



Ministry of Agriculture and Forestry

Te Manatu Ahuwhenua, Ngaherehere

Ref: AW-09

Brief No: 99/473

30 May 2000

Minister of Agriculture

MAF POLICY

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APPLICATION TO BE AN "APPROVED ORGANISATION": ANIMAL WELFARE INSTITUTE OF NEW ZEALAND

Purpose

- 1 *Mr Neil Wells, on behalf of the Animal Welfare Institute of New Zealand (AWINZ) has applied to you for a declaration to be an approved organisation under section 121 of the Animal Welfare Act 1999 (the Act). The application meets all the criteria in the Act apart from the financial arrangements which incorporate funding from territorial authorities. Crown Law advises that this is contrary to the Local Government Act 1974. MAF concludes you should not approve the application.*
- 2 *Before you make a final decision it is recommended that you invite Mr Wells, on behalf of AWINZ, to discuss this recommendation with you and invite AWINZ to consider submitting an amended application.*

The Application

- 3 Any organisation whose principal purpose is the promotion of the welfare of animals can apply to you, as the Minister responsible for the Animal Welfare Act 1999, to be an "approved organisation" under section 121 of the Act. Apart from MAF inspectors and police officers, only inspectors and auxiliary officers appointed on the recommendation of approved organisations can exercise enforcement powers under the Act. Your predecessor received a formal¹ application from Mr Neil Wells on behalf of AWINZ, on 22 November 1999, to become an approved organisation under the Act. If its application is successful, AWINZ will be able to deliver animal welfare services.
- 4 In order to approve the application you must be satisfied that the application meets all the requirements provided in sections 121 and 122 of the Act. The requirements set a high threshold as inspectors (in particular), and auxiliary officers, have considerable powers under the Act. For example, inspectors may search premises or seize or destroy an animal. The organisation supporting these persons must have appropriate accountability, financial and management arrangements.

¹ Mr Wells discussed an early draft of his proposal with MAF in late 1998.

- 5 A report evaluating AWINZ's application against the requirements of these sections of the Act is attached as Appendix 1.

Approved Organisations

- 6 Currently the RNZSPCA (SPCA) is the only approved organisation through a transitional provision in the Act. It undertakes almost 90% of the enforcement of animal welfare legislation. In 1999 the Primary Production Select Committee (PPSC) questioned the high degree of dependence on the SPCA. The provision enabling an organisation to apply for approval as an "approved organisation" is explicitly designed to lessen the reliance on MAF and the SPCA.

Assessment of the Application

- 7 The MAF analysis concludes that AWINZ's application meets all but one of the requirements of the Act. It considers that the AWINZ application does not meet the financial arrangements requirement in the Act (section 122(1)(b)). The key issue is the legal ability of territorial authorities to fund animal welfare services.
- 8 In the budget provided by AWINZ as part of its application, funding from territorial authorities (TAs) represents 20% of its projected annual income and is the only assured source of revenue. The other 80% would come from donations, fund raising and sponsorships. The proposal states that AWINZ would enter into an "arrangement" with the Waitakere City Council (WCC). Staff employed by the WCC, chiefly in animal control work, would sign an individual memorandum of understanding (MoU) with AWINZ to enable them to become animal welfare inspectors.
- 9 The WCC would enter into a MoU² with AWINZ whereby AWINZ would provide animal welfare and control services in both that city and in North Shore City (NSCC)³. They would pay fees to AWINZ for quality control and assurance purposes. The TAs would continue to employ and provide support services for the inspectors. They would also supply all necessary equipment and undertake prosecutions (with AWINZ authorisation), and other "employer related" activities. AWINZ would be responsible for overseeing the inspectors' animal welfare work and be responsible to MAF and to the Minister for the performance of the inspectors.
- 10 In January this year MAF asked Mr Wells to obtain an assurance from the WCC that the WCC had the legal power to spend funds on animal welfare work as envisaged in the proposed arrangement with AWINZ.
- 11 The WCC obtained a legal opinion which concluded that sufficient authority could be found in the Local Government Act 1974 (LGA) to support the proposed arrangement. MAF was not satisfied that the opinion covered all the relevant issues and sought a Crown Law Office opinion.

² The WCC and the NSCC are referred to as "linked organisations"

³ The WCC currently carries out animal control work under contract to the NSCC

- 12 The Crown Law Office has advised MAF that the LGA does not authorise a TA to fund an animal welfare organisation or employ animal welfare inspectors. A TA may only employ staff to perform its functions and may only spend money on matters expressly or impliedly authorised by statute. A TA could, however, make contributions to an organisation such as AWINZ to meet its costs in relation to the welfare of dogs under s.6 of the Dog Control Act. Crown Law considers that if Parliament had intended a TA to have a general role in animal welfare then the power could be expected to be found in the LGA or other legislation.
- 13 This aspect of AWINZ's financial arrangements is considered to be *ultra vires* the LGA. MAF considers that it is not in the interests of the public that AWINZ be declared to be an approved organisation under section 121(1) of the Act.

Other issues

- 14 Additional aspects of this application that you should note are:

Views of the RNZSPCA

- 15 Although the pilot programme has meant that the SPCA is no longer the only organisation outside of MAF and the Police involved in animal welfare enforcement, there is no evidence that it objects to competition in this area although it expressed some concerns initially. It is not clear whether this state of affairs would continue if AWINZ became an approved organisation and began wider more public operations, including public fund raising. It could possibly result in some confusion amongst members of the public as animal welfare has traditionally been the domain of the SPCA.

Policy relating to "approved organisations"

- 16 Section 122(1)(a) of the Act makes it clear that an approved organisation must have the promotion of animal welfare as its principal purpose. This requirement has the effect of excluding TAs from applying to be approved organisations. It reflects the policy position of the previous government and was considered and accepted by the PPSC. If you believe that the Act should be amended to allow TAs to undertake such activities, MAF would need a specific direction from you to seek the necessary policy approvals from Cabinet and legislative priority.
- 17 Such a change could be effected by amending either the Animal Welfare Act or the Local Government Act. The former could be initiated by yourself whereas the latter would become the responsibility of the Minister of Local Government and would require you to approach that Minister.

Conclusion

- 18 AWINZ's application meets all but one of the requirements of the Act. Under the Act, however, you must, as the responsible Minister, be satisfied that the application meets all the requirements.

- 19 MAF considers, following advice from Crown Law Office, that the proposed funding arrangements between AWINZ and the TAs are *ultra vires* the LGA. Consequently, the financial arrangements of AWINZ are such that having regard to the interests of the public, AWINZ is not suitable to be declared to be an approved organisation, and MAF considers that AWINZ's application should be declined. MAF believes that, as a matter of public policy, it is not appropriate for you to approve a proposal which is contrary to the law.
- 20 MAF notes, however, that if the application was amended so that it was clear that the TAs were neither funding animal welfare work nor employing animal welfare inspectors, then this application might more closely meet the requirements of the Act.
- 21 Following passage of the Act, MAF prepared a set of guidelines to assist the analysis of applications to become an approved organisations under the Act. The guidelines state that "the applicant will be provided with a draft copy of the recommendation and given a reasonable period of time (60 days) to present a submission to the Minister in response to the proposed decision".
- 22 To meet this undertaking, MAF recommends that you provide AWINZ with a copy of this briefing, the MAF report and the Crown Law Office opinion. A draft letter, which reiterates your invitation to Mr Wells contained in your letter of 12 May 2000 to meet after receipt of this briefing, is attached for your signature, if you agree. The letter invites Mr Wells to make a submission on the MAF report and to consider making an amended application.
- 23 Given the possible interest of your colleague, the Hon Pete Hodgson, in this issue, MAF proposes that you write advising him of your interim position and enclosing a copy of the MAF report.

Recommendation

- 24 MAF recommends that you:
- (a) note that the application from AWINZ meets all but one of the criteria in sections 121 and 122 of the Animal Welfare Act 1999;
noted
 - (b) note that you, as the Minister responsible for the Act, must be satisfied that the application meets all the requirements of the Act;
noted
 - (c) note that MAF considers, following advice from Crown Law Office, that the proposed funding arrangements between AWINZ and the Waitakere and North Shore City Councils are *ultra vires* the Local Government Act 1974, resulting in financial arrangements that are such that having regard to the interests of the public AWINZ is not suitable to be declared to be an approved organisation;
noted

- (d) **agree to sign the attached letter to Mr Wells inviting him to consider and make a submission on the MAF report prior to you making a final decision;**

agreed/not agreed

- (e) **note that the letter also invites Mr Wells, on behalf of AWINZ, to consider whether to submit an amended application; and**

noted

- (f) **agree to sign the attached letter to the Hon Pete Hodgson advising him of the advice you have received from MAF.**

agreed/not agreed

**P R Kettle
for Director-General**

**Hon Jim Sutton
Minister of Agriculture**

Encls: 3

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