepherd named Misty. Following repeated complaints of barking from Dennis Bell's property at 2 Berridge Road, Muriwai a bark abatement notice was issued requiring the dog owner to abate the barking nuisance on the property. The dog owner has appealed against the notice issued under section 55 of the Dog Control Act 1996.

RECOMMENDATION:

That the bark abatement notice issued to Dennis Bell be upheld.

1.0 Background

Under section 55 of the Dog Control Act 1996 where a dog control officer has received a complaint and has reasonable grounds to believe that a nuisance is being created by persistent and loud barking or howling of dogs, the dog control officer may issue a notice requiring the dog owner to abate the barking nuisance on the property.

Any person on whom the notice is served under section 55(1) of the Act may within seven days of receipt of the notice object in writing to the territorial authority against the requirements of that notice.

The territorial authority shall consider the objection and may confirm, modify or cancel the notice.

No objection under section 55 of the Dog Control Act shall be considered unless seven days notice of the date, time and the place at which it is to be considered have been given to the objector, who shall be entitled to be represented and to be heard and may submit evidence and call witnesses in support of his or her objection.

As from the lodging of an objection with the territorial authority, and pending the receipt of a further notice upon determination of the objection, the notice setting out the requirements that are the subject of the objection shall be deemed to be suspended.

2.0 Issues

Complaints have been received about the barking of Mr Bell's dogs. The first complaint was received on 25 February 2010. The complainant stated that Mr Bell worked at night and left his door open for the dogs to come and go in and out of the house. The complainant advised that the dogs were barking all night long running in and out of the house.

The complainant stated they had discussed the issue with Mr Bell several times but he continued the practice of allowing the dogs access in and out of the house at night.

On 15 March 2010 a further complaint was received about the dogs barking. The complainant said the barking problem had been going on for several months. The officer investigating the complaint did a letter drop to neighbours in the area requesting them to contact him if they also had experienced problems with continuous barking. Two other neighbours called the officer and confirmed there was a barking problem at 2 Berridge Road, Muriwai.

The officer issued a bark abatement notice which gave Mr Bell seven days to abate the barking nuisance.

Mr Bell has been taking the male dog to work to try and alleviate the problem.

The Council received a call after the bark abatement notice was issued stating that the barking situation had not improved since the abatement notice was issued. This message was received prior to the seven day period in which Mr Bell had to abate the nuisance.

No further complaint has been received since the abatement notice was issued.

3.0 Options

The Council has the following options:

- (a) confirm the notice;
- (b) modify the notice; or
- (c) cancel the notice.

4.0 Conclusion

Several neighbours have confirmed there is a barking nuisance on the property at 2 Berridge Road, Muriwai.

This has been an ongoing problem for neighbours covering a period of several months.

The Council has a responsibility to ensure that any statutory nuisance is abated. In this case a notice to abate the nuisance was issued to the dog's owner, Dennis Bell.

Mr Bell has been given seven days to abate the barking nuisance on the property. During the appeal period Mr Bell has exercised his right to appeal against the bark abatement notice.

Sufficient evidence exists to support the issuing of the notice to abate the barking nuisance.

It is recommended that the bark abatement notice be upheld.

ITEM NO: 7

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
FROM Richard Ritsma – Manager: Building Consents
APPROVED BY Lloyd Barton – Director: Customer Services
SIGNATURE

A handwritten signature in black ink, appearing to read "Lloyd Barton".

SUBJECT BUILDING ACT 2004 REVIEW DOCUMENT – FEEDBACK SUMMARY
FILE REF BB/2/2

A report will be circulated prior to the meeting.

ITEM NO: 8

REPORT



TO District Plan and Regulatory Committee
ON 14 April 2010
APPROVED BY Ian Dobson – Manager: Resource Consents
SIGNATURE

A handwritten signature in black ink, appearing to read "Ian Dobson", written over a horizontal line.

SUBJECT SCHEDULE OF DELEGATED DECISIONS ON RESOURCE CONSENT APPLICATIONS
FILE REF TP/1/6

Note: Councillors should raise any queries they may have with the relevant director prior to the day of the meeting so that these may be responded to on the day.

The schedule below summarises, for the Committee's information, recent decisions made by staff on delegated authority.

NORTHERN WARD

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Team Leader Resource Management	P & J Hooper L56162	6 Wilson Road, Warkworth	For consent to a Restricted Discretionary Activity for an accessory building in the Residential Low Intensity zone which will exceed 500m ² for the maximum cumulative footprint area of all buildings my 40m ² .	Non-Notified Approved 23/03/10
A	Team Leader Resource Management	R Duffy L56118	49 Snells Beach Road, Snells Beach	For a Certificate Compliance for additions and alterations to an existing building comprising a main dwelling on the first floor and minor household unit on the ground floor. Certificate of Compliance is also sought for the minor household unit in reference to existing use rights.	Non-Notified Approved 25/03/10
G	Land Surveyor Resource Management	D & A Holt R55943	2 Kanuka Road Sandspit	Consent to a Discretionary Activity to subdivide Lot 1 DP 398097 to create Lot 1 of 8420m ² and Lot 2 of 1.08 hectares with the Residential Landscape Protection.	Non-Notified Approved 24/03/10
A	Team Leader Resource Management	S Smuts-Kennedy & H Coney L56074	475 Mahurangi West Road, Mahurangi West	For consent to a Restricted Discretionary Activity to relocate a single household unit in the East Coast Rural zone. A total earthworks volume of 30m ³ will be required to provide a building platform.	Non-Notified Approved 26/03/10
A	Team Leader Resource Management	G Taylor L56157	86 Alnwick Street, Warkworth	For consent to a Restricted Discretionary Activity to construct a new dwelling with earthworks.	Non-Notified Approved 24/03/10

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Team Leader Resource Management	Mangakura Boat Club Inc. C55989	Hoteo River, Mangakura	For consent to a Discretionary Activity to attach a pontoon and gangway system to an existing wharf.	Non-Notified Approved 29/03/10
G	Land Surveyor	I & M Tickle R53812	35 Point Wells Road, Point Wells	For consent to a Discretionary Activity for a subdivision to create 6 residential lots to be accessed off a right of way.	Non-Notified Approved 30/03/10
A	Council Arborist Resource Management	A van Leiden Pruyn L56059	55 Willjames Avenue, Algies Bay	For consent to a Discretionary activity to remove a conifer tree as leaves are blocking the spouting and affecting the tank water.	Non-Notified Approved 30/03/10
A	Team Leader Resource Management	M & P Stewart L56126	19 Wilson Road Warkworth	85.3m ² addition to an existing dwelling within the Residential Low Intensity zone and McKinney Road Structure Plan Area encroaching the height in relation to boundary setbacks along the western boundary	Non-Notified Approved 31/03/10
A	Team Leader Resource Management	Landsdale Developments Ltd L56093	6 John Andrew Drive, Warkworth	For consent to a Restricted Discretionary Activity for the erection of a principal dwelling requiring 160m ³ of earthworks un-retained fill and the erection of a retaining wall and keystone wall.	Non-Notified Approved 01/04/10
A	Team Leader Resource Management	Middleclass Investments Ltd L56166	78 Rodney Street, Wellsford	For consent to a Non-Complying Activity to increase the number of children cared for at the childcare facility at 78 Rodney Street, Wellsford from 10 to 20 children.	Non-Notified Approved 06/04/10

WESTERN AND CENTRAL WARDS

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Team Leader Resource Management	Sandman Holdings Ltd R55805	206 Muriwai Valley Road, Muriwai	For consent to a Non-Complying Activity for a 2 lot subdivision based on the protection of 5084m ² of significant wetland.	Non-Notified Approved 24/03/10
G	Team Leader Resource Management	SH 16 Limited R55932	Moses Road Kaukapakapa	For Section 95A-F to create 9 lots from 4 existing sites. Land use consent also being sought to carry out earthworks of approximately 500m ³ to form the right of way and driveways	S95A-F Full Notification 25/03/10
A	Ecology Advisor Resource Management	DR & EB Shepherd L55978	9 Pinotage Place Huapai	For consent to a Discretionary Activity to remove a Cypress tree.	Non-Notified Approved 24/03/10
G	Land Surveyor	Pauanui Centre Ltd R56108	17 Old Pine Valley Road, Silverdale	For consent to create a ROW easement pursuant to section 348 of the Local Government Act 1974.	Non-Notified Approved 25/03/10
A	Team Leader Resource Management	MR8 Developments Ltd L54503	7-9 Wookey Lane, Kumeu	For consent to a Discretionary Activity to establish a childcare centre for 100 children within an industrial zoned site. Access will be gained within a defined road boundary and no loading space will be provided.	Non-Notified Approved 26/03/10
G	Team Leader Resource Management	Tyke Property Management Ltd L56142	710 Coatesvill-Riverhead Highway	For consent to a Discretionary Activity for a minor household unit infringing the 6m separation distance and a detached garage for the main dwelling within the front yard.	Non-Notified Approved 29/03/10
G	Independent Commissioner	V and J Jowsey R55613	406C Sunnyside Road Coatesville	For consent to a Non-Complying Activity to create one additional allotment	Limited Notification Approved 26/03/10

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Team Leader Resource Management	J & D Huffman L56178	200 School Road, Muriwai Valley	For consent to a Discretionary Activity for a proposed accessory building.	Non-Notified Approved 29/03/10
A	Team Leader Resource Management	Totalspan Westgate and R Hulme L56187	33 Bald Hill Road, Waitoki	For consent to a Discretionary Activity for the construction of a shed.	Non-Notified Approved 26/03/10
G	Team Leader Resource Management	M Creighton R55177	124 Shelly Beach Road, Maretahi	For consent to a Non-complying Activity to create seven additional rural-residential lots by protecting wetland.	Non-Notified Approved 30/03/10
A	Team Leader Resource Management	A & L Down L55968	Ashwood Avenue, Dairy Flat	For consent to a Discretionary activity to construct a new dwelling and carry out earthworks with a volume of 669m ³ to provide a flat building platform.	Non-Notified Approved 30/03/10
G	Team Leader Resource Management	Eglinton Wainui Trust R55730	293 Haruru Road Tahekeroa	Subdivision of the underlying site which is comprised of two titles with a combined area of 192.1215ha. It is proposed to carry out a boundary relocation to produce Lot 2 of 15.6 ha. to be amalgamated with an adjoining title as Stage 1 and to create Lot 3 of 1.1 ha in lieu of protecting 3.7 ha of native bush as Stage 2. Lot 1 the balance lot contains the existing dwelling and areas of bush previously protected	Non-Notified Approved 31/03/10
G	Land Surveyor	B Andrew R56121	84 Hinau Road, Muriwai Valley	For consent to form a legal right of way pursuant to sections 348 of the Local Government Act 1974.	Non-Notified Approved 31/03/10
A	Team Leader Resource Management	A Lett L56174	121 Oraha Road, Huapai	For consent to a Discretionary Activity to construct a shed 4m from the north eastern boundary infringing the side yard.	Non-Notified Approved 01/04/10
G	Land Surveyor	M & J Tindale R55923	128 Forestry Road, Waitoki	For consent to a Discretionary Activity for a two lot subdivision based on the protection of 5200m ² of significant wetland, it is also proposed to vest to Council 1.02ha as esplanade reserve.	Non-Notified Approved 29/03/10
G	Team Leader Resource Management	Wightman Developments Ltd R56016	Fletcher Road, Woodhill	For consent to a Non-Complying Activity creating two additional lots based on the protection of significant wetland and a boundary relocation prior to section 224c being issued, earthworks in excess of 1000m ³ being approximately 7610m ³ of cut and 3290m ³ of fill and the modification of more than 500m ² of a natural watercourse.	Non-Notified Approved 01/04/10
A	Team Leader Resource Management	P & T Fletcher L56152	513 Shelly Beach Road, Maretahi	For consent to a controlled Activity to construct a new shed in the West Coast Rural Policy area (variation 132).	Non-Notified Approved 06/04/10

HIBISCUS COAST WARD

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Senior Planner	L Chase & E Lyman L56146	Hibiscus Coast Highway, Orewa	For consent to a Restricted Discretionary Activity for a temporary activity, a half marathon even for a maximum of 1,000 participants, on the Orewa reserve.	Non-Notified Approved 24/03/10
A	Senior Planner Resource Management	Sierra Homes L56086	191 Millwater Parkway Silverdale	For consent to a Discretionary Activity to construct a new dwelling and carry out earthworks with a volume of 254m ³ to provide a flat building platform and includes retaining walls intercepting a line at 1 vertical and 2 horizontal from ground level.	Non-Notified Approved 25/03/10
A	Senior Planner	Sierra Homes L56139	193 Millwater Parkway, Silverdale	For consent to a Restricted Discretionary Activity to construct a new dwelling and construct two retaining walls interception a line at 1 vertical and 2 horizontal from ground level on the southern and northern boundaries.	Non-Notified Approved 26/03/10
G	Team Leader Resource Management	S & G Cox R56051	11 Duncansby Road, Red Beach	For consent to a Non-Complying Activity to enable the subdivision of the subject site into two residential lots.	Non-Notified Approved 26/03/10
A	Team Leader Resource Management	Cabra Holdings Ltd L56177	Waldorf Crescent, Orewa	For consent to a Restricted Discretionary Activity for earthworks of 30m ³ which involve excavations intercepting a line drawn at 1 vertical to 2 horizontal from the ground level at the eastern boundary.	Non-Notified Approved 29/03/10
A	Team Leader Resource Management	S & M Smith L56071	21 Montpellier Heights Arkles Bay	For consent to a Restricted Discretionary Activity to carry out earthworks of 642m ³ exceeding the 1:2 slope for new dwelling.	Non-Notified Approved 30/03/10
A	Council Arborist Resource Management	J Stewart L56077	1392 Whangaparaoa Road, Army Bay	For consent to a Discretionary Activity to remove a red gum tree which flowers contaminate the tank water.	Non-Notified Approved 30/03/10
A	Team Leader Resource Management	Hibiscus Coast Assc Football Club L56156	162 Brightside Road Stanmore Bay	Consent for additions and alterations to existing clubrooms that will exceed 150m ² of gross floor area and that infringe the 10 metre side yard.	Non-Notified Approved 31/03/10
A	Senior Planner	Navigation Homes L56154	58 Waldorf Crescent, Orewa	For consent to a Restricted Discretionary Activity to construct a new dwelling and carry out earthworks.	Non-Notified Approved 31/03/10
A	Senior Planner	Sierra Homes L56144	197 Millwater Parkway, Silverdale	For consent to a Restricted Discretionary Activity for earthworks.	Non-Notified Approved 31/03/10
A	Team Leader Resource Management	Horncastle Homes Ltd L56149	18 Galbraith Greens, Silverdale	For consent to a Discretionary activity for a new dwelling requiring earthworks.	Non-Notified Approved 01/04/10

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Team Leader Resource Management	Whangaparaoa Golf Club Incorporated R56169	1337 Whangaparaoa Road, Army Bay	For consent to a Non-Complying Activity to subdivide an existing dwelling from the balance of the Golf Course site, resulting in a residential site of 700m ² in area and the balance site being 40.821 ha in area.	Non-Notified Approved 01/04/10
A	Team Leader Resource Management	Sierra Homes L56076	187 Millwater Parkway Silverdale	Application to construct and operate a show home with associated signage within the Special 19 – Garden Residential Policy Area zoned site. Consent is also required for an infringement of the height in relation to boundary requirement along the south boundary, and to permit flag poles within the front yard. Work will further be required within the 1 to 2 plane.	Non-Notified Approved 31/03/10
A	Team Leader Resource Management	Tergil Investments Ltd L56052	29 Old North Road, Orewa	For consent to a Non-Complying Activity to construct a new residential dwelling within the Residential Landscape Protection zone.	Non-Notified Approved 06/04/10
A	Team Leader Resource Management	Red Beach Primary School L56141	20 Albert Hall Drive, Red Beach	For an Outline Plan of Works for the removal of the existing dental clinic and associated vegetation removal and earthworks and the construction of new staff facilities building.	Non-Notified Approved 06/04/10

RECOMMENDATION:

That the report on decisions relating to:

- A Land Use Resource Consent Applications [s.88 of the Resource Management Act 1991] (Controlled Activity, Discretionary Activity, Non-Complying Activity, Preservation or Conservation of Landscape);**
- B Lapsing of Consents [s.125 of the Resource Management Act 1991];**
- C Change or Cancellation of Consent Conditions by Consent Holder [s.127 of the Resource Management Act 1991];**
- D Existing Uses [s.10 of the Resource Management Act 1991];**
- E Non-Conforming Buildings [s.10 of the Resource Management Act 1991];**
- F Any Other Decision Relating to Activities;**
- G Subdivision Consent [s.105 of the Resource Management Act 1991] and Development Plans [s.409];**

made pursuant to delegated authority from the Council, be received.

SUBJECT PUBLIC EXCLUDED

That the public be excluded from the following parts of the proceedings of this meeting, namely:

Agenda Item No(s). 10, 11, 12, 13, 14 and 15

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under section 48(1) for the passing of this resolution
Appeals / Proposed District Plan 2000	Refer grounds	That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Local Authority to deliberate in private on its decision or recommendation in any proceedings before it where: (i) a right of appeal lies to any court or tribunal against the final decision of the Local Authority in those proceedings; or (ii) the Local Authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings. (section 48(1)(d) Local Government Official Information and Meetings Act 1987.)

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