

**AGENDA FOR AN ORDINARY MEETING OF THE ENVIRONMENTAL MANAGEMENT
COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE,
LINCOLN, WAITAKERE CITY, ON TUESDAY, 13 JULY 2004,
COMMENCING AT 9.30 AM.**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) and (7A) of the Local Government Official Information Act and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the item is a minor matter; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Committee resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Ordinary - Tuesday, 8 June 2004

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Environmental Management Committee held on Tuesday, 8 June 2004, as circulated, be taken as read and now be confirmed.



PART I - PRESENTATION

4 INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVES

Katja Lietz, Project Manager: Sustainability Projects will make a presentation regarding the International Council for Local Environmental Initiatives. They have been contracted by the Climate Change Office to run a New Zealand version of the Cities for Climate Protection programme, which currently runs very successfully in several countries involving 500 Local Governments. Waitakere City Council have taken an interest in the Australian programme for several years and have actively lobbied Central Government to see it established in New Zealand. The purpose of this presentation is for International Council for Local Environmental Initiatives to present the New Zealand version of the programme, Communities for Climate Protection, that is expected to be formally launched at the end of July.



PART II - ENVIRONMENTAL MANAGEMENT

5 COMMUNITIES FOR CLIMATE PROTECTION PROGRAMME

PURPOSE OF THE REPORT

The purpose of this report is to renew Council's commitment to join the Communities for Climate Protection programme and to make a commitment to reach the required five milestones within three years.

BACKGROUND

Waitakere City Council has taken an interest in the Cities for Climate Protection programme, run by the International Council for local Environmental Initiatives, for several years. In March 2002 this committee passed the following resolution:

- "1. That Council adopts the Cities for Climate Protection programme but continues discussions with Local Government New Zealand and other agencies with regard to participating in a national programme if one is established.*
- 2. That Council, within its internal procedures adopt measures toward implementing a climate protection programme."*

411/2002

A local version of the programme has now been established. The programme, called Communities for Climate Protection, will be run by the International Council for Local Environmental Initiatives under contract to the Climate Change Office.

The Communities for Climate Protection programme will be officially launched on 28 July as part of the Local Government New Zealand Conference. The Communities for Climate Protection is a programme that helps local government and their communities to reduce greenhouse gas emissions and their impacts. Internationally over 500 local governments are participating in the programme.

It has the support of the New Zealand Government, Local Government New Zealand and the Energy Efficiency and Conservation Agency. While the local programme draws heavily on the learning from international models, it has been developed specifically for the New Zealand local government context. Communities for Climate Protection-New Zealand is intended to build on the Energy Efficiency and Conservation Authority's [EnergyWise Councils Partnership](#) and the Climate Change Office "4 million careful owners" campaign.

Communities for Climate Protection empowers local governments to cut greenhouse gas emissions. It provides local governments with a strategic milestone framework, helps them to identify the emissions from their council and communities, set a reduction goal and develop and implement an action plan to reach that goal.

The program is based on the achievement of five milestones:

1. Establish an inventory and forecast for key sources of greenhouse emissions in council and the community.
2. Set an emissions reduction goal.
3. Develop and adopt a local greenhouse action plan to achieve those reductions.
4. Implement the local greenhouse action plan.
5. Monitor and report on greenhouse gas emissions and implementation of actions and measures.

Benefits of Waitakere City Council Joining the Programme

There are clear benefits from climate protection initiatives, including:

- Saving money by lowering council's energy bills.
- Developing new markets and industries and providing local employment and business opportunities.
- Improving air quality by reducing reliance on fossil fuels.
- Providing social and environmental benefits including tree planting and bush protection programmes.
- Promoting local leadership.
- Identifying opportunities for partnerships with industry, residents and other governments at a regional, national and international level.
- Generating additional revenue for Council through the initiatives developed.

Waitakere City Council already undertakes a range of activities under its climate protection programme and there are many other Council programmes that have climate protection as a co-benefit. Joining the *Communities for Climate Protection* programme will have the additional benefits of:

- Providing a more rigorous and systematic framework for the programme (the milestone framework).
- Ensuring that emissions are measured in a way that allows Waitakere City Council to set clear priorities and goals for its programmes, allows the measurement of progress towards these goals and allows comparison with other communities.
- Being part of an international movement with the opportunities for information exchange and learning this offers.
- Having access to technical and moral support from other members and International Council for Local Environmental Initiatives staff.
- Access to CCPT[™] on line software and other tools for calculating emissions and setting a reduction goal.
- The International Council for Local Environmental Initiatives has offered to fund a student intern to work with Council on the programme. This will be particularly useful in achieving Milestone 1.

STRATEGIC CONTEXT

The climate protection programme forms part of the *Sustainable Energy and Clean Air* platform of the *Long Term Council Community Plan*. Council has committed to completing 15 climate protection projects in the next 10 years. Joining the *Communities for Climate Protection* programme will help achieve this goal. Across the globe local governments have recognised they have a significant role to play in assisting in reducing greenhouse gas emissions and in New Zealand the Government's climate change policy states that it wishes to work in partnership with the local government sector to deliver New Zealand's climate change response. *Communities for Climate Protection* provides a mechanism to build council capacity to deliver on this expectation.

The Resource Management (Energy and Climate Change) Amendment Act 2004 has been enacted. While the Act removes local authorities' ability to consider the effects on climate change when considering resource consents involving the discharge into air of greenhouse gases, it directs councils to take into account the benefits of renewable energy, the efficient use of minerals and energy, and the effects of climate change when making decisions under the Act. *Communities for Climate Protection* provides a mechanism to build council capacity to deliver on their obligations within this Act.

RESOURCES

Experience across participating Councils in Australia indicates that the achievement of Milestones 1 and 2 approaches a day per week for 12 to 16 weeks. The work will be lead by the Project Manager Sustainability Projects within the Strategy and Development unit and forms part of the current work programme and budget under the Sustainable Energy and Clean Air platform of the Long Term Council Community Plan. The development of Local Action Plans at Milestone 3 will involve those departments identified through the inventory process as the areas in which greenhouse reductions and financial savings are the greatest. However assistance will be provided by the Strategy and Development unit and it is not expected that significant additional workload will be generated. There is a one off joining fee of \$1,200. The required resources for all five milestones are available in the current budget.

CONCLUSION

Council has been interested in the Cities from Climate Protection programme for several years and has actively lobbied for the establishment of a similar programme in New Zealand. Joining the new Communities for Climate Protection programme has significant benefits for Council and the workload will be easily accommodated in existing work programmes.

RECOMMENDATIONS

1. That the Communities for Climate Protection Programme report be received.
2. That Council join the Communities for Climate Protection Programme.
3. That Council commit to achieving the five milestones, required under the programme, within three years.
4. That a member of the Environment Management Committee be appointed to be Council's spokesperson for the programme and that this spokesperson attends the official launch of the programme.

Report prepared by: Katja Lietz, Project Manager: Sustainability Projects.



6 PROPOSED REGIONAL STORMWATER PROGRAMME

PURPOSE OF THE REPORT

The purpose of this report is to provide information to the Environmental Management Committee on the proposed Auckland Regional Stormwater Programme and seek endorsement of this programme.

BACKGROUND

Under the proposed amendments to the Local Government Act, the Auckland Regional Council is required to allocate 85% of the former Infrastructure Auckland funds to transport and stormwater and must have regard to the original Infrastructure Auckland notional allocations. Since October 1998, Infrastructure Auckland has made funding available for stormwater quality capital works via a granting programme. Infrastructure Auckland's notional allocation for stormwater was \$150 million; from which \$90 million of grants had been allocated to May 2004 leaving up to \$60 million of the original notional allocation.

Under the new regional governance structure, Infrastructure Auckland funds and assets will transfer to Auckland Regional Holdings and the Auckland Regional Council will have responsibility for utilising the remaining notional stormwater allocation to deliver stormwater quality benefits.

In February 2004, work by Infrastructure Auckland and Price Waterhouse Coopers estimated that between 3 and 11 billion dollars would be required to fully meet community outcomes for water quality in the region's harbours and streams over the next 20 years related to stormwater. Due to the obvious shortfall in current stormwater funding, Infrastructure Auckland engaged Boston Consulting Group to further investigate the issues and identify the best means of meeting community outcomes for stormwater quality. The Auckland Regional Council has supported this work which was completed in May 2004. The findings of the Boston Consulting Group's report provide independent objective advice that has assisted the Auckland Regional Council in reaching a view on how the funds could be used for greatest benefit in achieving stormwater objectives.

A report on this matter was presented to the Environmental Management Committee on 9 March 2004, and the Committee resolved as follows:

- “1. *That the Financial Business Plan - Auckland Regional Stormwater Programme report be received.*
2. *That the recommendations of the Financial and Business Plan Auckland Regional Stormwater Programme be adopted in principle, as an input to the Assessment of Water and Wastewater Services due to be completed by 30 June 2005, with further consideration in the 2006 Long Term Council Community Plan.*
3. *That the Chief Executive be delegated authority to take action as appropriate to protect Council's interest with regard to approved funding from Infrastructure Auckland.”*

352/2004

STRATEGIC CONTEXT

Council's approach to stormwater management is to promote integrated management in line with the Resource Management Act; particularly in terms of economic, social and environmental concerns, cross-Council integration, for example with roads, locality planning, parks, urban villages work and integration of stormwater management with protection and enhancement of the natural environment.

ISSUES

Growth and urbanisation in the Auckland region is increasing the volume of stormwater run-off and the level of contaminants and other sediments. This puts stress on the existing stormwater network and can lead to potentially serious impacts on the community and the environment such as flooding, stream erosion, ecological damage and beach closures.

Despite these consequences, current resource allocations within Territorial Authorities suggest that stormwater management, and water quality in particular, is not receiving the attention it deserves. Moreover, a comparison of planned spending versus estimates of the funding levels required to meet the proposed Regional Air, Land and Water Plan indicates that there will be insufficient funds to address water quantity and quality needs over the next 20 years.

Given the implications of neglecting stormwater issues, together with the potential for the pending funding shortfall to undermine stormwater management efforts, the Auckland region must ensure that its approach to this problem is as effective as possible. It cannot afford to have any of its funding exhausted on projects and solutions that do not deliver meaningful, sustainable improvements to water quantity and quality issues. To develop such an approach, Auckland's current stormwater management effort was measured against 'best practice' models, to identify opportunities for enhancing its impact and increasing available funds.

Effective stormwater management requires five elements to be in place and working together. While Auckland has made good progress on these elements, there are opportunities to improve its management approach across all of them, as follows:

- **Effective and Agreed Frameworks for Developing Plans**

The region has adopted a Best Practicable Option approach to stormwater management that is broadly consistent with accepted guidelines. However, the region needs to increase stakeholder buy-in to and understanding of current frameworks and processes; increase the level of investigations, information gathering and sharing; and improving the quality and timeliness of Integrated Catchment Management Plans.

- **Best Available Solutions**

There is a wide range of potential solutions for addressing stormwater quantity and quality issues. The current focus in the Auckland region is on remediation (eg. treatment via filters, ponds, riparian planting). While there has been some effort around preventative measures, more is required. The Territorial Authorities and the region should focus on three broad strategies, with a strong emphasis on prevention, preventing contamination at source through a variety of measures; use clever planning and regulations to manage (and fund) growth in greenfields and urban redevelopment; and develop remediation strategies in priority areas.

- **Public and Policy-Maker Commitment**

Individual agencies have implemented effective public education programmes (e.g. The Big Clean Up, WaiCare), but this effort, on the whole, has been fragmented and lacks a consistent regional message around the overall issue of stormwater. There has also been considerable effort to build policy-maker commitment, but a lack of good information and awareness of the issues has hindered decision-making processes and pushed stormwater lower on priority lists. A more concerted effort is required to inform policy-makers, and to develop regional umbrella messages around stormwater issues (and potential solutions) that can then be tailored to address specific community issues.

- **Capable and Sufficiently Resourced Organisations**

Regional leadership and local implementation are key features of successful stormwater models; there are also well-defined local and regional roles that need to be undertaken. Some of these roles and approaches have not been fully realised. At a regional level, for example, the Auckland Regional Council needs to take a more explicit leadership role in regional stormwater management and co-ordination. There is also an opportunity for greater emphasis on investigations, education and capacity building. At a local level, there is a need for additional stormwater capabilities and resources in most Territorial Authorities; they generally need to increase their focus on planning, monitoring and enforcement, and education.

- **Sufficient Funding**

While there are varying estimates of the funding required to improve stormwater outcomes in Auckland over the next 20 years, the exact amount is likely to be significantly higher than is currently planned for. Moreover, most funding comes from general rates, which may not be able to provide secure sufficient, stable funding and each Territorial Authority will need to pursue additional funding sources for capital works and maintenance at a regional level, in conjunction with other Territorial Authorities and the Auckland Regional Council.

PROPOSED REGIONAL STORMWATER PROGRAMME

In response to these findings, a regional stormwater programme is proposed by the Auckland Regional Council to drive improvements across all the elements of successful stormwater management. It will have three broad objectives:

- To establish regional leadership, co-ordination and momentum around overall stormwater objectives.
- To address shortcomings in the current approach to stormwater management. This would focus on the opportunities for improvement across each of the elements described above.
- To build ongoing capability and capacity in the Auckland Regional Council and Territorial Authorities. This will help create regional momentum and build a platform from which to deliver improved stormwater outcomes over the next 20 years.

The programme will be structured around 14 initiatives, as set out below:

Work Stream	Outcomes
Create Effective and Agreed Frameworks	<ul style="list-style-type: none"> • Increase buy-in to, and understanding of, regional planning frameworks and processes. • Build understanding of environmental status, trends, impacts and outcomes through investigations. • Develop a central knowledge management capability. • Ensure the development of timely and high quality Integrated Catchment Management Plans.
Deploy the Best Available Solutions	<ul style="list-style-type: none"> • Launch a regional source prevention programme. • Ensure that each Territorial Authority has an effective development programme in place to manage (and fund) growth. • Build regional understanding of remediation technologies.
Build Public and Policy-Maker Commitment	<ul style="list-style-type: none"> • Develop and deploy an education and information sharing programme for policy-makers. • Develop and deploy an integrated community outreach programme for the region (including local programmes).
Ensure Capable and Well Resourced Organisations	<ul style="list-style-type: none"> • Build Territorial Authority capabilities and capacity. • Build regional capabilities and capacity.
Secure Sufficient Funding	<ul style="list-style-type: none"> • Territorial Authorities establish new, more certain funding sources. • Launch regional effort on roading charges and other polluter-pays options. • Ensure there is sufficient, committed funding for regional programmes.

The Auckland Regional Council will provide a presentation to the Environmental Management Committee on its proposals.

RESOURCES

The Regional Stormwater Programme will cost between \$15 million and \$30 million over an eight-year period; costing details will be refined as individual projects are scoped and agreed. Auckland Regional Council funds, via Auckland Regional Holdings, should be used to fund the programme and to seed/match Territorial Authority commitments in priority areas already included in their Long Term Council Community Plans.

This programme will allow the Auckland region to develop a stormwater management approach that will deliver a broader, smarter and more cost effective set of solutions for water quantity and water quality.

The regional programme will also deliver two major benefits concerning funding. Firstly, it will clarify and reduce the amount of incremental funding actually required to meet desired outcomes. Specifically, by achieving higher quality, more timely Integrated Catchment Management Plans and by using a broader and smarter solution set, it is anticipated that the overall amount of capital spend required will be significantly lower than some of the current estimates. Secondly, the programme will deliver increased availability and certainty of funds at a local level, through initiatives on funding options, roading and other polluter-pays charges.

It is proposed to report back to the Environmental Management Committee on a regular basis to ensure that the Regional Stormwater Programme outputs are consistent with Council's approach.

CONCLUSION

Urban growth and development in Auckland is increasing the importance of stormwater management. Stormwater management is complex and the environmental impacts of contaminants accumulate over long periods of time. There has been an active programme to improve stormwater outcomes in Auckland for some time now, but funding has been insufficient and the effort has been somewhat uneven and fragmented.

The proposed Regional Stormwater Programme will provide the basis for successful stormwater management. The programme recommended will provide the capabilities and funding to manage stormwater cost-effectively and help ensure the sustainable management of Auckland's environment.

RECOMMENDATIONS

1. That the Proposed Regional Stormwater Programme report and presentation from the Auckland Regional Council be received.
2. That the Regional Stormwater Programme proposed by the Auckland Regional Council be endorsed.
3. That progress reports be submitted to the Environmental Management Committee on a regular basis to provide guidance and feedback on this programme.

Report prepared by: Tony Miguel, Group Manager: Asset Management.



June - August 04	Further detailed work on the package to clarify the components and clearly document the implications for landowners and residents of each component. Reporting to Environmental Management Committee on progress monthly.
June- December 04	Landscape and role of the foothills technical study undertaken.
September 04	Report to Council on detailed development of proposed package in order for Council to clearly identify which components it supports for further consultation.
October - December 04	Development of consultation materials and process for Phase 3 consultation.
February 05	Report to Council on recommended final boundary for the project area.
February - March 05	Phase Three consultation.
May 05	Council decision on final package for implementation.

Phase Two Consultation Objectives

The Phase Two consultation process is now complete. The objectives of the consultation programme were to:

- a) Discuss visions and values for the eastern foothills included in the Waitakere Ranges project boundary.
- b) Gain feedback on the proposed package, particularly the legislation component.

At the Council's Environmental Management Committee meeting in June 2004 a progress report was received on Phase Two consultation. This report introduces the Overview Report of the consultation programme on the proposed package for better protection of the Waitakere Ranges, including foothills and coastal villages.

STRATEGIC CONTEXT

The Waitakere Ranges Project is a key project within the Green Network platform of the Long Term Council Community Plan. The 'Green Network' strategic platform contains a vision that would see streams and forests full of life, the Waitakere Ranges permanently protected and a Green Network in place linking the Ranges to the sea, as well as connecting the everyday lives of the people of Waitakere with the natural world.

Council has indicated a strong commitment to working on protection of the Ranges, whilst recognising that there are many different values relating to the Ranges, and that much is already being done to achieve protection. As the many tools for protection are varied and community views diverse, a robust process is crucial.

ISSUES

Phase Two consultations showed broad support for identifying better ways to protect the Waitakere Ranges and their foothills. However there were passionately different understandings of what 'protection' meant and where and how 'protection' could be put into action. There was also concern about the consultation process followed and the project's relationship to the Waitakere City Council Structure Planning Review process.

Introduction of Legislation

The most discussed or commented on component of the proposed package was about introducing legislation.

Discussion about legislation suffered from a lack of clear information about what specific values could be protected, what level of protection could be provided and how that could be achieved. As a result people appeared to adopt positions based more on principle rather than on practical issues relating to protection through legislation. There were differing perceptions of what that could mean.

Since the information presented did not specify what protection meant, it left participants to postulate on the matter and to advocate for the use of specific mechanisms such as legislation or structure planning without articulating what they really wanted to achieve.

Other Elements

There was less discussion on the following elements of the proposed package. Generally there was a mix of support and opposition for each component, with participants expressing a desire to receive more detailed information before they would feel confident about making informed comments on the suitability of the components and therefore further consultation was required.

A number of written comments opposed the entire package, ostensibly on principle rather than commenting on the details of the individual components.

- Opinion was split on the establishment of a charitable trust. Support was given for a trust as a means of attracting alternative funding sources and improving iwi and community participation and engagement. It was countered by concern about how a trust would operate effectively. Issues included adding another level of bureaucracy, the relationship with existing groups and trusts, and the difficulties and complexities of establishing and maintaining a functional trust.
- There was general concern about the lack of detail provided about World Biosphere Reserves such as how a reserve was set up and managed, which agencies were involved and the implications for landowners. There was some support for further investigation with the aim of achieving international recognition.
- Opinion was mixed on reviewing the Auckland Regional Growth Strategy and associated Sector Agreement. Both sides of the debate had some focus on future residential densities with many concerns relating to the Swanson area. Those in support generally wanted to see less development in the area. Some in opposition expressed concern that their rights or plans they have for their property would be affected.
- Mixed responses were received regarding amending the Auckland Regional Policy Statement. The majority of responses were in opposition. Concerns were expressed that there was already enough protection and there were too many rules. There was also concern regarding impacts on current policy and that it would diminish the amount of permissible activities. Support for the option revolved around obtaining greater protection for the area.
- There was limited discussion over the proposal to develop an Implementation Plan. What little there was revealed confusion over the intent of such a plan.
- There was little informed discussion on establishing core staff teams within councils. Where there was informed discussion there was support providing some qualifications were met. There were few clear explanations from opponents.

Process and Methodology

Some people expressed appreciation for being able to take part in such a process and congratulated the partners for initiating the project. However a greater number of concerns were expressed about the project and the consultation process. The key concerns were that:

- Insufficient details were provided to enable informed comments from the community.
- Insufficient time was allowed to enable quality discussions in the workshops.
- Promotion of the events was inadequate.

The focus of consultation was on the 'proposed package' however some other subjects were broached. These included issues about the project boundary and the role of the structure planning process. In particular:

- Comments were made in support, opposing and recommending amendments to the project boundary, particularly regarding the eastern foothills.
- People sought clarity on the impacts and implications of the project on private property owners.
- A need was expressed to protect the foothills as a 'rural' transition or buffer area between the Ranges and the metropolitan urban area.

Project Title Issues

During the public forum of the May 2004 Council meeting, speakers commented on their perception that the name of the project was misleading. They expressed concern that the commonly used names of the project were unclear and lead residents living in the eastern foothills into believing their property outside the "Ranges Environment" would not be affected by the outcomes of the project.

At various times the project has been referred to as the "Waitakere Ranges Project", and the "Waitakere Ranges Protection Project".

The key concern is the misunderstandings about the area covered by the project, with some people believing the project covered the area of Waitakere City known as the "Waitakere Ranges" and did not include any of the foothills. This was expressed by people who, in reading promotional material, did not realise that the area in which they lived or were held an interest was included in the project. Members of the community have strongly argued that this has played a part in not fully engaging all the community who are directly affected by the project.

A lesser area of debate is over the inclusion of the term "protection". Protection means different things to different people. However the objective of the project is to provide long-term protection to the Ranges - through a variety of means from regulatory approaches to development and subdivision to voluntary and non-regulatory projects covering a wide variety of topics (including pest and weed control, visitor impact management, education and awareness of values etc).

A verbal report was taken to the Environmental Management Committee in June 2004 as part of the update on the analysis of phase two consultation. As part of this report a recommendation was put forward:

"That the Waitakere Ranges [Protection] Project be renamed the "Waitakere Ranges and Foothills Protection Project".

The main change was the adding of the word 'foothills' to be more specific about the extent of the project.

The meeting resolved:

"That the suggestion of changing the naming of the Waitakere Ranges Project to the Waitakere Ranges and Foothills Protection Project be referred to the Political Liaison Group for comment and that comments be reported back to the Environmental Management Committee."

984/2004

The Political Liaison Group discussed the recommendation at its meeting on 10 June 2004. The meeting came to a general consensus and recommendation that the project title did not need to include the word 'foothills' but that it should be included in a by-line.

RESOURCES

Funding has been allocated in the 2004/2005 Draft Annual Plan for further work on the Waitakere Ranges Protection Project, including Phase Three consultations.

CONCLUSION

The Phase Two consultations exposed a desire for further detailed work to be undertaken before decisions were made on which components should be progressed to the next step in the process.

There is a need for the partners to return to the community with more details on the potential impacts and implications of the components. This will allow for informed and meaningful consultation.

Policy work is continuing on the project, using the consultation discussions as a basis for informing more detailed investigations into all components, until such time as Waitakere City Council and Auckland Regional Council agree on the components to be progressed to the next step including pursuing implementation.

RECOMMENDATIONS

1. That the Waitakere Ranges Protection Project Phase Two Consultation Report and Proposed Name Change report be received.
2. That the Environmental Management Committee gives direction as to the name of the project.

Report prepared by: Yvonne Rooney, Communicator, Strategy and Development.



8 WAIPAREIRA AVENUE EXTENSION - PROPOSED ROADING DESIGNATION

PURPOSE OF THE REPORT

The purpose of this report is to recommend that the Committee confirms the requirement for the proposed road extension for Waipareira Avenue and endorses the conditions imposed by the Planning Commissioner.

BACKGROUND

A designation is a provision in a District Plan that gives effect to a requirement (the formal proposal to carry out a public work or project) made by a requiring authority. In this instance, the Council is the requiring authority that proposes to extend Waipareira Avenue and it will bisect Woodford Reserve to connect with Woodford Avenue. A designation acts as a form of 'spot zoning' that enables the requiring authority to undertake the necessary public work (for example building a road, telecommunications, water supply etc). The proposal to extend Waipareira Avenue was included in the Long Term Council Community Plan and has therefore been the subject of two public consultation processes: one under the Local Government Act 2002 and the Resource Management Act 1991.

The proposed new road would be an alternative to the main arterial route of Lincoln Road and would allow an improvement in connectivity and traffic flow for local traffic. Lincoln Road currently carries up to 40,000 vehicles per day. In addition, recent expansion of the Eco-Hospital, West City, the Mitre 10 and forthcoming Pak 'n Save development shopping centre and investment in Henderson have generated additional traffic. The proposed road will enable local traffic from Henderson and recent residential development in Buscomb Avenue to bypass Lincoln Road. The new road is intended to be a collector road, serving a different but supplementary function to Lincoln Road, establishing connectivity for local properties and residents to local facilities as well as to the arterial routes. It would also provide a local connection from the hospital to the north of the City.

The Council publicly notified a Notice of Requirement on 5 March 2003 with a closing date for submissions on 2 April 2003. The requirement directly affects 36-38 Waipareira Ave (Lot 4 DP 121630). It is also proposed that the road would continue through Woodford Reserve to connect with Woodford Avenue. Some time prior to the public hearing of the Notice of Requirement on 24 May 2004, the Council successfully negotiated a sale and purchase agreement for the property at 36-38 Waipareira Avenue and the former owner withdrew their submission against the road. Although the location of the road through the reserve would be established under the provisions of the Public Works Act 1981, and is not part of the land that is subject to this notice of requirement, public input into this aspect of the proposal was sought. In addition, the Council's solicitor attended the hearing of this matter and advised the Planning Commissioner and submitters that the Commissioner may take the effects on the reserve into account in reaching his decision.

STRATEGIC CONTEXT

The Long Term Council Community Plan has nine strategic platforms that will guide the Council's performance over the next ten years. The Integrated Transport and Communication platform has as its 2020 vision:

"Waitakere has public transport and communication systems that provide fast, effective services to the whole City. City travel demonstrates integrated environmentally responsible and innovative design."

ISSUES

The Planning Commissioner considered a range of evidence both in favour and against the proposed road extension from staff and eighteen submitters. A full copy of the hearing report is available.

The Planning Commissioner was satisfied that the designation was necessary to achieve the objectives of the public work and that the alternative sites were not suitable due to additional cost and subdivision layout. The Planning Commissioner has imposed six advice notes relating to mitigation measures. The advice notes relate to:

- this Committee considering a bylaw prohibiting heavy transport vehicles associated with the industrial areas from using this connection;
- Henderson Community Board approving the provision of yellow dotted lines prohibiting parking on the hospital side of Woodford Avenue between Lincoln Road and the Hospital entrance; and
- a landscaping plan including replacement specimen tree planting, installation of park benches and upgrading of signage to occur;
- the design of the road and screening to mitigate noise effects on neighbouring properties and headlights.

A35-A48

The conditions recommended by the Planning Commissioner are attached at pages A35 to A48. Overall, the conditions are considered reasonable and should provide local residents with reassurance that the overall design and implementation of the roading project will take their concerns into account.

NEXT STEPS

Upon receipt of the Commissioner's recommendation, the requiring authority (the Council) has 30 working days to advise whether it accepts or rejects that recommendation. Within 15 working days of the requiring authority's decision, a copy of that decision must be served on all those who made a submission and the land owners. That decision may then be appealed to the Environment Court by any person who made a submission on the designation. If no Environment Court appeals are lodged, the Council shall, without further formality, include the designation in the District Plan.

The designation covers 36-38 Waipareira Avenue, however the new road will connect through to Woodford Avenue via part of the reserve. Under Section 114 of the Public Works Act 1981, when reserve land is specifically required for roading purposes, Council as owner of the land can apply to have the Minister of Lands declare the land as "road" in the *Gazette*. On publication of the notice in the *Gazette* the land is vested in Council as road. The Council's Proposed Plan Change 8 would enable the Council to automatically re-zone the land from Open Space Environment to Transport Environment to match the new status of the land. The gazetting process is subject to the consent of the Minister of Conservation as the land is a recreation reserve. The procedure does not require public input although the Department of Conservation have advised that the consent of local iwi would be required as part of the process of gaining the consent of the Minister of Conservation. Council staff have met with iwi to discuss the proposal. The Department of Conservation would also require that the value of the land taken as road be paid back into Council's public account or a similarly valued piece of land be made reserve. The Council has been open and transparent in advising the community of its intentions for the road and the process involved.

COMMISSIONER RECOMMENDATION

A49-A56

The Commissioner provided his recommendations to the Council on 16 June 2004. The Commissioner has recommended to the requiring authority (the Council) that it confirm the requirement for the designation under Section 171(2) of the Resource Management Act 1991. A full copy of the Notice of Requirement and the Commissioner's recommendation is attached at pages A49 to A56.

RESOURCES

No additional resources are required to include the designation in the District Plan. The cost of the capital works and mitigation measures associated with the roading project is covered in the Long Term Council Community Plan and Transport Assets budget. The resource management component of the project is covered by existing budget for staff time.

CONCLUSION

The Council in its role as a requiring authority has received a recommendation from a Commissioner regarding the Notice of Requirement for the designation for a proposed road, located at 36-38 Waipareira Avenue. The acceptance of the Commissioner's recommendations will implement the designation for an extension of Waipareira Avenue to the northern boundary of Woodford Reserve.

Acceptance of the Commissioner's recommendation will enable the designation to be included into the District Plan, without further formality. The Council will then be able to undertake further processes to uplift the reserve status over the reserve land.

RECOMMENDATIONS

1. That the Waipareira Avenue Extension - Proposed Rooding Designation report be received.
2. That pursuant to Section 172 of the Resource Management Act 1991, the Council, in its role as requiring authority, accept the Commissioner's recommendation that the Notice of Requirement for proposed located at 36-38 Waipareira Avenue, being an extension of Waipareira Avenue to the northern boundary of Woodford Reserve be confirmed. This land is identified as Lot 4, DP 121630.

Report prepared by: Alina Hughes, Planner: Policy Implementation.



9 OPTIONS FOR COUNCIL'S INVOLVEMENT IN MANAGING GENETICALLY MODIFIED ORGANISMS

PURPOSE OF THE REPORT

The purpose of this report is to present some options for further investigation if Council wishes to have more involvement in managing genetically modified organisms.

BACKGROUND

This Committee, at its meeting of 13 April 2004, received a presentation from Mr Simon Terry, Executive Director of the Sustainability Council, regarding options available for community management of genetically modified organisms under the Resource Management Act 1991.

The presentation centred around the main findings of the report: "Community Management of Genetically Modified Organisms", commissioned by the Whangarei District Council in association with Far North District Council, Kaipara District Council, Rodney District Council and Local Government New Zealand. These northern councils are preparing to jointly explore options for their more direct involvement in management of genetically modified organisms in their districts.

At its April meeting the Committee resolved:

"That Council hold a workshop to consider options for giving effect to Council policy on GE Free in field and food with a view to:

- a) Setting the direction and scope of the approach Council wishes to take;*
- b) Establishing processes that are robust and meet statutory requirements including the Resource Management Act 1991, the Local Government Act 2002 and the Hazardous Substances and New Organisms Act 1996;*
- c) Learning from the experience of the Councils in the Northland region*
- d) Determining when Council should seek a range of advice on potential options and strategies for community management of genetically modified organisms/events/risks."*

605/2004

A57-A60

A workshop was held on Monday, 17 May 2004 and was attended by Councillors, staff and two guest speakers from the Environmental Risk Management Authority: Dr Libby Harrison, Group Manager New Organisms and Helen Sharpe, Legal Manager. The presentation that these two speakers gave at the workshop as attached at pages A57 to A60, and has been circulated to Members.

STRATEGIC CONTEXT

Waitakere City is proud of its status as an Eco-city. As civic leaders of the Eco-city, the Council is concerned for the health and well being of its citizens, and the health and life-supporting capacity of the environment. In this context, the Council is determined to explore all opportunities to be directly involved in applications to Environmental Risk Management Authority that involve genetically modified organisms.

At its meeting of November 2001 the Council resolved:

“That Waitakere City Council declares Waitakere City GE-Free in field and food.”

2635/2001

“That there be further investigation to identify the most effective ways of advancing Council’s aspirations for Waitakere City to be “GE-Free”, without compromising medical research or currently permitted activities but discouraging in everyway possible any form of field trials.”

2636/2001

The City has confined its reservations regarding genetic engineering to the use of genetically modified products in food and the use of genetically modified plants and animals in the environment (agriculture and horticulture). GE-Free for Waitakere does not mean that the City opposes the use of genetic modification for medical purposes and for research confined to the laboratory situation.

With the lifting of the moratorium on the release of genetically modified organisms in 2002, the concern for our local organics industry is not only maintaining their organic certification but also to be able to ensure they can provide their customers with products that are also free from genetically modified material.

Waitakere City Council has registered with Environmental Risk Management Authority as an interested party to applications for release of genetically modified organisms, and this will enable the Council to submit on any applications brought to notice anywhere in the country. It is not only use of genetically modified organisms in Waitakere City that may affect this community and the organics business sector but also their use across the city boundary or anywhere in the country that may have an effect on environmental safety or on trade relations. In particular, the Council will be concerned with the growing of any crops that may have an adverse environmental or economic effect on the organics industry, or on the environmental advantage that Waitakere City currently enjoys.

ISSUES

Mr Terry presented many matters relating to the regulation of genetically modified organisms, and identified possible gaps within that framework. As part of his report, Mr Terry provided a legal opinion from Dr Royden Sommerville. Mr Sommerville presented the view that jurisdiction does exist within the Resource Management Act 1991 to enable a District Plan to incorporate objectives, policies and rules relating to genetically modified organisms. While Mr Sommerville considers that there is jurisdiction, a policy decision needs to be taken by each and every Council about whether it chooses to exercise that jurisdiction and amend its District Plan. This policy decision has not yet been made by this Council.

The representatives from Environmental Risk Management Authority indicated at the workshop that the likelihood of a conditional release application being consented was a number of years in the future at this stage. The Authority had no knowledge of any likely application being lodged. All the work on genetically modified material was still at the laboratory trial stage. On this basis, it appears that there is no imperative to be too hasty in determining Council’s course of action on the issue.

OPTIONS

There are a number of options for action available to the Council.

1. **Retain the status quo.**

Waitakere has advised Environmental Risk Management Authority of its interest in any applications for the use/release of genetically modified organisms in the City.

Dr Harrison of Environmental Risk Management Authority confirmed at the workshop that Waitakere City Council had registered as an interested party in any applications for release or field trials of any genetically modified organisms. The Council will be advised of any such applications, can lodge submissions and attend hearings and speak in support of its submission. The Environmental Risk Management Authority decision-making committees consider all submissions and Environmental Risk Management Authority welcomes the input of relevant local authorities.

Further consultation with the Organics business sector, on the Council's position statement on the implications of commercial release of genetically modified organisms for the City, is planned in preparation for the Long Term Council Community Plan review starting in 2005.

2. **Participate in Northland Councils' discussion group.**

Staff members are in contact with Whangarei District Council who is leading the discussions on costs and benefits of a range of options for participating in the genetically modified organism application process.

Whangarei District Council prepared a remit on the issue to be presented to the Local Government New Zealand Annual General Meeting 2004, requesting:

- That Local Government New Zealand investigate the possibility of lobbying Government to amend the Hazardous Substances and New Organisms Act to enable Local Government to have direct input into decisions over genetically modified organism land uses that may take place in their region or district.
- That Local Government New Zealand support Local Authorities to make informed decisions with respect to the management of genetically modified organisms in their regions and districts.

However, the remit failed to gain the necessary support of five other local authorities.

3. **Consult through the Long Term Council Community Plan 2006/2016 Review**

Collate all the relevant material and the outcomes available from the discussions with the Northland Councils into a package that can be consulted on as part of the next review of the Long Term Council Community Plan. This will provide a vehicle for comment from the community as to the direction that it considers the Council's policy on genetically modified organisms should take.

4. **Analysis of District Plan Options**

Analysis of District Plan options could begin, but should logically follow on from broader decisions arising from the Long Term Council Community Plan Review consultation. It may be that the Long Term Council Community Plan Review will place a different emphasis on any interventions that the Council should make in terms of genetically modified organisms, and so the preparation of District Plan Changes at this time is considered to be premature.

5. Support Initiatives to Amend the Hazardous Substances and New Organisms Act

While this is a laudable action to take, the failure of the remit presented to the Local Government New Zealand Annual General Meeting 2004 indicates that there is little support for this amongst other Councils. As time passes and greater understanding of the effects of genetically modified organisms, and any regulatory gaps that exist is achieved, other Councils may also see the value in lobbying the Government regarding this matter. Until such time, it is considered more useful to clarify this Council's position first, through consultation for the next Long Term Council Community Plan Review.

RESOURCES

Staff resource is available to attend the Northland Council's meetings and report back to the Council.

CONCLUSION

The options that have been identified can be summarised as:

1. Retain the status quo.
2. Participate in the Northland councils' discussion group.
3. Consult community views on genetically modified organisms through the 2006/2016 Long Term Council Community Plan Review.
4. Initiate analysis of options available to change the District Plan.
5. Support initiatives to amend the Hazardous Substances and New Organisms Act to address perceived gaps in the legislation.

The suggested work programme is based upon taking action to give effect to Options 1, 2, and 3. Options 4 and 5 are longer term options that may be given effect to once the Council has clarified its position through completion of Option 3.

RECOMMENDATIONS

1. That the Options for Council's Involvement in Managing Genetically Modified Organisms report be received.
2. That Council staff attend the Northland Council's discussions.
3. That a package of information be prepared to explain the issues surrounding genetically modified organisms for public comment during the Review of the Long Term Council Community Plan 2006/2016.

Report prepared by: Carol Bergquist, Senior Analyst Environmental Policy, Eryn Shields, Planner: Policy Implementation and Matt Heale, Principal Advisor District Plan.



PART III - REGULATORY / ENFORCEMENT

10 LEGAL UPDATE (AS AT 1 JULY 2004)

INTRODUCTION

The following is a list of legal actions in respect of matters within the scope of the Committee, which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include references to Council's District Plan, minor prosecutions for dogs, swimming pools, health and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. The dates referred to in the headings are the dates on which appeals, informations or proceedings were first filed in Court.

ENVIRONMENT COURT

Kitewaho Bush Reserve, Peter Mawhinney and Others v Waitakere City Council

Following the Council's success in the High Court (where it won its appeal, and successfully defended the cross-appeal - see later agenda item below, for more information), the Council has reignited its costs application against Mr Mawhinney et al in the Environment Court. Council is seeking approximately \$140,000. A hearing date is expected for July/August 2004.

Waitakere City Council v Auckland Regional Council (SH16/18) (14 March 2002)

Appeal filed by Waitakere City Council against decision of Auckland Regional Council on earthworks, stormwater and related resource consents sought by Transit for SH16/18. Matters settled by agreement with Transit.

Selak v Waitakere City Council (7 March 2002)

Collett & Nye v Waitakere City Council (8 March 2002)

Appeals filed by the applicant Messrs Selak and their neighbours, Messrs Collett & Nye. Both appeals relate to the operation of the Selaks' Go-kart track on their property at Kennedy's Road, Whenuapai. The Selaks have appealed a condition disallowing use of the track on Sundays and public holidays. The Colletts & Nyes have appealed Council's decision to allow the Go-Kart activity. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impacts of the Go-Kart track, which is to be considered by all parties and may result in settlement of these appeals. Mr Collett has accepted in principle the efficacy and design of the Proposed Noise Mitigation Fence. A site visit was held in June and Mr Selak and Mr Collett are in discussions.

Abacus Developments Limited & Ors v Waitakere City Council (February 2000)

An appeal by Abacus, Kitewaho and related entities (associated with Mr Mawhinney) against subdivision consent conditions imposed for a subdivision at Bethells/Waitakere. The appeal was to be heard in February 2003 but has been adjourned pending the outcome of the High Court appeal referred to below in this report. It is expected to proceed to a hearing in 2004. Some discussions with Mr Mawhinney have taken place as to whether it is possible to narrow the scope of the appeal.

Peat v Waitakere City Council (10 April 2002)

This was an appeal by the Peats relating to a property located in Awhiorangi Promenade, Swanson, and within the Swanson structure plan catchment. The Peats sought approval for 2 additional lots, in accordance with the density identified as appropriate by the structure plan. The decision of the Court was delivered on 21 June 2004. It held that the consent should be granted to Mr & Mrs Peat. A separate (confidential) report has been provided to Council, and consideration is presently being given to the lodgement of an appeal to the High Court.

Estate Homes Limited v Waitakere City Council (31 August 2001) (Sturges Road)

Estate Homes appealed the financial reserves contribution assessed as payable for the second stage of its subdivision at 13-15 Sturges Road. This appeal has now been withdrawn, with Council and Estate agreeing to undertake an arbitration relating to valuation issues associated with Sturges Road.

Waitakere City Council v Estate Homes Limited (28 March 2002) (Ranui Station Road) (High Court)

An appeal to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004 and the decision has been reserved. A decision is not expected for several months.

Spencer v Waitakere City Council - Lone Kauri Road, Karekare (29 August 2000)

Appeal by Mr Spencer against Council's decision declining consent for subdivision of a property located at Lone Kauri Road, Karekare. The Waitakere Ranges Protection Society and several residents' groups are parties to the appeal. An on-site meeting between all parties took place along with mediation, resulting in an agreement in principle being reached. Consent documentation for the Environment Court is now being finalised and circulated to the parties. The appellant has not responded to documentation. At the Judicial Conference on 26 April 2004, Mr Barker (the Appellant/Applicant's Counsel) failed to appear.

Consent documentation was been finalised and executed on 30 June 2004 and will be filed with the Court for final order.

Corner Stone Limited v Waitakere City Council (February 2003)

An appeal by Corner Stone Limited against Council's decision to refuse an application for land use consent to develop 6 office units at 120 South Titirangi Road, Titirangi. As of 29 April 2003 there were 21 parties who had filed Section 271A or Section 274 notices. Following a hearing on parking and traffic issues, all parties agreed to settle the appeal, with additional requirements being imposed on Corner Stone (relating to landscaping, acoustic treatment, and restrictions preventing any further development taking place on site). A Consent Memorandum to the satisfaction of all parties was filed with the Environment Court on 21 May 2004.

Prema Trust v Waitakere City Council & Auckland Regional Council (July 2003)

An appeal against a joint Waitakere City Council/Auckland Regional Council decision refusing consent for an alternative healing centre at 34-36 Grassmere Road. Waitakere City Council and Auckland Regional Council have filed their respective replies to the appeals with the Environment Court, and 13 parties have filed Section 271A or Section 274 notices. All parties have now exchanged evidence and a hearing has been scheduled for the 2 weeks beginning 23 August and 30 August 2004.

Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming the consent conditions regarding financial contributions payable in respect of a proposed subdivision. Discussions between the parties continue.

Te Atatu Residents' & Ratepayers Association Inc v Waitakere City Council (January 2004)

A reference against the Council's decision approving Plan Change 2, which re-identifies the Harbourview land on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area. The Council has filed its notice of reply. A mediation date from the Court scheduled for June 2004 was cancelled by the Court (due to the unavailability of a Court Commissioner) however mediation may now proceed in mid-July 2004.

I & Z Farac v Waitakere City Council

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It seeks to rezone all (or part) of the property as Living 2 Environment. Discussions are to take place on the relief being sought.

Save Hobsonville Against the Mismanagement of its Environment Society Inc v Waitakere City Council (February 2004)

An appeal against the Council's decision granting consent to Vodafone to construct a telecommunications facility including a tower at 11 Scott Road, Hobsonville. An Environment Court-assisted mediation occurred on 18 March 2004, during which the appellant and applicant agreed to investigate the feasibility of reducing the height of the tower. Discussions between the appellant and Vodafone continue as to possible resolution.

Brodie Andrews v Waitakere City Council (June 2004) 202 Shaw Road, Titirangi

An appeal against an abatement notice issued by Council. In the course of removing motor vehicle parts and wrecks from Mr Graham Gordon's property Council found that a tenant, Mr Andrews has been undertaking mechanical repair activities contrary to the provisions of the District Plan. It served an abatement notice on Mr Andrews requiring him to cease this activity and sought a stay of its effect. The matter is the subject of a judicial conference on 2 July 2004.

HIGH COURT

Waitakere City Council v Kitewaho Bush Reserve Company Limited, Peter Mawhinney & Ors (Appeal filed 22 January 2002)

As previously reported to the Committee His Honour Justice Randerson released a decision in relation to this matter on 3 March 2004 which upheld Council's decision in relation to the appeal (in respect of Section 91 RMA) and confirmed the dismissal of Kitewaho's substantial cross-appeal.

Mr Mawhinney's application for leave to appeal was heard before Randerson J on 14 May 2004 and dismissed with costs to the Council. Mr Mawhinney has now filed an application for special leave with the Court of Appeal (which includes an application for extension of time for filing) which is to be heard in Wellington on 18 August 2004.

In relation to costs, Randerson J has awarded above scale costs of \$48,502.52 in favour of Council. This costs order has been made against Mr Mawhinney and the current trustees of the Waitakere Forest Land Trust. Kensington Swan has written to Mr Mawhinney to make demand for immediate payment.

Kitewaho Bush Reserve Company Limited (in Liquidation) & Ors v Waitakere City Council (February 2002) (Civil Proceedings)

This is a claim for damages by Kitewaho et al and is related to the matters addressed in the other High Court proceedings.

Mr Mawhinney has applied to have himself substituted in as plaintiff in these proceedings on the basis that he says he is now the trustee of the plaintiff trust, the Waitakere Forest Land Trust.

Mr Mawhinney has been ordered to file further evidence to show that he is the successor of the current plaintiffs. If such affidavit evidence is not filed, his application will be dismissed. If an order for substitution is made, this will be on the basis that Mr Mawhinney assumes responsibility for any costs up to the point of substitution.

PROSECUTIONS - DISTRICT COURT

I & A Covich - 40 Sunnyvale Road, Massey (May 2003)

Charges were laid against Mr and Mrs Covich alleging that the Covich's operated a cleanfill in contravention of an abatement notice requiring them to cease this activity. Mr & Mrs Covich pleaded not guilty and elected trial by jury. A depositions hearing took place on 11 November 2003, with counsel for the Covichs conceding that there was a case to answer. This matter has been set down for a trial during the week beginning 20 September 2004.

MT Yeo, KB Yeong, MTY Properties Limited - Various Properties (May 2003)

Charges were laid against Messrs Yeo and Yeong, and Mr Yeo's company MTY Properties regarding alleged unauthorised building work, failure to comply with notices to rectify, and unsafe buildings, in respect of seven properties owned by the defendants. The matters have been adjourned to a further status hearing to occur on 30 July 2004, to allow time for further discussions.

R Fowler - 7 Woontons Lane, Titirangi (August 2003)

Charges were laid against Mr Fowler for alleged offences under the Building Act (unauthorised building work) and Resource Management Act (breach of various district plan rules, including doing building work on the road reserve and in a stability sensitive area). Not guilty pleas have been entered. A pre-trial conference occurred on 22 April 2004 at which time the not guilty pleas were confirmed and the matter was allocated a defended hearing date of 8 July 2004.

G O'Malley - 18 Kopiko Road, Titirangi (August 2003)

Charges were laid against Mr O'Malley in respect of alleged unauthorised building work (new swimming pool, retaining wall and concrete block wall in a stability sensitive area). On 28 May 2004, Mr O'Malley appeared in Court and pleaded guilty to doing the building work. The Court imposed a fine of \$7,500.

P Wu - 76 Hobsonville Road, Hobsonville (September 2003)

Charges were laid against Ms Wu in respect of three building situated on a property co-owned by Ms Wu (the other owners having left New Zealand), for alleged unauthorised building works and unsanitary buildings. On 28 May 2004, Ms Wu appeared in Court and pleaded guilty to permitting building work to be done without a building consent and to permitting the use (residential) of buildings at the property. She was fined \$1,500 in respect of the unauthorised building works and \$7,000 in respect of the unsanitary building charges.

GPL Limited & JD Hardie - 591 Te Atatu Road, Te Atatu (October 2003)

Charges were laid against the company and its director, JD Hardie, for failing to provide a current building warrant of fitness to the Council and obstructing/hindering Council officers in carrying out their duties under the Building Act. At the end of May 2004, the defendant provided a report to Council which satisfied Council of the state of the building and the Council agreed that the charges be dismissed by consent.

C Davis - 12 McEntee Road, Waitakere (January 2004)

Charges were laid against Mr Davis for the alleged unauthorised conversion of a garage to a habitable unit. Mr Davis has since removed the unauthorised works and the charges have been withdrawn.

Rbit Investments Limited (January 2004) - 12 Marewa Street, Te Atatu (January 2004)

Charges were laid against the company and its three directors for alleged unauthorised building work to convert the basement of a house to a habitable unit. The defendant company appeared in Court on 28 May 2004 and pleaded guilty to permitting building work to be undertaken without building consent. The company was fined \$3,000.

J P O'Malley - 623 Swanson Road (January 2004)

Charges were laid against Mr O'Malley for alleged unauthorised building work (conversion of a shed to a residential unit). Mr O'Malley has indicated that he will plead guilty to undertaking the authorised works and sentencing is expected to occur on 2 July 2004.

Dovey Place Developments Limited, Neslo Construction Limited & Foundation Engineering Limited - Dovey Place, Massey (February 2004)

Charges were laid against the owner of a number of properties at Dovey Place (Dovey Place Developments Limited) and the contractors responsible for the foundation and building works for undertaking the construction of five houses without building consent. These matters will have their first call on 2 July 2004.

T, D & S Watford - 55 Derwent Crescent, Titirangi (March 2004)

Charges have been laid alleging failure to comply with a notice to rectify building work. The matter is listed for first call in court on 30 July 2004.

A & J Kumar - 23 Roberts Road, Te Atatu (March 2004)

Charges have been laid alleging unauthorised building works and failure to comply with a notice to rectify building work. The matter is listed for first call in court on 30 July 2004.

Contract Sealing Limited, Action Plumbing Gas & Drainage Limited & Others - 547 West Coast Road, Oratia (March 2004)

Charges have been laid alleging unauthorised building works. The matter is listed for first call in court on 30 July 2004.

R D Bradford - 10 Apsley Rise, Henderson (March 2004)

Mr Bradford requested a hearing to contest an Environmental Infringement Notice issued by one of Council's enforcement officers. The matter was heard on 1 July 2004. Part-way through the Council's evidence, Mr Bradford advised the Court that he wished to abandon his case. The Judge confirmed a guilty plea and fined Mr Bradford \$300 (infringement fine) plus costs.

HIGH COURT

Application for Declaratory Orders regarding Swimming Pool Fencing (December 2003)

The Council has filed proceedings in the High Court seeking declaratory orders regarding the application of the provisions of the Fencing of Swimming Pools Act 1987 ("FSP Act") and, in particular seeking a ruling on the interpretation of "immediate pool area". There are four other parties, namely Auckland City Council, Rodney District Council, and two defendants against whom the Council has already initiated minor prosecutions for alleged failure to comply with the FSP Act. The matter has been allocated a two-day hearing for 2-3 August 2004.

RECOMMENDATION

That the information be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



PART IV - DISTRICT PLAN / STRUCTURE PLANS

11 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

The Principal Advisor: District Plan will provide a verbal update to the Environmental Management Committee on progress in dealing with the appeals on the Proposed District Plan.

An up-to-the-minute progress report will be brought to each meeting outlining the status of the appeals.

RECOMMENDATION

That the information be received.

Report prepared by: Owena Schuster, Committee Secretary.



12 DISTRICT PLAN - FINANCIAL CONTRIBUTIONS APPEALS

PURPOSE OF THE REPORT

The purpose of this report is to recommend withdrawal of the Financial Contributions chapter from the District Plan.

BACKGROUND

District Plan Provisions / Transitional Procedures

Provisions for financial contributions chapter were included in the proposed district plan in 1995. These provisions are complex, and need not be fully explained here. However the main points are as follows:

- The provisions in the financial contributions chapter cover water supply, drainage (wastewater and stormwater), roading and reserves (community facilities are not included).
- In other parts of the plan there is provision for financial contributions as an option to mitigate effects on the environment - such matters are assessed on a wide range of resource consent matters.
- To a large degree the financial contributions chapter is based on a formula approach. The Optimised Capital Requirement for growth is calculated and a proportion of that charged as a financial contribution dependant on the growth expected in the relevant catchment of the city.

There were a number of submissions, and later appeals (RMA 769/98, 768/98 and 767/98) lodged against the plan's provisions. The outstanding appeals are from major development companies including Neil Construction Limited, Fletcher Homes Limited and Universal Homes Limited. There is one section 274 party, Juderon Family Trust.

The appeals seek deletion and substantial amendment of all of the proposed plan's financial contribution provisions. The grounds of appeal are that the provisions are unfair, unreasonable and uncertain. The Juderon Family Trust would prefer to see the district plan provisions remain.

It is important to note that these district plan provisions have never been utilised. Unlike other proposed plan provisions, the Resource Management Act did not allow Councils to impose financial contributions under the district plan until those provisions became operative. In Waitakere's case, the provisions have been subject to appeals lodged in 1998.

In order to allow for councils to still collect financial contributions, sections 407 and 409 of the Resource Management Act continued the previous Local Government Act 1974 provisions as a transitional position until such time as the relevant district plan rules became operative.

This Council has therefore continued to this day to use the old legislative basis for collecting financial contributions.

Local Government Act 2002

As the Committee would be aware, the new Local Government Act 2002 has now introduced an alternative legislative basis for collecting Development Contributions. Council has decided to use this mechanism for collecting contributions on infrastructure for water, wastewater, stormwater, roading and community facilities.

For a number of reasons, the Local Government Act 2002 mechanisms offer advantages over the Resource Management Act. These advantages include:

- Easier introduction processes. While the requirements under Local Government Act 2002 include the adoption of policies for contributions and integration with wider funding policies, and also special consultative procedures, these requirements are far less onerous than the district plan review/ plan change procedures under the Resource Management Act.
- More certainty. Because procedures under the Local Government Act are more straightforward, there is a greater possibility for certainty, which is potentially beneficial for both the Council and the developer. One major possibility that has become available is the ability to introduce the actual contribution required in any particular case, rather than having the uncertainties involved in the formula approach currently proposed in the district plan. Dollar amounts of contribution can be much more easily changed under the Local Government Act than under the Resource Management Act.
- More flexibility. Development contributions cover a wider range of public assets under the Local Government Act than the Resource Management Act. For instance, it has been possible to require development contributions for community facilities. There is also more scope for defining the procedure by which contributions may be required. Under the Resource Management Act, financial contributions can effectively only be required as a condition of resource consent. In addition to this possibility, the proposed development contributions policy applies, as appropriate, to building consents and service connections as well as resource consents.
- More holistic. There are obvious advantages in development contributions being considered alongside Council's other funding sources as part of an integrated package, rather than, at best, linked to Resource Management Act/ district plan provisions.

The Development Contributions and Financial Contributions Policy was adopted by Council on 29 June 2004. This policy will replace all of the current transitional arrangements, except in respect of reserves which will continue to be collected under the transitional provisions until a comprehensive basis for development contributions, including reserve fund contributions, is in place.

At the November 2003 meeting this committee indicated the possibility that the financial contributions chapter of the district plan may be removed, and approved the undertaking of without prejudice discussions to be held with the appellants. These discussions have since been held with appellants who have been advised of this intention. No opposition has been received.

STRATEGIC CONTEXT

Financial and development contributions are an important component in funding capital for infrastructure and services. Contributions are payable for the component of new works attributable to the growth of the city. Payment of contributions reduces the burden on the general ratepayer of such new works.

The action recommended in this agenda item is consistent with the Revenue and Financing Policy 2003, and with the Development Contributions and Financial Contributions Policy which has been adopted by Council on 29 June 2004.

The Environment Court is applying pressure on Council to have the appeal issues resolved. As noted below, removal of the Financial Contributions chapter of the District Plan will allow Council to have a fully operative plan and, in conjunction with the adopted Development Contributions and Financial Contributions Policy, will enable Council to provide the community and network infrastructure necessary for growth as indicated in the Long Term Council Community Plan 2003.

ISSUES

Local Government Act vs Resource Management Act

As noted above, Council has now decided in principle, to follow the route of development contributions under the Local Government Act 2002 rather than financial contributions under the Resource Management Act and district plan. At the time of writing this report, the deliberations on the draft policy are yet to be completed.

The district plan financial contributions chapter is therefore redundant, regardless of the outcome of the deliberations on the Development Contributions and Financial Contributions Policy. That chapter has never been used as a basis for requiring contributions and would now never be used for that purpose.

Mitigating Environmental Effects

The Local Government Act 2002 cannot be utilised for financial contributions relating to the mitigation of environmental effects. It is important that the current district plan provisions covering mitigation of effects are retained. The appeals do not cover those provisions, therefore there is no issue relating to them being retained. The Development Contributions and Financial Contributions Policy contains the discussion regarding the relationship between these two forms of contributions in Section 2.3 and 2.3.1. For clarity, these provisions are repeated here:

2.3 Development Contributions or Financial Contributions

Prior to the passing of the Resource Management Act in 1991, the Council collected financial contributions and reserve contributions on the basis of the relevant sections (sections 283, 285, 286, 289, 291, 292, 321A and 322) of the Local Government Act 1974 (LGA 74). Pursuant to sections 407 and 409 of the Resource Management Act the Council has continued to use this basis for financial contributions and reserves contributions since that date, and will continue to do so as appropriate and necessary.

An alternative would have been to introduce a new financial contribution regime in the District Plan, under the relevant parts of Resource Management Act. This was Council's original intention when the District Plan was notified in October 1991. That plan contained a financial contributions chapter which included an intended financial contributions framework for network infrastructure and reserves. There was also a framework for the taking of financial contributions to mitigate or offset environmental effects of development activity.

There were submissions, and later appeals, lodged against the proposed financial contribution provisions in the District Plan, which raised major issues about the approach adopted, including a concern about what was considered to be a lack of certainty in those provisions.

These appeals had not been resolved at the time of introduction of the LGA02. This Act introduced the alternative of development contributions as a means of recovering costs for the costs of growth relating to community facilities (which include network infrastructure and reserves). In Council's view, the development contribution provisions allowed for a better mechanism to resolve the issues highlighted in the District Plan appeals, including providing the opportunity for greater certainty.

The Council therefore decided to recover costs of growth relating to community and network infrastructure through development contributions rather than financial contributions.

For the sake of clarity, in this policy the following terminology is used:

- **Financial contributions means those taken for reserves and for environmental mitigation under the Resource Management Act.**
- **Development Contributions means those taken for community and network infrastructure under the Local Government Act for the costs of growth.**

2.3.1 Financial Contributions

The Council will continue to collect financial contributions for reserves through ss407 and 409 Resource Management Act pending a decision whether to assimilate contributions for reserves into development contributions or to promote a plan change to include an appropriate financial contributions rule in the District Plan.

The LGA02 does not provide a legislative basis for contributions to mitigate or offset environmental effects of development activity. This component of financial contributions therefore remains in the District Plan. In addition to this there will be other circumstances where works and services or a financial contribution may mitigate or offset site specific adverse effects, which would otherwise be more than minor. In such cases, effects would normally be required to be avoided, remedied or mitigated on the site of the activity proposed. However if this is not possible, an opportunity is provided through the District Plan for works and services to be provided off-site, or for a financial contribution to be paid. This opportunity is available at the applicant's initiative only. If offered by the applicant, and considered to adequately mitigate or offset the adverse effect, the works, services or financial contribution may be required as a condition of resource consent.

Council will continue to collect financial contributions for reserves:

- **On subdivisions at a maximum rate of 6% for all classes of land under Subsection 285 and 286 Local Government Act 74, pursuant to s407 Resource Management Act.**
- **On developments under Section 294 Local Government Act 74, pursuant to Section 409 Resource Management Act.**

Interim Issues

As noted above, Council has been collecting financial contributions under transitional provisions of the Resource Management Act. This situation could continue indefinitely. There is no reliance placed on district plan provisions. The Development Contributions and Finance Contributions Policy is planned to come into effect on July 1 2004. That will effectively replace the Resource Management Act transitional provisions in all cases except reserves, which will continue to use the Resource Management Act transitional provisions. These matters are all addressed in the Development Contributions and Financial Contributions policy.

Council has received legal advice that there is no difficulty or risk to Council in deleting the financial contributions chapter from the district plan. The worst case scenario is that Council would be no worse off than it has been up until now ie. through continuing to utilise the Resource Management Act transitional provisions. The intention is that reserves contributions might be collected as a development contribution under the Local Government Act 2002 from 2006 but there will first need to be some internal accounting changes, including changes to the Long Term Council Community Plan for that to occur. Continuing vigilance will be required to ensure that the transitional provisions for reserve fund in Resource Management Act are not repealed in the interim. If moves are made in that direction it will be possible to introduce a rule into the District Plan by a Plan Change which could have effect from the date of notification. Officers are therefore satisfied that the interim arrangements are comprehensive and effective.

CONCLUSION

With the introduction of the Local Government Act 2002, it is now possible to introduce a more comprehensive development contributions framework than was available under the Resource Management Act 1991. The financial contributions chapter of the district plan has never been used, and now serves no purpose. Financial contributions can still be sought for mitigation of environmental effects.

Council is under pressure from the Environment Court to have the appeals settled. This can be done by simply withdrawing the financial contributions chapter from the district plan. The agreement of the appeal parties is not necessary for that to occur.

RECOMMENDATIONS

1. That the District Plan - Financial Contributions Appeals report be received.
2. That Financial Contributions chapter of the District Plan be withdrawn and the Environment Court and relevant appeal parties to appeals Resource Management Act 769/98, 768/98 and 767/98 be advised accordingly.

Report prepared by: Matt Heale, Principal Advisor District Plan.



13 STRUCTURE PLANNING REVIEW - UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to present to the Environmental Management Committee an update of the actions relating to the Structure Planning Review that have occurred since the Review was considered by the Committee on 16 December 2003. The Committee will recall that the Structure Planning Review Report was prepared by independent consultants, and was peer reviewed. It led to a significant number of Council resolutions that required further work by the Council.

BACKGROUND

The Foothills Environment is a sensitive rural environment adjacent to the bush clad Waitakere Ranges and outside the Metropolitan Urban Limits. Structure planning has been one method provided for in the District Plan and used by the Council to:

- assess the environmental capacity of the catchment and the role of land within that catchment;
- assess whether there is potential for any further development or not, taking into account the environmental capacity of the catchment and environmental constraints in the District Plan Foothills Environment of the Waitakere Ranges;
- assess the effects of any future development in relation to the Waitakere Ranges generally;
- assess the upstream, downstream and cumulative effects; and
- assess whether the land is able to absorb growth, to determine what the capacity is for the development of land within each catchment, and to provide for environmental enhancement, such as riparian margin re-vegetation and appropriate re-vegetation of sites.

Structure plans have been developed by the Council in three Foothills Environment catchments (Oratia, Birdwood and Swanson). The Council has also engaged in the development of a structure plan in the Dilworth catchment, as part of the process of achieving the resolution of an appeal against the District Plan. The privately initiated Pakanui Structure Plan is also awaiting the outcome of the work associated with the Structure Planning Review.

The Structure Planning Review was a District Plan monitoring project that sits within the Council's wider strategic planning and District Plan monitoring framework. The Council has a statutory obligation to monitor its District Plan under Section 35 of the Resource Management Act 1991, to ensure it remains an effective planning tool.

The Structure Planning Review arose out of statutory processes initiated by the Council to incorporate structure plans into the District Plan, the strategic directions agreed to by the Council via the development of the Council's Long Term Council Community Plan, and following Environment Court appeals, interest and debate from external organisations and individuals.

In the light of these processes, the Environmental Management Committee resolved in April 2003:

- “2. That Council Officers co-ordinate a review of structure planning as the preferred method for managing development and enhancement of the Foothills and Countryside Environments.
3. That funding for the review be sourced from the budget originally intended to undertake the technical studies directed at identifying the physical constraints to development in the Opanuku Catchment.”

The scope of the task identified in Resolution 776/2003 was significantly large enough to require the separation of the review of structure planning in the Foothills and the Countryside Environments. The cost of the Foothills Structure Planning Review exceeded the amount of funding reallocated from the Opunuku Catchment technical study budget.

The Environmental Management Committee also resolved in August 2003:

“That the Environmental Management Committee nominates Crs Fenton, Hulse and Yates to approve the Structure Plan Review Project Brief, following completion of the consultation on the Draft Project Brief.”

1716/2003

STRATEGIC CONTEXT

The Foothills Environment is beyond the Metropolitan Urban Limit as defined by the Auckland Regional Policy Statement. The Auckland Regional Policy Statement provides for the structure planning approach. The Auckland Regional Council has, however, been a submitter in opposition to both the Proposed Birdwood and Swanson Structure Plans.

The Council has encountered a long history of advocacy both for and against further subdivision potential for sites within the Foothills Environment. This advocacy has been addressed to some extent by the utilisation of a method within the Council's District Plan, namely the development of structure plans for defined catchments within the Foothills Environment. Structure plans have therefore been a significant policy and operational initiative for this Council since the public notification of the District Plan in October 1995.

Structure plans are intended to enable Council to achieve a number of outcomes that assist in meeting its strategic objectives. These include:

- enhancement of the Green Network;
- comprehensive catchment management;
- participation by local communities in planning for their area; and
- greater subdivision flexibility that is more consistent with an effects-based approach to subdivision and sustainable land management in the City's Foothills and Countryside Environments.

Out of 146 policies in the District Plan, 22 have structure planning as a method of implementation.

The Council did not undertake the Structure Planning Review in isolation. The Council is currently also engaged in the Waitakere Ranges Project, which is part way through an extensive public consultation process. The Structure Planning Review, being a more technical review, had a more targeted approach, focussing on the approach to development and implementation of structure planning only in the Foothills Environment.

The findings from the Structure Planning Review have been included in the debates associated with the Waitakere Ranges Project, to assist in informing all those people that are involved in that Project.

ISSUES

Structure Planning Review Resolutions

The Structure Planning Review Report canvassed many matters, and made 17 recommendations. The recommendations related to the Council's strategic policy, the Council's approach to structure plans, the Swanson Structure Plan, and regional and central government actions. The Environmental Management Committee considered the Report's recommendations, the Peer Review comments, and legal advice at its meeting on 16 December 2003. The Committee made 18 resolutions, having considered all of the information available.

A61-A68

The table attached at pages A61 to A68 groups the resolutions arising from the Committee's meeting on 16 December 2003. The grouping reflects the similar nature of some of the resolutions. The table provides commentary on the Council's approach to fulfilling the requirements within each resolution, as well as comments regarding the implications of the resolutions in terms of the Birdwood and Swanson Structure Plan Environment Court appeals.

The key points from the Table are as follows.

- That setting the strategic vision for the Foothills Environment via the Waitakere Ranges Project is a pre-requisite to completing much of the work associated with many of the other Structure Planning Review resolutions. The Structure Planning Review consultants identified the Waitakere Ranges Project as the process that could assist with the further development of the strategic vision for the Waitakere Ranges. The setting of the strategic vision will thereby inform Council's decision making on a range of other matters identified in the resolutions.
- While the Waitakere Ranges Project will assist with the setting of the strategic vision for the Foothills Environment, any land identified as Foothills Environment outside the boundary of the Waitakere Ranges boundary may need further consideration in terms of what policy framework applies to that land. This is particularly so for the land in the northern part of the Proposed Swanson Structure Plan, the Birdwood Structure Plan and the Pakanui area, as these areas may be located outside the Waitakere Ranges boundary. Consequently the Waitakere Ranges Project may not necessarily provide a vision for the entire Foothills Environment.
- That setting the strategic vision via the Waitakere Ranges Project has been identified as one pre-requisite to determining the Council's initial negotiating position on the Environment Court appeals related to Variation 88, the Swanson Structure Plan. There is also a need to develop scenarios that identify which District Plan methods are appropriate to implement the strategic vision. This scenario development process will also help the Council to determine its position on the appeals relating to Variation 88, the Swanson Structure Plan.
- Setting the strategic vision via the Waitakere Ranges Project may also redefine the Council's negotiating position on any remaining Environment Court appeals related to Variation 87, the Birdwood Structure Plan, if those appeals remain unresolved at that time.
- That the completion of the tasks associated with many of the resolutions arising from the meeting that considered the Structure Planning Review on 16 December 2003 will take 2-3 years. This includes any mediation relating to the existing Environment Court appeals, any consequential changes to the District Plan, and other supporting policy development and operational adjustments.
- That the completion of some of the work associated with the resolutions arising from the meeting on 16 December 2003 may require consideration during forthcoming Annual Plans. This consideration may include ensuring that there is adequate staff resource available to complete the work programme, and meeting any additional unanticipated / unbudgeted policy advice / projects / costs.

Waitakere Ranges Project: Council Resolutions 26 May 2004

Following consideration of the timeline for the Waitakere Ranges Project the Council endorsed the following extended timeframe, to allow for full and meaningful consultation.

June 2004	Presentation to Environmental Management Committee 8 June of Summary of Phase Two Consultation Analysis. Communication to Waitakere Ranges and Foothills residents and landowners of next steps in the process.
June - August 2004	Further detailed work on the package to clarify the components and clearly document the implications for landowners and residents of each component. Reporting to Environmental Management Committee on progress monthly.
June - December 2004	Landscape and role of the foothills technical study undertaken.
September 2004	Report to Council on detailed development of proposed package in order for Council to clearly identify which components it supports for further consultation.
October - December 2004	Development of consultation materials and process for Phase 3 consultation.
February 2005	Report to Council on recommended final boundary for the project area.
February - March 2005	Phase 3 consultation.
May 2005	Council decision on final package for implementation.

In addition the Council resolved:

“That the other partners in the Waitakere Ranges Project be advised of the Council’s decision with regard to the timeline for the project.”

839/2004

1. *That the Chief Executive conducts further work including analysis of the implications of legislation incorporating the following elements:*
 - *Recognising that the Waitakere Ranges are special and deserving of care and protection, now and in the future;*
 - *Recognising that current District Plan provisions have been reached after years of consultation and should be respected;*
 - *Permitting changes to the District Plan to be made as long as they accord with the principles of protection that the legislation would establish (there being no adverse environmental effects);*
 - *Acknowledging that activities currently permitted by the District Plan and enjoyed by landowners should not be affected;*
 - *Allowing the continuation of current statutory processes including Structure Planning and employing transitional provisions to ensure that existing rights are grand parented in;*
 - *Requiring bodies exercising statutory powers which affect the Ranges and Foothills to take into account the need to consider effects of development on the landscape and to avoid the potential cumulative effects development would have on the Waitakere Ranges and Foothills.*
2. *That the effects of legislation based on these elements on the Ranges, Coastal Villages and Foothills be investigated.*
3. *That the Chief Executive also reports on all existing packages both National and Local providing financial incentives to landowners for adopting conservation measures.”*

836/2004

It is clear from the timeframe arising from this meeting that the Council will resolve its strategic vision for the Foothills that are located within the area bounded by the Waitakere Ranges Project in May 2005.

This will enable the commencement of:

- The development of scenarios that identify the effects of differing district plan methods. This will then enable the Council to determine what the strategic vision will look like when it is implemented. This process will help the Council to determine its position on the appeals relating to Variation 88, the Swanson Structure Plan;
- More detailed discussions and/or mediation with all parties to the appeals relating to Variation 88, the Swanson Structure Plan. The completion of the work associated with the development of scenarios will enable mediation to begin in earnest. This will fulfil the requirement in Resolution 836/2004 (above) that the current statutory processes be continued; and
- Consideration of the translation of the strategic vision into the District Plan (especially if the vision requires plan changes that are outside the scope of the relief sought in the existing appeals relating to Variation 88, the Swanson Structure Plan, or Variation 87, the Birdwood Structure Plan). These plan changes may include amendments to the policy framework for parts of the Foothills Environment outside the boundary of the Waitakere Ranges.

Environment Court Decision: Peat v Waitakere City Council

The Environment Court has released its decision in the Case of Peat v Waitakere City Council (RMA A082/2004). This case relates to a subdivision consent in the Swanson Structure Plan Area. This matter may be of relevance to the progression of the Waitakere Ranges Project, the Structure Planning Review and the appeals against Variation 88, the Swanson Structure Plan. This matter is reported in a separate item on this Agenda.

ENVIRONMENT COURT CALL OVER

The Environment Court Judge, in his decision following the Call Over on 10 February 2004 stated:

"... I accept that the foothills of the Waitakere Ranges is a very sensitive environment. It is important for the Council to get its strategic vision right. I am also conscious that if the application for adjournment was not granted, there is a strong possibility that the Council would be forced to withdraw Variation 88. This would result in much of the cost involved in getting it to this stage, while it is not lost altogether, will at least be dissipated.

I am of the view that all parties will benefit by the adjournment rather than forcing the matter to proceed to a hearing when the Council is clearly not in a position to present an appropriate strategic vision to the Court. Accordingly the matter will be adjourned sine dei and I direct the Council to report on a 6-monthly basis, both to the Court and to all parties as to the progress of the review. The first reporting date will be Tuesday the 10th of August 2004 ..."

At the time of the reporting on 10 August 2004, the Council will update the Judge on the progress that has been made in relation to the Structure Planning Review resolutions, and the relevant matters arising from the Waitakere Ranges Project. It will also update the Judge on the implications of the recent Environment Court decision RMA A082/2004 (the "Peat" decision")

This update will include the revised timetable for the Waitakere Ranges Project adopted by the Council at its meeting on 26 May 2004. It will also provide an indication to the Judge of the process and anticipated timeline that the Council will follow once it has made its final decisions on the strategic vision. All appellants and parties to the various appeals will be informed of that process and timeline.

RESOURCES

As indicated in the commentary within the attached Table, completion of the work associated with the resolutions will require the development of a work programme spanning Council's financial years, and has the potential to be a significant call on staff resource in 2005/2006 and 2006/2007. This may require consideration as part of the Annual Plan cycles for those years.

CONCLUSION

The resolutions arising from the Structure Planning Review Report have been fed into the Waitakere Ranges Project. The resolutions arising from the Structure Planning Review Report require a significant amount of policy work, with potential for consequential District Plan changes and operational adjustments. Much of the Council's approach to structure planning policy (and consequential operational adjustments) is now relying on the development of a robust strategic vision for the Waitakere Ranges.

Council has made significant progress towards identifying both the public's perceptions and aspirations for the future of the Waitakere Ranges. It is expected that the development of the vision for the Waitakere Ranges will define the Council's position in relation to structure planning in the Foothills Environment. Once that vision is known, more detailed District Plan policy development will occur to address the general resolutions relating to the Structure Planning Review. The Council will also be able to reach an informed position regarding its initial negotiating position(s) on the remaining appeals relating to the Birdwood and Swanson Structure Plans.

RECOMMENDATION

That the Structure Planning Review - Update report be received.

Report prepared by: Eryn Shields, Planner: Policy Implementation.



14 ISSUES SURROUNDING THE DEFINITION OF CLEARANCE IN THE DISTRICT PLAN

PURPOSE OF THE REPORT

This report is seeking the approval of the Environmental Management Committee to publicly notify a plan change to the definition of "clearance" in the District Plan.

BACKGROUND

The Environment Court commented in an oral decision on an enforcement matter that the definition of "clearance" should be clarified. The revised definition should provide that expert opinion would be required to remove trees that are dead or suffering from an infectious disease or where removal is required to avoid injury to people or property. The Proposed Plan Change does not involve any change to existing District Plan policy, or rules and is simply a clarification of the existing definition.

District Plan Framework for Vegetation Alteration/Clearance

Issue 5.2 in the Policy section of the District Plan deals with effects on native vegetation and fauna habitat. Historically native forest in the Waitakere Ranges and the lowland parts of the City has been heavily modified over the last 150 years. The Waitakere Ranges and foothills have regenerated during the last 60-80 years although the loss of native bush in the now urban lowland areas has been almost total due to urbanisation. These changes to the City's native forest, shrub lands and wetlands have resulted in the following significant resource management issues:

- a reduction in the City's naturally occurring biodiversity and loss of a valued resource;
- degradation of aquatic habitat;
- reductions in the total area of fauna habitat, and especially forest habitat and wetlands;
- the fragmentation of habitat particularly in the lowland areas;
- continued degradation of coastal habitat and mangrove areas.

Objective 2 in the Policy section states:

"To protect the City's native vegetation and fauna habitat, including protecting:

- *The quality and resilience of the resource;*
- *The variety and range of species and their contribution to the biodiversity of the City;*
- *Their ecological integrity;*
- *Their healthiness as a potential source of harvest for cultural purposes."*

A69-A73

There are several policies that relate to vegetation alteration in the Plan. There are specific policies on woodlots (policy 2.8), harvesting of native plants for medicines and cultural reasons (policy 2.11), subdivision design (policy 2.13), the removal of undergrowth and natural regeneration processes (policy 2.7). All policies relating to vegetation clearance are attached at pages A69 to A73.

District Plan Definition of Clearance

The District Plan has two layers of rules: the Human Environments Rules that provide for bulk and location controls and the Natural Areas rules that deal with the effects of activities on the natural environment such as earthworks, vegetation alteration, works in riparian margins and impermeable surfaces. The Natural Area Rules have the same status as the Human Environment Rules. The Natural Areas have been established on the basis of vegetation cover and natural features such as streams and are mapped irrespective of cadastral (property) boundaries. The least restrictive Natural Area is the General Natural Area (the urban environment) where the environmental qualities have changed over time due to some piping of streams, intensive settlement patterns and amenity trees rather than bush covering much of the landform. The most restrictive Natural Area is the Riparian Margin/Coastal Edge Natural Area where the Council has made a policy decision to restrict vegetation alteration and seeks to encourage planting of margins with appropriate species.

The vegetation alteration rules are different for each of the six Natural Areas and need to be read in conjunction with the definitions of vegetation alteration and clearance in order to understand exactly what trees can be removed without a resource consent.

The vegetation clearance rules were the subject of several District Plan appeals and the issue raised by the Environment Court decision in February 2002 was made after these appeals had been settled.

STRATEGIC CONTEXT

Waitakere City Long Term Council Community Plan

The Long Term Council Community Plan has identified nine strategic platforms for delivering Council service. The two most relevant platforms are: the Green Network and Urban and Rural Villages. The Green Network platform is about caring for natural areas. The City's parks, bush and streams form a "Green Network" that provides homes and "highways" for wildlife and recreational areas for people. It also assists with managing and filtering stormwater. Protection and enhancement is sought on both public and private land, community involvement is encouraged, as is the protection of landscapes, native plants, wildlife and ecosystems, while providing friendly green areas throughout the City. The Urban and Rural Villages platform is about ensuring people have choices in housing, transport, employment and recreation in their neighbourhoods and town centres.

The Resource Management Act 1991

The purpose of the Resource Management Act as outlined in Part II of the Act is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in Section 72 of the Resource Management Act is to assist Council to carry out its functions. Councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

Auckland Regional Council

Section 75 of the Resource Management Act requires that a District Plan must not be inconsistent with a regional policy statement or plan. The Auckland Regional Policy Statement is now operative and the Proposed Plan Change is consistent with regional planning documents. The minor change to the definition of clearance is consistent with the Air Land and Water Plan that takes an integrated approach to the management of discharges.

ISSUES

Clearance

The definition of 'clearance' was commented on by Judge McElrea in enforcement proceedings taken by this Council (Waitakere City Council v Gavin Adams, Anne Adams, G&A Development Limited, Kane Holdings Limited). This case involved the clearance of remnant gumland/eucalypt trees in the Sturges area. An important part of the decision focussed on the definition of clearance and the Court accepted that the two bullet points in the definition operate in the alternative rather than both of them having to apply together.

The definition of clearance states:

"removing or killing any native vegetation of any height or any exotic vegetation with a height of 1.0m or more, including any alteration of the root structure of such vegetation likely to result in plant death, provided that this definition shall not include pruning or:

- *the removal of any vegetation that, in the opinion of an expert recognised by the Council, is dead or suffering from an untreatable or dangerously infectious disease;*
- *removal of alteration of vegetation necessary to avoid injury to persons or damage to property."*

The issue that requires clarification is that as the definition currently stands, if a tree is considered by the owner to be dangerous and removal is necessary to avoid injury to people or property, this can be undertaken without any independent assessment. The Environment Court judge stated:

"I accept Mr Price's submission concerning the "danger" exception; there is no requirement that a Council-approved expert be involved in making that assessment. It may be that in any future amendments to the Plan, the Council might want to bring the two limbs into line, one with each other. As I say, it would provide perhaps some better degree of certainty for citizens than having to face the prospect of a prosecution and a finding by the Court more than a year after the event that their judgment was wrong."

Given the judicial scrutiny of this definition, it is considered appropriate to change the definition to clarify that expert opinion is also required to decide that a tree is dangerous. This is supported by Council staff involved in the original enforcement proceedings and Council's arborists.

Current District Plan Provisions

A74-A125

As outlined above the Proposed Plan Change is based on comments made by an Environment Court judge during enforcement proceedings two years ago. A copy of the judgement, as attached at pages A74 to A125. The Court recommended that the definition of "clearance" should be clarified to bring both limbs of the definition into line with each other. As the definition currently stands there is no requirement that a Council-approved expert be involved in deciding whether or not tree removal is necessary to avoid injury to people or damage to property. This has led to a potential loophole where people may claim that a tree has been removed because of danger to people or property without any independent assessment of that.

This is a resource management issue and one that should be addressed following judicial comment. If the definition is not amended, the District Plan will not be achieving its intent of sustainably managing the environment for present and future generations. The change is unlikely to increase compliance costs as tree consents are processed free of charge by Council.

Potential Plan Change

The Proposed Plan Change is limited to some additional wording being added to the definition of "clearance". The new definition should read (additions shown underlined):

"removing or killing any native vegetation of any height or any exotic vegetation with a height of 1.0m or more, including any alteration of the root structure of such vegetation likely to result in plant death, provided that this definition shall not include pruning or:

- *the removal of any vegetation that, in the opinion of an expert recognised by the Council, is dead or suffering from an untreatable or dangerously infectious disease;*
- *the removal or alteration of vegetation that, in the opinion of an expert recognised by the Council, is necessary to avoid injury to persons or damage to property."*

Resources

Plan Change Priorities and Current Work Programme

There is sufficient existing staff time already allocated in this years budget to undertake this work.

CONCLUSION

Overall it is concluded that a plan change should be undertaken to address the loophole identified by the existing definition of the term "clearance". The need for this amendment to the District Plan was identified by the Environment Court in enforcement proceedings.

RECOMMENDATIONS

1. That the Issues Surrounding the Definition of Clearance in the District Plan report be received.
2. That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee resolve to publicly notify a proposed Plan Change to the Operative Waitakere City District Plan that amends the definition of "clearance" to read:

"removing or killing any native vegetation of any height or any exotic vegetation with a height of 1.0m or more, including any alteration of the root structure of such vegetation likely to result in plant death, provided that this definition shall not include pruning or:

- *The removal of any vegetation that, in the opinion of an expert recognised by the Council, is dead or suffering from an untreatable or dangerously infectious disease*
- *The removal or alteration of vegetation that, in the opinion of an expert recognised by the Council, is necessary to avoid injury to persons or damage to property."*

Report prepared by: Alina Hughes, Planner: Policy Implementation.



15 **ISSUES SURROUNDING NEIGHBOURHOOD CHARACTER PROVISIONS OF THE DISTRICT PLAN**

INTRODUCTION

This report is prepared as a discussion document regarding further monitoring of the District Plan provisions relating to neighbourhood character and amenity in the Living Environment. This issue has been raised in relation to a minor household unit in New Lynn that meets all current district plan controls but has raised issues of building design and appearance.

BACKGROUND

The issue of residential amenity and neighbourhood character has been raised through one particular example of a minor household unit in Sheridan Drive, New Lynn. In the case of this site it is not the use of the building as a minor household unit but the bulk and appearance of the building that is the main issue. The Living Environment rules provide for minor household units as a permitted activity on sites with a minimum net unit area of 600m² subject to compliance with all other permitted activity standards.

The definition of a minor household unit is:

“means one building built for Residential Activity of not more than 65m² in gross floor area (excluding any garaging for motor vehicles) which is associated with an existing dwelling on the same site.”

This has raised a concern as to whether the current permitted activity threshold is affording suitable protection of neighbourhood character and amenity values. The issue of residential amenity and neighbourhood character relates to the size, scale and location of the house or dwelling and associated buildings, garages, sleep-outs and minor household units. The existing rules would have allowed a garage and loft to be constructed with the same physical effects as the minor household unit in Sheridan Drive. The building complied with all of the Human Environment and Natural Areas rules in the District Plan and therefore only required building consent.

Existing Provisions of the Waitakere City District Plan relating to neighbourhood amenity include a suite of policies, objectives, rules and assessment criteria that are aimed at maintaining neighbourhood character and amenity in Waitakere City.

Issue 5.11 in the Policy Section of the District Plan states:

“The City’s local areas and villages can be affected by intensification of settlement and, to a degree, changing uses, such that some of the key elements and characteristics that make these areas unique can be adversely affected. The key factors affecting local areas are changes in section size and the style of housing, such that the original style, form and scale of buildings is changed, and loss of the essential character of an area that is derived from the dominant activities. In most areas, this is an issue of...the construction of buildings that are out of scale with the existing buildings and section sizes of the area.”

The policy identifies the following effects on the urban landscape (part of Table 5.11(a) produced below):

Landscape	Effects on Landscape Elements	Effects on Landscape Character
Urban (residential)	<ul style="list-style-type: none"> • Reductions of planting on private sections with infill housing. • Reduction in amount of space around buildings with more intensive settlement. • Possible dominance of surrounding sites by larger buildings. • Feeling of openness and greenness undermined. • Loss of relative quiet. 	<ul style="list-style-type: none"> • Possible undermining of characteristic residential character to the degree that it is no longer the defining feature. • Overwhelming of any natural features.
General (streetscapes)	<ul style="list-style-type: none"> • Change in the streetscape (planting and openness). • Loss of physical overlooking of streets (urban). • Loss of local landmarks in road reserves. • Loss of connections between community/public spaces and private areas. • Changes in building style and relationship with street. 	<ul style="list-style-type: none"> • Reduction of connection between street and homes/buildings (private and public space). • Loss of uniqueness of streets in different parts of the city.

Objective 11 in the policy section is concerned with recognising the varying character of each part of the City. It states:

“To achieve a quality of settlement and associated activities within each of the City’s Human Environments which is sympathetic to , and protects and enhances, the dominant natural and physical (including building) features which contribute to the amenity value and the neighbourhood character of an area, including maintaining and enhancing:

- *the quality and character of different patterns of settlement within the City’s intensively settled residential areas;*
- *the pedestrian-oriented amenity values of the town centres and the character of those areas as retail centres;*
- *the utilitarian nature and character of the industrial areas;*
- *the natural and physical features that give each rural and coastal village its particular and unique character;*
- *the pastoral/rural character of the northern parts of the City;*
- *the complex, missed landscape of the foothills.”*

The policy section in part 5.10 deals with effects that contribute to the community's amenity values including issues of health and safety. The policies specifically aim to manage:

- noise;
- overshadowing and loss of adequate daylight to residential and non-residential buildings;
- loss of privacy from inappropriate placement of buildings;
- odour, dust and vibration nuisance;
- reduction in the darkness of the night sky, to a level that disrupts sleep;
- reductions in the availability of accessible open space for residents;
- inappropriately designed housing; and
- impediments to public access to and along the coast and waterways.

The District Plan defines amenity as:

Means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes.

Amenity values and neighbourhood character are described in the glossary – District Plan Policy. The District Plan encourages development in the urban areas of the City on the basis that this is where most of the City's population live and work and a higher density supports passenger transport and investment in civic amenities.

Issue/s Identification

The issue of residential amenity and neighbourhood character has been raised through one particular example of a minor household unit in Sheridan Drive, New Lynn. The existing house is located on an 855m² section that is zoned Living Environment and General Natural Area. The main dwelling is located approximately 12m from the front boundary in line with most of the other houses constructed in the street (varies from 6m for properties adjoining the site to around 17m for other properties). The application was for a two storey, standard detached minor unit of 65m² located 4m from the front boundary on a site over 600m². The proposal is fully complying with the current District Plan provisions on bulk and location and did not require the removal of vegetation as the front yard had little in the way of existing vegetation. This meant that the building only required building consent. The new building appears out of scale with its surroundings for the following reasons:

- the building is located 4m from the front boundary and although it complies with the 3m front yard control it is closer to the road than most of the other houses in the street;
- although the building complies with the 8m building height, it is located on a slight rise from the road therefore creating more of an impression of visual dominance;
- the pitch of the roof is steep, accentuating its height;
- the external finish and appearance differs to its surrounding houses; and
- there is no height in relation to boundary control for street frontages.

Building setback is an important element that defines a streetscape. A streetscape is that combination of physical elements or features that make up the road and the combination of surrounding buildings, gardens and private spaces that overlook and are visually linked to a road or street when viewed from the road itself. Because roads and streets can be such a dominant part of a landscape, particularly in urban landscapes, they are important in defining landscape qualities and neighbourhood character.

Building height gives a human scale to development and in most of the residential urban environment tends to be limited to two-storey dwellings. The pitch of a roof can accentuate different architectural features or highlight textures and form. The height of buildings in relation to boundaries can also affect access to daylight and lessen visual dominance of structures. In residential areas the way houses face the street, the existing trees and landform contribute to a sense of place. The overall design of individual houses and streets sets up strong links between private and public spaces.

The District Plan does not have a height in relation to boundary control on the road boundary. This was a policy decision taken as the District Plan is an effects-based document and it was considered that any effects on shadowing in the Transport Environment (footpath, berm and roads) are negligible as it is an uninhabited space. Although the height in relation to boundary control addresses shading effects, it also impinges on visual dominance. Therefore, although the building complies with all the controls, it may be considered to be visually dominant in comparison to other houses in the street.

STRATEGIC CONTEXT

Waitakere City Strategic Plan

The Long Term Council Community Plan sets the Council's strategic direction for the next ten years and the range of responses, interventions and partnerships that it will make. The Long Term Council Community Plan informs decision-making and has five priorities and nine strategic platforms. The two platforms that are most relevant to this issues paper are: urban and rural villages and integrated transport and communication.

The urban and rural villages platform is about ensuring people have choices in housing, transport, employment, recreation in their neighbourhoods and town centres. The Council's objective is to make the City a vibrant and enjoyable place to live, work and play by creating attractive urban places that encourage growth and economic development, with minimal environmental impacts.

The integrated transport and communication platform is essentially about developing a workable passenger transport system to serve a growing population and end traffic congestion. It will serve the existing network of roads, towns and neighbourhood centres. This is reflected in Council policies and themes in the District Plan. One of the key themes in the District Plan is urban intensification but not at the expense of amenity.

The Resource Management Act 1991

The purpose of the Resource Management Act as outlined in Part II of the Act is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in Section 72 of the Resource Management Act is to assist Council to carry out its functions. Councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

Section 7 requires Councils to have particular regard to the efficient use and development of natural and physical resources, the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. The recognition and maintenance of amenity values are important and it is critical to ensure that the urban environment is not unduly compromised.

Auckland Regional Council

Section 75 of the Resource Management Act requires that a District Plan must not be inconsistent with a regional policy statement or plan. The Auckland Regional Policy Statement is now operative and Chapter 2 that provides a regional overview and strategic direction states:

“The growing trend towards redevelopment of the existing urban areas includes infill housing of residential areas; the central city (Central Business District and city fringe) apartments; and a re-evaluation of commercial and industrial land with a view towards comprehensive residential and associated uses (eg. Railways land in the city). Some criticism of the quality of infill housing in residential areas has resulted, but this can be avoided by appropriate methods that ensure higher density residential areas are attractive places in which to live. An assessment should also be made addressing impacts on matters such as school provision, open space, traffic and local amenity.”

The Auckland Regional Policy Statement supports intensification of the existing urban area to support the regional transport strategy. It is clear that maintenance and enhancement of amenity is a key factor in good design outcomes for the region.

Issues

Waitakere City has an effects based District Plan. The Act provides for a continuum of activities with corresponding effects ranging from permitted activities that are deemed not to have any adverse effects, controlled activities where the Council must give consent but may impose conditions, limited discretionary activities that require Council to assess the application against certain assessment criteria, discretionary activities that are generally notified with a rigorous assessment of effects, through to non-complying activities that must pass stringent assessment against policies and adverse effects and finally prohibited activities that cannot be granted consent. The permitted baseline is a useful method for understanding what range of activities and effects are allowed as of right so that other applications that may have infringe rules can be measured against it. The table below outlines in a table format the range of district plan controls that would have applied to the Sheridan Drive example and what is permitted as of right ie. does not require a resource consent in the Living Environment.

Residential Density	<ul style="list-style-type: none"> • Dwellings with a minimum of 450m² net unit area per dwelling except in the Living (3) Environment. • Dwellings with a minimum of 650m² net unit area and an average of 800m² net unit area in the Living (3) Environment. • Minor household units with a minimum 600m² net unit area for the minor household unit and associated dwelling.
Building Location - Natural Landscape Element Rules	<ul style="list-style-type: none"> • Buildings and development which are not on sensitive ridgelines.
Building Height (except dwellings in a medium density housing development)	<ul style="list-style-type: none"> • Buildings having a maximum building height no greater than 8m.

<p>Height in Relation to Boundaries/Separation of Buildings (except internal boundaries in a medium density housing development)</p>	<ul style="list-style-type: none"> • Have ground floor windows of any habitable rooms located no less than 1.2m from a site boundary or from a building on the same site. • Do not project beyond the following recession planes - southern boundary 2.5m plus 35 degrees, western and eastern 2.5m plus 45 degrees, northern 2.5m plus 55 degrees. • (Note the HIRB control is not measured from the Transport Environment/road).
<p>Front Yards - Does Not Apply to Buildings in a Medium Density Housing Development or Scheduled Activities on Scheduled Sites</p>	<ul style="list-style-type: none"> • Buildings set back from the road by a minimum of 3m. • Eaves which encroach 0.6m into the front yard.
<p>Building Coverage Except Buildings in a Medium Density Housing Development and Scheduled Activities on Scheduled Sites</p>	<ul style="list-style-type: none"> • Buildings resulting in a building coverage of no more than 35% of the net site area (including 20m² building coverage for a covered car space where a covered car space is not otherwise provided).
<p>Building Location - Privacy/ Amenity Except Minor Household Units and Dwellings in a Medium Density Housing Development</p>	<ul style="list-style-type: none"> • Residential buildings located and designed so that the main glazing of the main living room and outdoor space is separated by 6m from the site boundary (except the road boundary) or is screened from adjoining sites.
<p>Car Parking and Driveways- Apply to Any Activity Except a Medium Density Housing Development</p>	<ul style="list-style-type: none"> • Dwellings where 2 on-site car parks are provided for each dwelling. • at least one car park is located where it would be possible to erect a garage or carport of 3mx6m. • minor household units where one on-site car park is provided.

There are other rules relating to air discharges, odour, dust, glare and vibration, signs and non-residential activities that are not relevant to this issues paper. There are a range of controls for the General Natural Area for vegetation alteration, earthworks and a range of other matters. There were no Natural Area consents required by the subject example because it did not involve any tree removal or earthworks outside the building platform which is permitted.

As outlined above it is only where applications infringe the permitted baseline that an application is measured against certain assessment criteria. Each rule in the Living Environment has assessment criteria. The current District Plan provisions for residential density include the following assessment criteria:

2(a)

The extent to which the development complements amenity values and neighbourhood character

2(b)

The extent to which the development is compatible with the size of the site

2(c)

The extent to which the development complements existing development on the site, having regard to:

- *Separation distances between dwellings*
- *The visual impact of access to rear dwellings*
- *The visual appearance of the development from the road*
- *Privacy between buildings and of outdoor space*

It should be noted that if infringed all of the bulk and location rules provide for visual impact and amenity concerns to be addressed. The medium density housing criteria also specifically refer to design elements such as neighbourhood character, site layout, building location, visual and acoustic privacy, car parking and vehicle access, on-site outdoor space, entries to buildings, site facilities and landscape treatment as measures to enhance design and integrate development into the surrounding neighbourhood and create a quality living environment.

Further Monitoring Required

At this stage, it is not clear that a Plan Change altering the permitted baseline for buildings including minor household units in the urban area is required. A Plan Change is a significant step given the additional costs to Council and the general public that would be caused by altering the thresholds for certain activities and the likelihood of appeals to new provisions. The Sheridan Drive example may be a “one-off” that is unlikely to be repeated and therefore may not warrant changes to the District Plan. However, further monitoring should be carried out to provide the Committee with empirical evidence on the quality of new building design. If a Plan Change is the appropriate course of action, then a height in relation to boundary control for the Transport Environment may be appropriate although all the implications of this would need to be assessed. This approach would be consistent with the effects-based nature of the District Plan.

Approaches Taken by other Local Authorities to the Issue

All territorial authorities in the Auckland region seek to control urban amenity and neighbourhood character through a range of controls that are similar to our: maximum building height, density, maximum building coverage, outdoor living space, visual privacy, yard controls, height in relation to boundary controls and minimum landscaping requirements. Perhaps one main difference is that the height in relation to boundary controls generally apply to all site boundaries in the North Shore Plan and the Auckland (Isthmus) Plan provides for 60% of the 6m front yard to be landscaped which lessens the amount of building that can occur close to the road boundary and has a height in relation to boundary control for the road boundary.

Other Relevant Issues

Council staff are working on a new rule for site analysis that will inform design outcomes for the City’s town centres and it is likely that this work will influence ongoing monitoring of urban design outcomes throughout the City.

CONCLUSION

In conclusion, the District Plan already includes a number of controls on neighbourhood character and amenity in its policies, rules and assessment criteria. Any future Plan Change would need to be supported by monitoring data demonstrating that the existing regulatory framework is deficient. At this stage, there is insufficient data to proceed with a Plan Change but further detailed monitoring should take place.

RECOMMENDATIONS

1. That the Issues Surrounding Neighbourhood Character Provisions of the District Plan report be received.
2. That a monitoring report on amenity issues in the Living Environment be brought back to this Committee in the next six months.

Report prepared by: Alina Hughes, Planner: Policy Implementation.



16 **PROSTITUTION REFORM ACT 2003 - WORK PROGRAMME**

PURPOSE OF THE REPORT

This report presents the Council's work programme for engaging with the public on the policy issues arising from the decriminalisation of prostitution precipitated by the passing by Parliament of the Prostitution Reform Act 2003.

BACKGROUND

The Prostitution Reform Act decriminalises the soliciting and provision of sexual services for reward. Decriminalisation means repealing the previous laws relating to prostitution, and making it subject to the same laws and controls that regulate other businesses. It is now viewed by Parliament as just another "commercial" activity, meaning that sex workers have the same status in law as their clients; and labour laws and health and safety regulations can be openly applied.

The Prostitution Reform Act creates two types of brothels. The first is a Small Owner-Operated Brothel where there are no more than four sex workers, and where each worker retains control over his or her individual earnings. Small owner-operated brothels do not require the certification or licensing (by the District Court) of their premises. The other type of brothel is where there are five or more sex-workers, with an operator who manages or controls the business. An operator of such a brothel is required to obtain a certificate from the District Court.

Reports on the implications of the PRA were presented to the August 2003 Environmental Management Committee meeting, and the October 2003 Council meeting.

An internal staff team comprising officers from Consents, Legal Services, Strategy & Development, Field Services and City Services was formed to work through the various issues arising from the decriminalisation of prostitution. The team has been considering various options for the Council's response to the Prostitution Reform Act. The team has met with representatives from the Police, Auckland Regional Public Health Service, the New Zealand Prostitutes' Collective and owners of three massage parlours located in Waitakere City.

A workshop attended by staff, Councillors, Community Board Chairs, Police and Health Service representatives was held on 6 October 2003. A further workshop was held on 31 May 2004, and identified a work programme to progress the Council's policy on this matter. It was also clear from the 31 May 2004 workshop that the Council's response should encompass the many and various activities undertaken by the commercial sex industry, as brothels are only one component of that industry.

STRATEGIC CONTEXT

The Council's strategic objectives are to encourage social and economic activity in its urban and rural centres, to encourage the development of strong and safe communities, and to provide a home for innovative economic activities. The Council has a range of regulatory mechanisms available to achieve its objectives and control the effects associated with activities. These mechanisms include the District Plan, Bylaws and other non-statutory Council policies.

The Council has recently completed the Liquor Licensing Policy (through the Sale of Liquor Act 1989), and a Gaming Act 2003 Class 4 Venue Policy (related to 'pokie machines'). A City Wide Alcohol Strategy is also being prepared. Any regulatory response by the Council to the Prostitution Reform Act needs to be considered in the context of these policies.

ISSUES

The purpose of the decriminalisation of prostitution is to make sex work safer and to allow councils to manage the potential negative outcomes of decriminalisation. The PRA enables the Council to minimise the visibility of prostitution and the activity's potential to create adverse effects. It does not allow the Council to place constraints on the industry based on moral viewpoints. Key issues that have emerged from the regional and internal work to date and from the discussion at 31 May 2004 workshop are summarised below.

Council staff consider that an integrated approach to this matter is required. For example, while the PRA enables the development of location and signage Bylaws for brothels, it does not enable Bylaws for other activities related to the sex industry such as striptease clubs and adult video shops. Consequently it is considered important that any Bylaw be integrated with any District Plan change, to ensure that the Council addresses all of the effects of commercial sex activities in the City.

The Council is required to consult with the public on both draft Bylaws and draft District Plan changes. Failure to consult would present the possibility of challenges to any Bylaws or District Plan Changes on the basis of poor process. Consequently it is considered appropriate that a draft policy statement be prepared for consultation purposes, and that explains the following matters:

- the intention of the Prostitution Reform Act;
- the Council's strategic policy approach in relation to the commercial sex industry;
- the role that by-laws can play in regulating the commercial sex industry (including the scope of draft by-laws);
- the role that the District Plan can play in regulating the commercial sex industry (including the scope of draft plan changes); and
- the role of other agencies in regulating the sex industry (such as the NZ Police, the Ministry of Health, the District Court);
- an overview of policies and actions undertaken by other Councils in the region, and an assessment of the likely impact of those policies on Waitakere City;
- taking all of the above into account, a statement of the preferred course(s) of action for Waitakere City Council.

The purpose of creating the draft policy statement and identifying roles and responsibilities is to enable the Council to focus discussion on matters that it has some ability to influence. It will also provide a clear indication of the Council's preferred course(s) of action for Waitakere City. It can also clearly set out those matters that the Council has no ability to control. Public comment on the draft policy statement will be sought.

The purpose of any Bylaw or District Plan Change is not to achieve a “social good” or a “moral viewpoint”. Both may be used to address the environmental effects of the activities, and matters such as nuisance and avoidable offence. The draft policy statement will be sufficiently broad to enable comment to be sought from the public on various options for Bylaws and Plan Changes. Comment from the public, while not being able to bind the Council to a particular approach, is useful to inform Council of the range and intensity of views held within the community.

TIMEFRAMES

It is expected that the preparation of the draft policy statement will take some months, to enable the appropriate level of policy detail (Bylaw and District Plan) to be assembled, and for comprehensive consultation with key government and community stakeholders to be undertaken. The draft policy statement will be presented to the Environmental Management Committee for approval prior to being made available for public comment. It is expected that comment from the public will be sought over a period of four to six weeks. Following this period, the policy statement will be amended as the Council sees fit and finalised. Any consequential Bylaws and/or District Plan Changes that are required to give effect to the policy statement will then be forwarded to the Environmental Management Committee for approval to have them publicly notified. It is expected that the processes for Bylaws and District Plan Changes will continue on into the 2005 calendar year.

RESOURCES

Preparing the consultation document and undertaking the consultation can be adequately resourced from existing budgets. No additional staff funding or resources are required.

CONCLUSION

The decriminalisation of prostitution raises a complex set of issues relating to both the residential and urban sectors of Waitakere City. It requires a holistic approach that is linked with other Council policies and strategies that are currently being developed to manage the impact of legislation such as the Sale of Liquor Act 1989 and the recently enacted Gambling Act 2003. It also requires a realistic assessment of what the effects of the Prostitution Reform Act might be, and the placement of them into perspective with other issues confronting the City, such as drugs, alcohol, crime and violence. Staff are suggesting that the Council prepare a draft policy statement that seeks to inform the public on the roles and responsibilities of Council and other agencies, and seeks comment on the various regulatory options available.

RECOMMENDATIONS

1. That the Prostitution Reform Act 2003 - Work Programme report be received.
2. That the Council continues to use the current District Plan and policies to regulate commercial sex premises (including brothels, sex shops, striptease clubs, massage parlours or activities of a similar nature) while it develops an integrated strategy and regulatory framework for dealing with any effects relating to the decriminalisation of prostitution.
3. That a draft policy statement be prepared for consideration by the Environmental Management Committee for use in public consultation.

Report prepared by: Annika Lane, Senior Analyst: Governance and Infrastructure and Eryn Shields, Planner: Policy Implementation.



17 SWANSON STRUCTURE PLAN - RESOLUTION OF APPEALS

PURPOSE OF THE REPORT

The purpose of this report is to advise the Committee of implications arising from a recent decision of the Environment Court (the 'Peat decision').

The report also suggests that the Committee reconsider its position in relation to the Swanson Structure Plan references as a consequence of the Court's decision.

BACKGROUND

The Swanson Structure Plan

The Council adopted Variation 88 to the Proposed District Plan in December 2002. Variation 88 is more commonly referred to as the Swanson Structure Plan.

The Council's decision in respect of Variation 88 is subject to a number of references (appeals) to the Environment Court, some of which seek additional lots and some of which challenge the Structure Plan in total.

The Swanson references provided, in part, the catalyst for the Council to undertake a review of structure planning. A brief for this project was prepared, and the Council then engaged four independent consultants to provide a report addressing the matters that were set out in the brief. The consultants concluded that Council needed to undertake further work to confirm its strategic vision for the Waitakere Ranges and Foothills Environment, and that the Swanson Structure Plan should be withdrawn. A peer review of the report was subsequently conducted by an experienced and respected resource management consultant.

The reports of the independent consultants and the peer reviewer were presented to the Environmental Management Committee on 16 December 2003. At that time, the Committee adopted the majority of the recommendations of the consultants, but stopped short of withdrawing the Swanson Structure Plan.

Instead, the Committee passed the following resolution:

- “1. *That in relation to Recommendation 15 in the Structure Planning Review, the Council request that the Environment Court defer the appeal proceedings relating to Variation 88 until such time that the strategic vision for the Waitakere Ranges and the Foothills Environment is confirmed.*
2. *That once the strategic vision for the Waitakere Ranges and the Foothills Environment is confirmed, the Council seek to resolve the Environment Court appeals relating to Variation 88, in accordance with that confirmed vision.*
3. *That if the Environment Court declines the Council's request for deferral of proceedings, the matter be referred back to the Environmental Management Committee for further consideration.”*

4400/2003

The Environment Court subsequently considered the Council's request on 10 February 2004. The Court accepted the Council's position and adjourned the proceedings indefinitely, in order to provide an opportunity for Council to undertake the work required to confirm its strategic vision for the Foothills Environment. The Court directed that the Council report its progress on a six-monthly basis, with the first reporting date falling on 10 August 2004.

The Peat Decision

A126-A164

The Environment Court has recently released a decision in the case of LB Peat and SK Peat v Waitakere City Council (A082/2004). A full copy of the decision is attached at pages A126 to A164. The Peat decision grants consent to an application to subdivide a property that is located within the Swanson Structure Plan area. The proposed subdivision is consistent with the allocation of lots that is indicated under the Structure Plan. The decision gives rise to some significant implications that need to be considered by the Committee.

Council's solicitors, acting on instruction from the Chief Executive, have filed an appeal with the High Court in response to the decision. That action was taken in order to preserve the Committee's options, as the period for lodging an appeal expired prior to the Committee meeting. Depending on the course of action that the Committee decides to follow, the appeal may be able to be withdrawn.

STRATEGIC CONTEXT

The Council's strategic direction for the Foothills Environment is set out in the District Plan. The Plan records that the Foothills are intended to be an area where a permanent settlement threshold is established at a level that maintains the role of the foothills as a visual and ecological buffer between the urban area and the Waitakere Ranges.

In this regard, the protection of open space character, native vegetation, riparian areas and the limiting of the provision of urban infrastructure are all key to maintaining the visual and ecological integrity of the Foothills area.

There is a significant history of advocacy both for and against further subdivision potential for sites within the Foothills Environment. This advocacy has been addressed to some extent by the development of structure plans for defined catchments within the Foothills Environment. Structure planning has formed an important resource management method for the Council since 1995, when the Proposed District Plan was publicly notified.

ISSUES

The thrust of the Peat decision is that the Swanson Structure Plan should be afforded substantial weight when considering applications for subdivision consent, despite the fact that there are a number of unresolved references that challenge the Structure Plan.

It is reasonable to assume that the Environment Court would reach the same conclusion in relation to other subdivision applications that come before it, where such applications are consistent with the Swanson Structure Plan. This assumption is likely to be shared by many of the landowners in the Swanson Structure Plan area, who may be encouraged to lodge applications for subdivision consent in the near future. This could create an undesirable situation whereby the Structure Plan is being implemented while still fundamentally under challenge.

In these circumstances, it is considered that the Council's current approach to the resolution of the Swanson Structure Plan appeals is no longer tenable. The Peat decision has forced the Council's hand. If the Structure Plan remains in place whilst work continues to clarify the strategic vision for the Foothills, much of the Swanson catchment might be subdivided before the Environment Court has an opportunity to consider whether such subdivision is an appropriate environmental outcome.

It is considered that the Council now has little choice but to revise its position. There are two feasible alternatives:

Withdraw the Swanson Structure Plan

The Committee could decide to withdraw the Swanson Structure Plan. The Resource Management Act entitles the Council to take such action at any time prior to a hearing. The Act does not provide any of the parties with a right to challenge such a decision.

Applications for subdivision consent are unlikely to be successful in the absence of the Structure Plan, as they could draw no direct support from the provisions of any statutory document. Withdrawal would almost certainly avoid the undesirable possibility of subdivision applications being approved in advance of the Environment Court's determination on the merits of the Swanson Structure Plan.

If the Committee elects to withdraw the Swanson Structure Plan, it would mean that the investment of resources and funding that has been put into the Structure Plan would be at least partially lost. Any future proposal to initiate a structure plan for the Swanson catchment would need to commence from the start of the statutory process.

Confirm the Swanson Structure Plan

The Committee could decide to confirm its original decision to adopt the Swanson Structure Plan. This would then become Council's formal position in response to the references. This option would rely on the Committee being comfortable with the outcomes that are proposed through the Structure Plan.

The Environment Court would be advised that the Council no longer requires the current adjournment of the proceedings, and that it now wishes to have the references progressed in advance of any further work that it might undertake to clarify its strategic vision for the Foothills. Council's solicitors and staff would prepare a case for the Environment Court proceedings that would support the Swanson Structure Plan.

Consideration of this option was alluded to by the Court in paragraph 117 of the Peat decision, where it stated:

"If we allow the Peats' appeal and consent to the subdivision, we will do so because in our judgement (having had regard, among other things, to any effects on the environment of doing so, and to the relevant provisions of the planning instruments) that would serve the purpose of the Act. We accept that this might encourage owners of similar land to make similar applications, and might make it more difficult for the City Council to decline them. That would be the normative effect of an appeal decision. The City Council should then consider whether its attitude to conforming subdivision in the Structure Plan catchment is sound, pending final determination by the Court of Variation 88." (emphasis added)

If the Committee confirms its original decision to adopt the Swanson Structure Plan, it may wish to indicate a willingness to participate in Court appointed mediation prior to the references being set down for hearing.

Mediation would provide an opportunity for the Council to explore how it might modify the Structure Plan in order to address the concerns of some of the parties. In particular, the Committee has previously indicated that lots additional to those shown on a structure plan should be a prohibited activity (resolution 94/2003). It is also possible that other changes, such as a requirement for increased mitigation planting, could be introduced. If full resolution of the references could not be achieved through mediation, then Council would request a hearing.

Whilst this option would leave the Swanson Structure Plan in place, it is anticipated that any subdivision consent applications that might be lodged would not have progressed to the point where they might be granted in advance of the Structure Plan references being considered by the Environment Court.

RESOURCES

Sufficient budget and resources are in place to progress either of the options that are outlined in this report.

If the Committee chooses to adopt either of these options, the potential for a precedent effect from the Peat decision would not arise. As such, there would be no significant benefit in pursuing the High Court appeal that has been lodged and it could be withdrawn. This would avoid the cost of litigation in this matter.

CONCLUSION

The Peat decision creates a situation that requires the Committee to reconsider its current position in relation to the Swanson Structure Plan references, as that position is now untenable.

The report outlines two alternative options for the Committee to consider in order to respond to the references. The Committee could either withdraw, or confirm, the Structure Plan. Each of these options would constitute a sound and defensible response to the circumstances that exist in the wake of the Peat decision.

RECOMMENDATIONS

1. That the Swanson Structure Plan - Resolution of Appeals report be received.
2. That the Committee considers the issues set out in the report and passes either of the following resolutions:

- A**
- (i) That Variation 88 (the Swanson Structure Plan) be withdrawn, and the Council's solicitors be instructed to notify the Environment Court of this decision on or before the scheduled reporting date of 10 August 2004.
 - (ii) That the High Court appeal in relation to the Peat decision be withdrawn.

OR

- B**
- (i) That Council's solicitors be instructed to advise the Environment Court, on or before the scheduled reporting date of 10 August 2004, that:
 - The Council no longer requires an adjournment of the proceedings relating to the Variation 88 references; and
 - The Council's position in response to the references is to confirm its original decision to adopt the Swanson Structure Plan; and
 - The Council supports mediation in relation to the Swanson Structure Plan references, and requests that the Court appoint a mediator to assist the parties.
 - (ii) That the High Court appeal in relation to the Peat decision be withdrawn.

Report prepared by: Philip Brown, Group Manager: Planning & Community Services.



PART V - CONFIDENTIAL ITEM

18 UPDATE ON STRATEGIC LAND PURCHASE

This item will be considered in the Confidential Supplement of the agenda, and has been circulated to members separately with this agenda.

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, Update on Strategic Land Purchase.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation of the 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 the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none">Update on Strategic Land Purchase	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none">Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	<p>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- The matters contain information which if released would affect the Council's negotiations.*

