

COUNCIL MEETING AGENDA

25 MAY 2010

3. STADIUM ACCESS – SOUTHLAND KINDERGARTEN ASSOCIATION

(Memo from Chief Executive – 10.5.10)

At the Council meeting held on 13 April, a request from the Southland Kindergarten Association for free access to the MLT Event Centre by local kindergartens was considered. The Council resolved that the Association's request for free usage be referred to the Ministry of Education, with an invitation for the Ministry to enter into negotiations with a payment of a capital sum commensurate with benefit being sought by the Association.

- 1 Please find enclosed a letter received from the Ministry of Education in response to this request. The letter is a little perplexing as the Ministry of Education acknowledges that it funds and regulates early childhood education services, yet it believes it has no authority or responsibility to enter into negotiations with the Council on behalf of the Southland Kindergarten Association. The letter's silence on any funding contribution suggests that the Ministry of Education is not interested in advancing funds to enable free access to the Event Centre by kindergartens, to be a possibility.

While the Council could certainly negotiate directly with the Southland Kindergarten Association, it would seem rather pointless if any negotiations that took place with the Association were dependent on a suitable funding contribution being made by the Ministry of Education.

RECOMMENDATION

THAT the letter be received,

AND THAT the Council notify the Southland Kindergarten Association of the Ministry of Education's preference to not be involved in any negotiations regarding free access to the MLT Event Centre by local kindergartens.

4. 2009-2019 LONG TERM COUNCIL COMMUNITY PLANS –
EXAMPLES OF GOOD PRACTICE

(Memo from Chief Executive – 10.5.10)

- 1 Please find enclosed a letter from Ann Webster, Assistant Auditor-General, Research and Development advising that the performance measures contained within the Gore District Council's LTCCP have been selected as being appropriate for inclusion in a proposed report to showcase better practice performance measures from selected LTCCPs.

The letter was a pleasant and welcome surprise. A good deal of work was invested in overhauling the Council's performance measures in the 2009-2019 LTCCP. Therefore it is pleasing to learn that this work was both successful and has been recognised as good practice for a Council of our size.

RECOMMENDATION

THAT the letter be received and noted.

5. SOUTHERN FIELD DAYS: APPLICATION FOR FEE WAIVER

(Memo from Chief Executive – 10.5.10)

- ✦ Please find enclosed a letter from the secretary of the Southern Field Days seeking the Council's favourable consideration for a waiver of the fee of \$2,500 incurred for building control inspection services during the 2010 Southern Field Days.

Councillors will no doubt be aware that the \$2,500 fee was significantly discounted when approved by the Council's Emergency Committee. The Committee was advised in January that application of the approved fees and charges with no discount would have resulted in total fees being in the order of \$6,500.

Given this discount and the fact that the Building Control Department operates without any ratepayer input and is at present struggling to maintain a balanced budget, it is not possible for me to submit a positive recommendation on this matter.

RECOMMENDATION

THAT the request from Southern Field Days for a waiver of all building control fees associated with its 2010 event, be declined.

6. COMPLAINTS LODGED AGAINST THE GORE DISTRICT COUNCIL
BY DOUGLAS WALKER: UPDATE

(Memo from Chief Executive – 03.05.10)

1. Purpose of Report

- 1.1 The purpose of this report is to provide the Council with an update on the numerous complaints lodged against the Gore District Council by former Chief Financial Officer, Mr Douglas Walker.
- 1.2 Due to the very public manner in which Mr Walker raised his grievances, and the reports in news media at the time I am setting out the results of the various complaints now they are all concluded.

2. Background

- 2.1 Mr Walker commenced employment with the Gore District Council as an accountant on 3 February 2004. Subsequently on 1 November 2005 he was promoted to the position of Chief Financial Officer.
- 2.2 Mr Walker was in the process of being appointed to a more senior position of General Manager Corporate Services when a number of issues relating to his conduct, came to light. The allegations made by other staff were serious.
- 2.3 An employment investigation into these allegations was conducted towards the end of 2006. The investigation could not be completed due to Mr Walker being too stressed to attend a second interview.
- 2.4 Consequently on 19 January 2007, Mr Walker resigned from his employment with the Gore District Council. Mr Walker's resignation, together with the sudden departure of former Building Control Manager, Mr Murray Martin led to very terse public exchanges between four former Councillors and the balance of the then Council, along with the writer, over the Council's employment practices.
- 2.5 Following the resignation of the four Councillors, Mr Walker who by that time had relocated to London, distributed a statutory declaration making a number of remarkable and unsubstantiated allegations in relation to harassment,

bullying and the management of the Council's finances. This statutory declaration was distributed widely in the community in the lead up to the 2007 Local Body Elections and was also afforded prominent publicity in local newspapers.

2.6 It was against this background that a number of complaints were lodged by Mr Walker and his supporters. I am now in a position to be able to report on the outcome on each of the complaints lodged or threatened.

3. Personal Grievance Under the Employment Relations Act 2000

3.1 Mr Walker's, then lawyer, first notified the Council of a claim of constructive dismissal and therefore a personal grievance under the Employment Relations Act in a letter dated 18 January 2007. As this letter constituted raising a personal grievance with the Council, Mr Walker then had three years in which to file proceedings with the Employment Relations Authority.

3.2 Despite numerous public statements that he was working on or intending to file proceedings for a personal grievance with the Authority, this never materialised.

3.3 I am not surprised by this outcome as there was no legal or factual basis for any of his allegations.

3.4 The upshot of all of this is that Mr Walker is now out of time and cannot bring any proceedings under the Employment Relations Act against the Gore District Council even if they had merit which they don't.

4. Complaint to Auditor-General

4.1 On the strength of the statutory declaration, Mr Walker and others lodged complaints with the Auditor-General concerning the Council's debt management policy, allegations of rural roading subsidies being utilised to prop up urban roading, the management of the Rayonier Fund and disclosure of severance payments. These complaints were dismissed by the Auditor-General in September 2007.

4.2 However, some of the complainants were not happy about the roading subsidy issue in particular. These parties were Eastern Southland Federated Farmers, former Councillor Sally

McIntyre and Mr Walker himself. Following further analysis by the Auditor-General, including a site visit by the Council's auditors, Deloitte, the Auditor-General affirmed his earlier decision.

5. Complaint to the Department of Labour

- 5.1 In late 2007 Mr Walker, along with former Councillors and some former staff, lodged a complaint to the Department of Labour alleging that the Council had unsafe work practices in relation to the containment of harassment and stress. As previously advised to the Council this complaint was not upheld, with the Department finding no evidence of workplace bullying or harassment.
- 5.2 The Council was however issued with an Improvement Notice because it did not have specific policies on stress and harassment. These policies have subsequently been put in place.

6. Complaint to the New Zealand Institute of Chartered Accountants

- 6.1 Given Mr Walker's reckless and untrue allegations made in a very public setting, I lodged in my personal capacity, a complaint to the New Zealand Institute of Chartered Accountants. My complaint alleged that Mr Walker had committed a breach of the Institute's Code of Ethics and Rules.
- 6.2 The complaint process conducted by the New Zealand Institute of Chartered Accountants is private. I can advise however that the complaint was dealt with in a satisfactory manner.

7. Complaint to the Privacy Commissioner

- 7.1 Mr Walker's next port of call was to lodge a complaint to the Privacy Commissioner. This complaint centred around the use of personal information relating to Mr Walker in my complaint to the New Zealand Institute of Chartered Accountants.
- 7.2 The personal information was obtained from the Council with the consent of His Worship for the express purpose of assisting my complaint to the Institute. The information

provided to me was very positive towards Mr Walker but significantly, completely contradicted the allegations made in his statutory declaration.

- 7.3 The Council released the information to me under the Local Government Official Information and Meetings Act on the basis that it was a matter of public interest and that this interest outweighed any privacy concerns that Mr Walker may have held. Another feature of the Council's decision was that all of the material would have been disclosed publicly in any personal grievance proceeding brought by Mr Walker.
- 7.4 I would also note that the Council at that time had also submitted an official information request to the Department of Labour on all relevant information it had obtained from former staff and elected members who lodged complaints against the Council.
- 7.5 After a full investigation the Privacy Commissioner ruled that the Local Government Official Information and Meetings Act trumped the Privacy Act and therefore the complaint could be taken no further.

8. Complaint to the Office of the Ombudsmen

- 8.1 Mr Walker not surprisingly then lodged a complaint to the Office of the Ombudsmen alleging that the Council acted improperly in releasing personal information about him under the Local Government Official Information and Meetings Act. The Council was able to provide the Office of the Ombudsmen with an extraordinary amount of information pertaining to public statements made by Mr Walker and his supporters which pointed to a high degree of public interest about his grievances. Further, the Council was able to point out that Mr Walker was at the forefront of leading the charge to bring matters of concern into the public arena.
- 8.2 The Ombudsman, David McGee agreed and once furnished with all the relevant information simply notified the Council that Mr Walker's complaint was not sustained.

9. Conclusion

- 9.1 Mr Walker appears to have used every relevant taxpayer funded agency to advance his grievances. Along with his

small band of supporters, his complaints have been dismissed by each agency following a full and careful enquiry.

RECOMMENDATION

THAT this report be received.

7. RESOURCE MANAGEMENT DISCOUNT POLICY

(Memo from Planning Consultant – 15.5.10)

The Minister for the Environment has finalised details of the Resource Management Discount Policy. Under the initial draft a discount of 5% per day applied for the first five days late in processing resource consent applications, followed by a sliding scale over time to 80% of fee normally applying. It is now decided to enforce a discount of 1% per working day up to 50% of the fee. Attached is a copy of the paper from the Minister to Cabinet.

The approach now adopted is fairer than that previously, but will result in administrative problems particularly where a consent is processed one or two days late, requiring a refund of between \$1.50 and \$8.00 on our current fee system.

The regulations were due to come into force on 1 July. As the regulations are still being drafted and will not come into force until 28 days after the regulation appears in the Gazette, the regulations are not likely to come into force before 1 August.

In consulting on the regulations considerable debate took place as to how timeframes would be calculated under the Act. Except for non-notified applications, where no additional information or written approvals are requested by Council, there is no clear list of the total number of days allowed by the Act to process an application. A complex flow chart will need to be developed for each application showing all possible steps and the number of days allowed for each. It will be necessary to then aggregate these to determine total allowed days.

Other subtleties include:

- The first statutory working day for a resource consent application being the first full day after the application is received.
- The clock does not stop for a consent until notification of the decision is sent to the applicant. This is not the same as a decision being made on the application.
- When sending requests for further information, the date of sending the request, the date of receiving a reply and the time between does not count. This is the same with stopping and starting the clock for hearings (as days between the beginning and end of a hearing do not count), requesting reports and waiting for the applicant to gain written approvals.

- If an application has a timeframe extended under s37 the timeframe which is counted for the purpose of the regulation will be the altered timeframe, not the original timeframe.

As the main issue in the regulations is known it is possible to put in place additional time monitoring systems for consents. Regard will also need to be given in assessing how fees are charged on resource consents in the future. A separate report will be prepared on this issue as part of the annual consideration of Council's charges and fees.

The regulations will also set out additional matters such as;

- the circumstances when a Council can determine it is not responsible for the late processing and no refund is required
- the process for issuing/obtaining a refund.

Until the regulations are issued much of the detail can be finalised. A further report will be made to Council at that time.

RECOMMENDATION

THAT the report be received.

EXCLUSION OF THE PUBLIC

His Worship to move

I move that the public be excluded from the following parts of the proceedings of this meeting, namely the items as listed below.

The general subject of each matter to be considered while the public is excluded, the reason for passing the 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:

<u>General Subject Matter</u>	<u>Reason for passing this resolution in relation to each matter</u>	<u>Grounds under Section 48(1) for the passing of this Resolution</u>
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Confirmation of Minutes

Confirmation of Minutes of the Ordinary Meeting of the Gore District Council, held in Committee, on Tuesday 13 April 2010.

Confirmation of the report of the meeting of the Finance and Policy Committee, held in Committee, on Tuesday 4 May 2010.

Other Business

MLT Event Centre – Proposed Transfer of ownership.	Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and maintain legal professional privilege.	7 (2) (i) and 7 (2) (g)
Refuse Contractors Gate Fee Renewal		