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3 March 2000

WAITAKERE CITY COUNCIL

- 7 MAR 2000

Mr Tom Didovich  
 Animal Welfare Services  
 Waitakere City Council  
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 AUCKLAND MAIL CENTRE

### FUNDING FROM RATES FOR ANIMAL WELFARE

- 1 You have asked for our advice as to whether a territorial authority is legally entitled to apply rates revenue towards animal welfare activities, including enforcement action, under the Animal Welfare Act 1999. The proposal is that Council employees will be appointed as inspectors under the Animal Welfare Act, under some contractual or other arrangement with AWINZ once it achieves "approved organisation" status under the Act.
- 2 We assume that the issue arises because Council will wish to contribute to the operating costs of AWINZ and to pay Council staff while acting as inspectors. For the reasons set out in this report, we consider that the Council is able to apply funds from its general revenues for these purposes.
- 3 Section 6(2)(b) of the Dog Control Act 1996 specifically authorises a territorial authority to contribute financially to an organisation whose objects include matters relevant to the welfare of dogs. Section 9 of the Dog Control Act states that money received by a territorial authority under that Act may be expended only for purposes which the Act authorises. Because the Act authorises the making of grants to dog welfare organisations, Council may apply funding obtained under that Act to an organisation such as AWINZ.
- 4 There is nothing about the Dog Control Act that limits the source of grants authorised under s.6, or other expenditure contemplated by that Act, to income received under the Act. In other words, Council may expend revenue from other sources to funding its activities, and grants made, under the Dog Control Act 1996. However, the activities of AWINZ, and presumably of the Council's employees who may act as inspectors, extend beyond matters of dog welfare and it is therefore arguably that Council cannot fully justify its expenditure on matters covered by the Animal Welfare Act 1999 as coming within the ambit of the Dog Control Act 1996.

- 5 There is no express provision in the Animal Welfare Act which either authorises or contemplates the involvement of a territorial authority directly in the implementation of that Act. You have referred to the Animals Protection Act 1960 (the previous statute) as allowing a territorial authority to employ warranted inspectors, in contrast to the new Act which does not allow this *per se*. Section 9 of the Animals Protection Act 1960, which provided for the appointment of inspectors, made no particular reference to territorial authorities. Under that Act an inspector could be appointed under the State Sector Act (ie a Crown employee) or the Minister could appoint any other "suitable person".
- 6 This provision is largely carried through into s 124 of the Animal Welfare Act 1999 in that under subsection (1) the Minister may appoint an inspector under the State Sector Act. Under subsection (2) the Minister may appoint somebody on the recommendation of an approved organisation.
- 7 While the 1999 Act contemplates that an inspector appointed under subsection (2) will be employed by, or otherwise associated with, an approved organisation, there is no express limitation to that effect. Therefore, just as under the previous legislation, a subsection (2) appointment could be an employee of a local authority, so this can be the case under the 1999 statute.
- 8 We do not therefore consider that the differences between the two statutes in any way prohibit the continuation of the previous situation by which Council employees were eligible for appointment as inspectors.
- 9 The issue that has been raised by the MAF policy adviser is whether Council has the power to fund animal welfare activities otherwise than pursuant to the Dog Control Act 1996. By our analysis, the situation under the Animal Welfare Act is not much different to what it was under the Animals Protection Act 1960. In other words, if it was lawful for Council to be involved under the previous legislation, we do not see that the new statute has altered the position.
- 10 For it to be unlawful for the Council to apply rates revenue to animal welfare purposes, it would need to be *ultra vires* the Council to involve itself in those activities at all. In other words, if the Council is legally entitled to be involved in animal welfare activities, then it is entitled to fund its involvement out of revenue.
- 11 Whatever its underlying purpose, we do not see the Animal Welfare Act 1999 as excluding Councils from any involvement in the matters covered by that Act. On the other hand, the Act does not (either expressly or by implication) provide for the involvement of local authorities in animal welfare matters. Therefore Council's entitlement to be involved in such matters must be sourced from other legislation.
- 12 To the extent that such matters involve the welfare or control of dogs, then Councils are expressly able to be involved by reason of the Dog Control Act discussed earlier in this report. It would be somewhat unusual for Parliament to have intended that Councils should be involved in matters of dog welfare, but not in the welfare of other animals.

- 13 One of the purposes of Local Government as described in s.37K of the Local Government Act 1974 is to provide scope for communities to make choices between different kinds of local public facilities and services. This is supplemented by the broad powers conferred under sections 595, 598 and 601 of the Local Government Act. Under these sections the Council is expressly authorised to promote and encourage services and facilities for the general wellbeing of the public, for welfare activities in the district, and for community services and amenities. While in a general sense, these powers are for the benefit of people, they extend to the preservation of buildings, the maintenance and enhancement of the natural environment, and generally matters which contribute to the wellbeing or amenities of the public generally, or sections of it.
- 14 The connection with animal welfare is therefore dependent on the notion that the care and protection of animals is seen as a matter of community benefit, amenity or wellbeing. Our view is that the broad terms of these and other sections of Local Government Act are to be interpreted as encompassing matters of animal welfare within the Council's territorial district.
- 15 Because Councils are entitled to be concerned with animal welfare in their district, they are entitled to fund that involvement from general revenue.
- 16 For the reasons set out above, we therefore consider that it is within Council's powers to maintain an involvement in matters covered by the Animal Welfare Act 1999, not limited to the welfare of dogs only, and to fund that involvement out of general revenue. We trust that this answers the questions that you have raised and would be happy to assist further if required.

Yours faithfully  
**KENSINGTON SWAN**

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**Matthew Casey**  
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