



Ashburton District Council

AGENDA

A **MEETING** of the **ENVIRONMENTAL SERVICES COMMITTEE** will be held as follows:

Date: Thursday 5 February 2008

Time: 1.30 pm

Venue: Council Chamber
5 Baring Square West
Ashburton

B LESTER
Chief Executive

MEMBERS:

Cr R J Kilworth (Chairman)
Cr R C Beavan
Cr I J Burgess
Cr J A Kingsbury
Cr L J Leadley
Cr P W Reveley
Cr J Sparks
Cr B A Tasker
Mayor M B O'Malley (ex officio)

AGENDA

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29 January 2009

ASHBURTON DISTRICT COUNCIL REPORT

FILE NO: 2/17/3 cc 6/4/8 SWIM
DATE: 5 February 2009
REPORT TO: Environmental Services Committee
FROM: Environmental Services Manager
SUBJECT: Water Storage Reservoirs and the Fencing of Swimming Pools Act 1987

5. WATER STORAGE RESERVOIRS AND THE FENCING OF SWIMMING POOLS ACT 1987

5.1 SUMMARY

Staff have raised concerns over the practice of siting on-farm water storage reservoirs in close proximity to dwellings; they hold concerns in such cases for the responsibility that they exercise in granting a code compliance certificate to certify that a new dwelling complies in all respects with the Building Act 2004, if a water storage reservoir is sited in close proximity and could present a drowning hazard to small children. A related issue is that of how the reservoirs are being used in some cases, for bathing, this has serious implications relating to the Fencing of Swimming Pools Act 1987.

This report provides the Committee with specialist legal advice on this matter and attempts to progress a policy position for the Council that can be applied by staff when dealing with regulatory matters involving Reservoirs.

5.2 RECOMMENDATION

- “1. That the report be received.
2. That the position of the Ashburton District Council with regard to on-farm water storage reservoirs be that such structures are NOT swimming pools as defined by the Fencing of Swimming Pools Act 1987 unless they are used for bathing.
3. That Council carries out consultation with the community to raise awareness of this matter so that land owners are made aware of the implications of the Fencing of Swimming Pools Act 1987, if they choose to use an on-farm water storage reservoir for the purposes of bathing; and that such consultation also raise awareness of the need to protect children from the risk of drowning where on-farm water storage reservoirs are located in close proximity to dwellings.
4. That Council opens dialogue with the Ashburton Aquatic Park Trust regarding Lake Hood and the Fencing of Swimming Pools Act 1987, so that once the review of this Act is completed that the Trust can address compliance issues for the lake (this could involve an exemption being granted by the Council along with other measures such a warning signs and other water safety measures being taken).”

5.3 BACKGROUND

Farm development utilizing irrigation is occurring across the irrigable land of the district. It is common for on-farm water storage reservoirs to be constructed to store either ground water or water taken from the Rangitata Diversion Races, so that it can be available on demand for irrigation.

Reservoirs that store less than 20,000 cubic metres and have a depth not exceeding three metres are exempt from the need for a building consent. Reservoirs greater than this capacity and depth are classified as 'large dams' and are subject to the Building Act. They are required to have a building consent and a safety assurance programme as well as be certified by a building consent authority. It is likely that Environment Canterbury will soon become accredited as the building consent authority for large dams and that ECan will monitor the compliance of reservoirs that qualify as large dams in accordance with the Building Act 2004, along with the water rights held for them.

The accompanying legal advice confirms that reservoirs, which are located in close proximity to dwellings, cannot be considered to be a 'Swimming Pool' in terms of the Fencing of Swimming Pools Act 1987. However, the advice does raise concerns that should a reservoir be used for bathing, then the Fencing of Swimming Pools Act 1987 will apply to the reservoir and all requirements of that act become a legal obligation to the land owner, including erecting complying fencing.

Pages 11-24

5.4 STATUTORY IMPLICATIONS

The Building Act 2004, subpart 7 - sections 133a to 162 are applicable.

The Fencing of Swimming Pools Act 1987 (generally) requires that man-made structures with a depth of 400 mm and intended for swimming are required to be fenced, unless exempted (exemptions of some pools are provided for in the Act and a review of the Act is currently underway).

The Ashburton District Council is required to discharge responsibilities contained in the above acts. A Building Official issuing a code compliance certificate must be satisfied that in all respects, new building work complies with the Act and building codes. Concern is held that an on-farm water storage reservoir in close proximity to a new dwelling does not comply with the building code and that in the event of an accidental drowning that some implied responsibility could fall on the Building Official responsible for the issue of a code compliance certificate.

5.5 OPTIONS AND RISKS CONSIDERED

1. Do nothing and allow people to become aware of the implications of this matter should a drowning occur.
2. Carry out public consultation to raise awareness with owners to increase safety of young persons.
3. Inspect all reservoirs for evidence of them being used for bathing and enforce the Fencing of Swimming Pools Act 1987.

5.6 STRATEGIC LINKS

Outcome 1: A thriving and diverse local economy that provides the foundation for a quality lifestyle

- c. Ashburton District has a growing population enjoying a high quality of life.

Outcome 5: Healthy, active people enjoying a good quality of life in a caring and safe community

- d. Young people are supported to lead healthy and safe lives and are active participants in community life.

5.7 CONSULTATION

This matter will require considerable public consultation to raise awareness of statutory requirements as they relate to the Fencing of Swimming Pools Act 1987. Federated Farmers of NZ and the Aquatic Park Trust are two parties that should have dedicated consultation, plus a media release and newspaper articles are other mechanisms that could be used.

5.8 FINANCIAL IMPLICATIONS

No financial implications are anticipated with the proposed course of action.

Prepared By

J McKENZIE

Environmental Services Manager

Approved By

B LESTER

Chief Executive

ACTIVITY REPORTS

6.1 BUILDING SERVICES

6.1.1 Building Consents

The number of building consent applications received for the month of December was 88 with a total value of \$31.5m. The number of applications received during the legislated working days (ending 24 December) was 64. This leaves 24 applications received between 21-24 December which will statistically be included into the January 2009 numbers. The value of these 24 applications is approximately \$19.5m. Among these 24 applications are some portions of the Barrhill Chertsey Irrigation Scheme consisting of three building consent applications and additional applications are still expected for other stages of the project, including the powerhouses.

This number of applications is a decline from the previous month but is an increase of 15 applications over December 2007. To date the input of applications has remained at a fairly steady rate to date.

In speaking to local builders, the level of work loads is varied. Some builders have indicated that enquiries for new homes are leaning towards higher end homes. This may have some effect on builders whose primary market share is the lower to medium price range.

- **Issues**

The current level of building consents processed within the twenty day time frame has declined to approximately 56.2 %. The level to which information submitted is required to be assessed has increased due to BCA accreditation. This has led to more time needed to process building consents to show compliance with the Building Code and effectively manage the Council's risk. In an attempt to bring numbers down, outside contactors are being utilised. This is at a higher cost than "in house" processing.

As part of the accreditation process, the Council was required to calculate the number of staff required to carry out BCA functions. The matrix which was utilized determined that staffing levels should be 10 building officials and three administration staff. The current levels are 5 building officials and 1.75 administration staff. This deficiency in staffing levels has significantly contributed to the fall in the number of building consents processed on time.

Changes to systems and procedures have been implemented in the last month to streamline some operations. Inspections are now booked electronically by Customer Services utilizing the Outlook Calendar. This enables the customer to be given a specific time to expect the Building Official on site.

A new filing system has been implemented for current building consents. Building consents are now held in the building office until the code compliance certificate is issued, at which time the full file is placed on the property file. The system enables all information is centrally stored for easy access. In the future this will cause an issue for storage space which will need to be addressed.

Changes have also been made to the efforts of cost recovery. Traditionally charges for plan processing have not consistently been recovered. The Council's schedule of Fees & Charges allows for "T&C" (Time & Charges). The fees are actively and consistently being recovered from the customer. There also will be a revised schedule of Fees & Charges proposed. This will provide a more equitable breakdown of fees according to the value of proposed work and engendering a "user pays" policy.

- **Outlook**

The current economic climate makes it impossible to predict what trend building will take in our district. A downturn in building activity is expected, however since the district is not following current trends it is felt that there maybe some moderation for Mid Canterbury region. The local trends will be tracked on a monthly basis to keep apprised of building activity throughout the district.

Building consent data and activity graphs are attached.

Pages 25-32

6.1.2 Financial Report

Variance comments for period to 31 December 2008 are attached.

Pages 33-34

6.2 PLANNING

6.2.1 Proposed Plan Change 6 – Boundary Adjustments

The hearing of the submissions received took place on 2 December 2008, before the Hearings Panel of Crs Kilworth, Beaven and Leadley. The decisions were sent to all submitters on 9 December 2008, and the 30 day period for lodging an Environment Court appeal closes on Wednesday 11 February. No appeals have been lodged to date.

6.2.2 Lake Hood Private Plan Change

The Lake Hood Private Plan Change proposes to provide an appropriate zoning and District Plan framework to enable an extension to the Lake Hood Aquatic Park. It includes the creation and ongoing use of a recreational lake by the public and residential activities. The Lake Hood Private Plan Change was notified on Saturday 20 December and submissions close on Tuesday 10 February 2009.

6.2.3 Ashburton Railway Station – Redson Corporating Holdings

The Council's decision, (via an Independent Hearing Commissioner) to retain the Ashburton Railway Station by declining the resource consent for demolition, was appealed to the Environment Court by the applicant. Environment Court mediation between the parties took place on Friday 12 December 2008, at the Ashburton District Court and the outcome was for the parties to the appeal to form a working party to examine options for the retention and viability of the Railway Station. The Court requires steady progress and has set the first progress report at 31 March 2009. The Railway Station Working Party will meet on 9 February. Council's appointees to the Working Party are Cr Kilworth and the Manager of Democracy and Community Services.

6.2.4 Ashburton Community Water Trust Interim Decision Appeal

The interim decision released by the joint Hearings Panel of Commissioners acting for both Environment Canterbury and the Ashburton District Council has been appealed to the Environment Court by Synlait. The decision was released in November 2008, and the appeal is dated 16 January 2009. Council's Solicitor, Aidan Prebble, has been instructed to act for the District Council in this matter.

6.2.5 Weathertight Homes Resolution Service – Claim Settlement

Council has now paid a share of the settlement for a claim that has been progressed through the Weathertight Homes Resolution Service to the value of \$15,019.76. This value involves legal services and the financial settlement to the home owners as a result of a mediated settlement. The majority of the remediation costs are being funded by those directly involved in the construction work.

6.2.6 Resource Consents Granted by Delegated Authority

Land use and subdivision consent data attached.

Pages 35-40

6.3 REGULATORY

6.3.1 Staff

Don Boyd has joined the Department as the Trade Wastes Officer.

Amy Hughes is due to take up the vacant Environmental Health Officer post on 24 February 2009.

Julie Overton will leave the Department at the end of February. It is intended to employ a part time Licensing Officer in the licensing area to assist Alison Batchelor in maintaining the Liquor and Gambling Process.

The Regulatory Team delivered a “Departmental Showcase” presentation to Council Staff.

6.3.2 Meetings

During the reporting period meetings were held with:

- Hill Laboratories ref Trade Waste monitoring.
- CHUBB (now First Security) ref animal control issues.
- The Joint Working Group on Air Quality with ECan.

Adrian Humphries delivered a presentation to the Mid Canterbury Doctors Forum on public Health.

6.3.3 Bylaws

Signs for dog control at Lakes Clearwater and Camp were erected before Christmas.

The requirement for signage relating to the Methven glass ban, illegal dumping, camping restrictions and dog control is still being carried out and will take some time. It is also likely that there will be significant cost involved.

Funding for fencing of a dog exercise area has been included in the budget for the new financial year.

6.3.4 Environmental Health

- **Food safety**
 - 1 new food premises was inspected and graded; it displayed an Excellent standard of food safety.

- 1 food complaint was investigated. This related to alleged rodent infestation of a food manufacturer and was requested by the District Health Board.
- 2 new mobile shop licenses were issued.
- 3 food businesses have indicated an interest in taking part in the Voluntary Implementation Programme for the new Food Act.

- **Hairdressers**

- One new hairdressing salon was inspected and registered.

- **Nuisances**

- A total of 171 noise complaints were received; 43 noise directions and one RMA Abatement Notice were issued.
- 1 complaint of smoke nuisance was received and investigated.
- 3 complaints relating to cats have been investigated.
- 3 complaints about untidy/unhealthy sections have been received. In all cases action has been taken by the owners to remedy the situation.
- 1 visit was made to a premises where bees were causing a problem.
- 2 Noise complaints relating to commercial premises were investigated and resolved.

- **Disease**

During the reporting period the following disease notifications were made from Ashburton to the District Health Board:

Disease	Number	Remarks
Campylobacter	19	None of these figures are particularly remarkable.
Pertussis	1	
Giardiasis	2	
Leptospirosis	2	
Salmonella	1	

No notifications were passed on to Ashburton District Council for further investigation, hence it is assumed that no cases were found to be related and considered to be outbreaks.

6.3.5 Water Monitoring

Sampling indicates that good results have been achieved across all public supplies in the District. Also, no problems were identified with the private supplies which are monitored under contract.

6.3.6 General Inspections

In the reporting period, the following inspections have been carried out:

- 4 building warrant of fitness audits.
- 12 litter infringements were served.
- 14 complaints of littering/illegal dumping were received. Nine investigations of illegal dumping activities were carried out and 12 infringement notices issued.
- 10 Planning matters; 1 abatement notice was complied with, 3 matters resolved relating to signs, 2 sites continue to be monitored, 4 investigations are ongoing.
- 25 Notices were issued on fire hazardous sections. Two sections which had not been made safe were cut by Council contractors and invoices issued.

6.3.7 Gravel Pits

There is an ongoing issue with the use of former gravel pits in the district for disposal of waste. There are 268 pits in the district which are controlled by Council and some of these are being misused. In order to effectively regulate the use of these pits, the Regulatory Department, in cooperation with the Property and Operations departments, is endeavouring to identify a system that will allow the legal disposal of specific waste in certain pits and prevent illegal dumping.

6.3.8 Liquor Licensing

The following issues are raised:

- The appeal in the Christchurch High Court by Combined Rural Traders (CRT) was heard. The applicant had appealed against the decision of the Liquor Licensing Authority which declined their application for an off licence in June last year. The Judge's decision has been reserved and should be released imminently.
- The Liquor Licensing Authority was in Ashburton on 2 December to consider a number of applications, all regarding opposed applications for managers' certificates. All decisions of the DLA were upheld.

6.3.9 Animal Control

- **Registration status**

Since the last meeting dogs unregistered from last year have been identified and registered. The annual breakdown is as follows:

Category	Number
Dogs registered in 2007/ 2008	5512
New registrations	999
Dogs re-registered from 2006/2007	5412
2007/ 2008 registered dogs not accounted for	100
Percentage re-registered in 2007/2008	98.2%

- **Court Cases**

Since the last meeting one case is going before the court; for a dog charging and biting passers-by on the footpath.

- **Dog Control Act – Infringement Notices**

Fifty one infringement notices have been served since the last meeting making a total of 185 since 1 July 2008.

- **Impounding**

Sixty three dogs have been impounded since the last meeting. Five dogs are still in pound.

- **Rehoming**

Twelve dogs have been rehomed direct to new owners.

- **Dog and stock control report**

The report for December 2008 is attached.

Pages 41-43

- **Animal Control Contract**

The Environmental Services Manager and key staff are holding weekly meetings to address the issue of re-tendering the animal control contract. It is hoped that we will be in a position to advertise for tenders in the next month.

J McKENZIE

Environmental Services Manager