



NOTICE OF MEETING

ENVIRONMENTAL MANAGEMENT COMMITTEE

I hereby give notice that an Ordinary Meeting of the Environmental Management Committee will be held on:-

DATE: **Tuesday, 11 November 2003** **TIME:** **9.30 am**

VENUE: **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

5 November 2003

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

MEMBERSHIP:

Councillors	PA	Hulse (Chairperson)
	DA	Yates, JP (Deputy Chairperson)
	DQ	Battersby, JP
	BA	Brady, JP
	JM	Clews, QSO, JP
	RP	Dallow, QPM, JP
	AC	Fenton
	OE	Hoskin, MNZM, JP
	JP	Lawley
	GE	Nash, JP
	VS	Neeson, JP
	GB	Presland
	GW	Russell, JP
	CA	Stone

Mayor, Bob Harvey, QSO, JP (ex officio)

(Quorum 5 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

WAITAKERE CITY COUNCIL



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, 11 NOVEMBER 2003,
COMMENCING AT 9.30 AM.

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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, 11 NOVEMBER 2003, COMMENCING AT 9.30 AM.

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

Extraordinary	- Tuesday, 9 September 2003
Ordinary	- Tuesday, 7 October 2003
Extraordinary	- Tuesday, 7 October 2003
Extraordinary	- Wednesday, 22 October 2003

RECOMMENDATION

That the minutes of the Extraordinary Meeting of the Environmental Management Committee held on Tuesday, 9 September 2003, Ordinary Meeting held on Tuesday, 7 October 2003 including the Public Excluded minutes, Extraordinary Meeting held on Tuesday, 7 October 2003 and the Extraordinary Meeting held on 22 October 2003 including the Public Excluded minutes, as circulated, be taken as read and now be confirmed.



4 **PRESENTATION - FRIENDS OF THE WHAU**

A1-A3

Doug Craig, Secretary, Friends of the Whau will make a brief presentation on the work of the Friends of the Whau in regard to stream care and restoration and then will present the case for Council adoption of a bylaw via the special consultative procedure as laid out in the Local Government Act 2002, as attached at pages A1 to A3.



PART I - REGULATORY / ENFORCEMENT

5 **LEGAL UPDATE (AS AT 29 OCTOBER 2003)**

INTRODUCTION

The following is a list of legal actions in respect of matters within the scope of the Environmental Management 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 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

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, storm water and related resource consents sought by Transit for SH16/18.

Several other parties have also filed appeals (namely Transit, John Boyle, Ockleston Family Trust). It now appears that the appeals aside from Waitakere City Council's appeal will soon be settled. Transit has now settled its appeal with Auckland Regional Council, by entering into a consent memorandum that confirms that the total amount to be spent by Transit on mitigatory measures for the entire SH16/18 project is \$768,000. Waitakere City Council is continuing with ongoing settlement negotiations with Transit. Waitakere City Council has recently agreed to resolve that part of its appeal that relates to the Greenhithe side of the motorway project. The basis upon which settlement has been reached is that Transit has agreed to consult with both Waitakere City Council and the North Shore City Council prior to the allocation of the mitigation package of \$768,000. This will ensure that Waitakere City Council has some input into the allocation of the funds. The remainder of Waitakere City Council's appeal remains live.

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.

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

This was 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 2003.

Peat v Waitakere City Council (10 April 2002)

An appeal by Mr and Mrs Peat against Council decision to decline subdivision consent application seeking a non-complying 3 lot subdivision in 26 Awhiorangi Road. The subdivision would, if granted, 'jump the gun' by proceeding prior to resolution of both the Swanson Structure Plan references and the current global review by Council of structure planning, and Council's evidence is being prepared on this basis. The matter was part heard in the Environment Court on Friday, 17 October 2003. The hearing will recommence at a later date when the same Court can sit again. The hearing did not commence at the scheduled date due to the case before it running over time. The order for boundary adjustment sought by the Peats was non-contentious and has been approved by the Court.

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

Estate Homes has appealed the financial reserves contribution assessed as payable for the second stage of its subdivision at 13-15 Sturges Road. A cash bond of the amount of the contribution in dispute has been paid and on that basis Council has consented to an Order allowing the subdivision to proceed. The matter has been adjourned at the request of Estate Homes Limited, with a further report date of 31 October 2003. Estate Homes Limited has issued High Court proceedings relating to a contested reserves contribution assessment in respect of the first stage of its Sturges Road subdivision.

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

C4-C7

An appeal against consent conditions imposed for a proposed subdivision at Ranui Station Road. The matter was argued in the Environment Court on 25-27 August 2003. The appeal in respect of the reserve fund contribution was abandoned leaving Council's contribution to the road as the only matter in dispute. The Court's decision was issued on 17 September, upholding the aspect of the appeal regarding road widening. All other contribution issues had been resolved by agreement. This matter has now been appealed to the High Court. A copy of a letter from Robert Enright regarding the Court's decision has been circulated separately at pages C4 to C7 in the Confidential Attachments supplement.

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. Both the Waitakere Ranges Protection Society and several residents' groups are parties to the appeal. An on-site meeting between all parties took place and a proposal has been put forward, with negotiations continuing. Mediation took place on 29 March 2003, resulting in an agreement in principle being reached, with the details still to be finalised.

Richmond Eden Limited v Waitakere City Council (4 February 2003)
Waitakere Ranges Protection Society Incorporated v Waitakere City Council and Richmond Eden Limited (3 February 2003)
Pradhir & Others v Waitakere City Council (February 2003)

The above appeals relate to a decision granting resource consent to Richmond Eden Limited for a 12-lot subdivision of a site at 39 Landing Road, Titirangi. The Waitakere Ranges Protection Society has opposed the decision; Pradhir & Others have opposed a condition that relates to parks and walkways; and Richmond Eden Ltd (the applicant) has appealed a number of the conditions. Mediation took place on 3 September and 7 October 2003 and proposals were put forward for Council to consider further.

Poll v Waitakere City Council (January 2003)

Vicki Poll has appealed Council's Commissioners' (Harry Bhana/Alan Watson) decision refusing an application for a land use consent to operate a café/restaurant and a wedding reception/private function centre from existing building and gardens at 164 Brigham Creek Road, Whenuapai, known as "Surreal Café". This decision was contrary to the reporting officer's recommendation. A number of surrounding residents have registered an interest in the appeal with the Environment Court as Section 271A parties.

Although Council and the appellant were willing to enter into mediation, the surrounding residents (Section 271A parties) did not wish to enter mediation and therefore the matter went to hearing. The Environment Court hearing took place with Council during the week of 18 August supporting the Commissioner's decision. The Court has now issued its decision determining that the Commissioner's decision could not be supported and that consent should be granted subject to some modification of the conditions recommended.

Cornerstone Limited v Waitakere City Council (February 2003)

Cornerstone Limited has appealed the Council's decision to refuse an application for land use consent to develop six 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. Cornerstone has provided its initial evidence and Council has filed evidence in reply. A hearing is scheduled for the week of 17 November 2003.

8 Wallace Road Limited v Waitakere City Council (November 2002)

The company has appealed Council's costs and charges in respect of an application that was made for resource consent to develop 31 residential units on land situated at 8 Wallace Road, Ranui. The application was refused. A meeting to explore settlement options took place and the parties were able to resolve the dispute with the appeal being withdrawn.

Waitakere Ranges Protection Society v Waitakere City Council
R & L Thompson v Waitakere City Council

These proceedings involve two references concerning subdivision, filed in relation to Variation 87 of the Proposed District Plan. Waitakere Ranges Protection Society are a party to the Thompson reference. This reference seeks site specific relief in respect of the Thompson's property. The Waitakere Ranges Protection Society reference is more a general reference appeal. The Juderon Family Trust are a (Section 271A) party to that appeal. Mr and Mrs Vaughan are (Section 274) parties to the appeal. Mr and Mrs Vaughan's interest was only discovered relatively recently.

A meeting took place on 5 September 2003 between all parties and a further meeting with the Vaughans at which the prospect of resolution was discussed. An impasse has been reached at this point but further discussions are proposed to take place in the next three weeks. It is hoped that this will lead to resolution of the matter.

A part of Kitewaho Bush Reserve Company Limited's general reference has been annexed to these proceedings by a previous Environment Court decision and therefore any resolutions reached between the other appellants may be subject to resolution of the general Kitewaho reference.

Bay Olympic Sports & Soccer Association v Waitakere City Council (March 2003)
Friends of Crum Park Incorporated v Waitakere City Council (March 2003)

These are two appeals relating to Council's decision to partially grant consent to night-light fields at Crum Park, Green Bay subject to conditions. Bay Olympic has appealed the restrictions imposed by Council, and Friends of Crum Park have contested the lack of further restrictions.

Bay Olympic and Friends of Crum Park have been involved in ongoing Council-facilitated mediation in an attempt to reach agreement. This has continued for some weeks. Bay Olympic has recently put forward a proposal for development, which is being considered by Council and Crum Park. It is hoped that this will resolve the matter.

Waitakere Ranges Protection Society Inc v Waitakere City Council and Brand Housing Limited

This is an application by Brand Housing Limited for effectively what will be a rehearing for Brand's subdivision and land use consent application for a property located in Rimutaka Place, Titirangi. Originally, Brand (and its director, Rick Eggink) sought approval for a 14-lot subdivision. A modified proposal is now being floated for the Court's consideration. This was last before the Court in 2000, when the Court issued an interim decision declining Brand's application. Brand has filed an application requesting a further hearing, and a judicial conference was held on 9 September 2003. The application has been set down to be heard on 18 November 2003. Submissions are currently being exchanged. At this stage a local community interest group, the Waituna Action Group Incorporated, opposes the application for a rehearing on the basis that Brand should submit a fresh resource consent application, which can then go through a public notified process. Brand opposes Waituna on the basis that the rehearing will allow for some public input and scrutiny. The Auckland Regional Council may also oppose Brand, but is presently considering its position.

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 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 71A or Section 274 notices. The Court has invited the parties to participate in mediation and only 3 of the interested parties agreed. Prema has requested a further reporting date to the Court of 10 November 2003 at which time it will advise if it will continue with its appeal.

HIGH COURT

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

Kitewaho Bush Reserve Company Limited & Ors v Waitakere City Council (February 2002)

These proceedings involve applications by Kitewaho and associated companies for declarations and enforcement orders relating to eight different subdivision applications and related applications for certificates of compliance. On 18 October 2001 Judge Treadwell released an interim decision rejecting Kitewaho et al's declaration and enforcement applications, and essentially finding in Council's favour.

In December 2001 the Court released its final decision. In that decision the Court found that the proceedings issued by Kitewaho and related companies were an abuse of process and largely misconceived. Costs were reserved. In other words, Council was successful in its defence of all aspects of these proceedings (other than certain findings by the Court in relation to Section 91 and Section 92 Resource Management Act).

At a meeting on 19 December 2001, Council resolved that an appeal should be lodged to the High Court to clarify the Court's decision in relation to matters of interpretation of the Resource Management Act. That appeal was filed on 22 January 2002 and was served on the other parties involved (ie. Kitewaho and related entities and the Auckland Regional Council). Kitewaho and related entities served its own (voluminous) appeal on Council.

Separate to the above High Court appeals, both Waitakere City Council and the Auckland Regional Council have applied to the Environment Court for substantial costs against Kitewaho and related entities. The Court has deferred any decision on the costs application pending the outcome of the above High Court appeals.

There have been a number of preliminary steps required in these proceedings to address the voluminousness and imprecision of Kitewaho's points on appeal. This has resulted in a number of re-pleadings.

This matter is to be heard in the week beginning 17 November 2003. It has been set down for a four day hearing. The parties are currently in the process of exchanging submissions and preparing a casebook.

Bible College (NZ) Inc & Ors v Waitakere City Council (17 July 2003)

Bible College (NZ) Inc filed a notice of proceedings for an application for judicial review of Council's decision granting consent (non-notified) for development of a Pak N Save, Mitre 10, etc on the Lincoln Park site. Evidence has been exchanged. Discussions continue. Matter set down for hearing week of 3 November 2003 if not settled.

ENFORCEMENT ORDERS

Waitakere City Council v Borrett - 49 Sunnyvale Road, Massey

Application for Enforcement Orders in relation to an alleged illegal landfill site in Sunnyvale Road. A search warrant and an Order to inspect the property were obtained from the Court in September 2001 and Council officers have since inspected the property. As a result of that inspection, amendments to the Enforcement Orders being sought were made. Mediation was held on 1 May 2003 before an Environment Commissioner with a further on-site mediation held in late May and 29 July 2003, respectively. Settlement has been reached and a Consent Order issued by the Court.

Waitakere City Council v Covich - 40 Sunnyvale Road, Massey

An application for Enforcement Orders in relation to an alleged illegal cleanfill site and unauthorised earthworks at the property was filed in Court on 17 October 2003, requiring that all unauthorised works cease immediately. A hearing is scheduled for 19 November, as the Covichs have asked to be heard on the application.

PROSECUTIONS

Graham Gordon - 202 Shaw Road, Titirangi (16 November 2001)

A number of informations were served on Mr Gordon in relation to Resource Management Act breaches for allowing car bodies to be stored on his property and allowing multiple household units to be established. Council alleges that these activities are contrary to the District Plan and to Enforcement Orders made against Mr Gordon by the Court in 1993.

Mr Gordon has entered not guilty pleas to all charges and elected trial by jury. He has been committed to trial after conceding that there is a case to answer. The Court has indicated that the matter will be heard in week beginning 3 November 2003. It is anticipated that it will require a three day hearing.

Susan and Andrew Borrett - 49 Sunnyvale Road, Massey (3 June 2002)

Informations were laid for Resource Management Act offences for unauthorised vegetation clearance, earthworks and breaches of interim enforcement orders. The Borretts entered a plea of not guilty and requested trial by jury. The trial took place during the week commencing 8 September 2003. Mr Borrett was found guilty on five out of six charges and Mrs Borrett four out of seven charges. Sentencing occurred on 29 October 2003: Mr Borrett was sentenced to 20 weeks imprisonment and ordered to pay \$5,000 in prosecution costs; Mrs Borrett was fined \$9,000 and ordered to pay \$3,500 in prosecution costs.

Lorenzen - 91 Kaurilands Road, Titirangi (November 2002)

Informations have been laid against Mr Lorenzen in relation to the clearance of bush in the Riparian Margin and General Natural Area. The matter was set down for a first call on 29 November 2002 but adjourned to enable Mr Lorenzen to seek legal advice, with a further date of 28 March 2003. Mr Lorenzen has entered a plea of not guilty and requested trial by jury. Depositions occurred on 14 May 2003 with the defendant agreeing that there was a case to answer. A pre-trial application by the applicant to dismiss the charges was heard by the Court on 10 September 2003. The Court dismissed this. The trial will take place in December.

Ivan and Alona Covich - 40 Sunnyvale Road, Massey (May 2003)

Informations have been laid against Mr and Mrs Covich. Council alleges that the Covich's are operating a landfill without a resource consent and therefore are acting in contravention of the District Plan and the Resource Management Act. The matter was called on 30 June 2003, the Covichs entered a not guilty plea and elected trial by jury. The matter had a pre-depositions call over date of 20 August 2003. A depositions date has been confirmed on 17 November 2003.

COURT OF APPEAL - APPEALS FROM PROSECUTIONS

Aik Law & Kim Lai - 34 Rathgar Road, Henderson (21 August 2001)

These defendants rented an unsanitary building, previously a garage, to a family of six for a period of four years and three months. On 25 May 2001, they were convicted in the Waitakere District Court pursuant to CRN Nos. 3090028151 & 52 and sentenced to total fines of \$40,500. The defendants subsequently appealed the conviction and sentence and were granted leave by the High Court to produce a significant amount of new evidence during the course of the appeal. Council also produced evidence in response to this at the hearing, which took place in the Auckland High Court from 24 to 26 July 2002.

Following the High Court's (Harrison J) refusal to grant leave to appeal to Law and Lai, an application was made to the Court of Appeal for further leave to appeal against the order for costs. The Court of Appeal granted special leave to Law & Lai to appeal to the Court of Appeal against the convictions, sentences and the order for costs made by the High Court. The matter is schedule for a one-day hearing on 18 November 2003.

RECOMMENDATION

That the Legal Update Report be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



6 LIQUOR LICENSING POLICY

PURPOSE OF THE REPORT

A8-A75

This report presents proposed changes to the draft Liquor Licensing Policy (the Policy), as attached at pages A8 to A55. The changes are proposed in response to submissions received from stakeholders and the general public. A summary of the submissions and staff comments is attached at pages A56 to A75.

BACKGROUND

At its December 2002 meeting, the City Development Committee endorsed a two-stage process of policy development and consultation to develop a new Policy and identify and address wider alcohol-related issues for Waitakere City that would be addressed through a citywide alcohol strategy.

A Reference Group comprised of representatives from Waitakere City Police, Alcohol Healthwatch and the Safe Waitakere Alcohol Project worked together with the Sale of Liquor Inspector and Council Staff to develop a new Policy and to identify wider alcohol issues that could be addressed through other citywide policies and practices. A workshop for interested parties was held on 4 April 2003. Sixty people attended, representing a wide range of interests, including the Licensing Trusts, Council, Health, Industry and Community.

An analysis of the workshop discussions and reference group review has indicated that the Council needs to take some actions around some specific issues relating to the way alcohol issues are addressed in the City. The Policy addresses those issues and identifies some strategies for dealing with them at a citywide level. At its July 2003 meeting the Environment Management Committee endorsed the Policy for public consultation, including proposals for dealing with alcohol issues through a citywide strategy.

The key issues identified by the Reference Group and public workshop participants are:

- Noise from inside premises and from intoxicated patrons leaving premises.
- The Sale of Liquor Act and the Resource Management Act do not allow the District Licensing Agency to manage the location of licensed premises, nor can the District Licensing Agency restrict the number of licensed premises.
- The need to link hours of opening to District Plan Human Environment identifications.
- Under-Age Drinking.
- Host Responsibility.
- Public Notification and involvement.
- The link between gambling and premises with liquor licences.

The Committee also endorsed in principle proposed changes to amend the bylaw covering amusement galleries so that it will apply to premises licensed under the Sale of Liquor Act. Such an amendment would establish a uniform standard for all premises operating amusement devices. Such premises licensed for the sale of liquor would have to comply with the conditions imposed by the Liquor Licensing Policy as well as the bylaw.

Copies of the Policy were widely circulated during August and September 2003. The Policy was also publicised on the Council's Internet site and through the local news media. Eighteen submissions were received on the Policy from the following individuals and organisations.

Industry

Henderson RSA
CLUBS New Zealand Inc
Portage & Waitakere Licensing Trusts
Tachelle Consulting Services
Babich Wines Limited

Community

Whenuapai Ratepayers & Residents Association
Huia-Cornwallis Ratepayers & Residents Association
New Lynn Community Board
Colin Tucker - Massey Resident
Piha Ratepayers & Residents Association
Asian Network Incorporated

Police

North Shore/Waitakere/Rodney District Police

Health/Alcohol Interest Groups

Alcohol Healthwatch
Auckland Regional Public Health Service
Centre for Social & Health Outcomes Research & Evaluation
Alcohol Advisory Council of New Zealand
Auckland Regional Alcohol & Drug Service

Council

Waitakere City Council - City Services.

Roger Parton, Chief Executive of Clubs New Zealand Inc and Colin Tucker from Massey, will be speaking to their submissions at the Committee Meeting.

STRATEGIC CONTEXT

The availability and use of alcohol has strong links to many of the Council's key objective areas: community safety, economic development, health and wellbeing, and First Call for Children. The Council has a range of relevant responsibilities and can have a major impact on the drinking environment, through its role as District Licensing Agency, developing District Plan regulations, making and enforcing bylaws and public health inspections.

The Policy should also be considered in the context of the wider legislative framework – including the Resource Management Act, the Local Government Act 2002 and the District Plan.

The World Health Organisation has accredited Waitakere City as a Safe Community. The Policy must be considered in the context of the four inter-agency community agency projects that come together under the Safe Waitakere goal of community safety

ISSUES

RECOMMENDED CHANGES TO THE DRAFT POLICY

The submissions were generally supportive of the approach taken in the Policy - particularly with regard to the Policy's emphasis on host responsibility. Many of the suggestions in the submissions will be included in the project plan for developing a citywide alcohol strategy.

A56-A75

Some of the submissions suggested changes to the Policy. Staff reviewed each suggestion in the context of the documentation from the Reference Group discussions and feedback from workshop participants. Staff comments and recommended changes are included in the summary of submissions as attached at pages A56 to A75.

Staff recommended changes to the Policy are listed below starting from the beginning of the Policy.

1. Background & Strategic Context

The second paragraph amended to read:

“The purpose of the Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse as far as can be achieved by legislative means”.

At the seventh paragraph, about half-way down the page, after “Therefore the Council has adopted a two-stage process. The first stage was to develop a Liquor Licensing Policy that: add the following bullet point:

Places the Council's DLA function in the context of its responsibilities as outlined in the Resource Management Act and the Local Government Act 2002 and the district planning process”

The last paragraph refers to the submissions to the policy and should be removed.

Pages 1-6 will not be included in the Final Policy because they were included for consultation purposes only.

2. Policy Objectives (Page 7)

Number 3 should be amended as follows:

3. To support the purpose of the Act - to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse as far as can be achieved by legislative means.

Add the following point:

7. To reduce hazardous and excessive consumption of alcohol.

3. Medical Officer of Health & Fire Service (Page 9)

Amend to read as follows:

The District Licensing Agency requests reports from the Medical Officer of Health for On-Licenses and Club Licenses and from the Fire Service for the renewals of each license.

4. Waitakere City Council (Page 9)

Middle of paragraph five should read:

Therefore any person who wishes to operate their premises in accordance with or longer than the hours specified in the "Hours of Opening" section of this Policy will require a resource consent to enable them to do so, because the hours specified in this policy do not meet the performance standards of the District Plan.

5. Community (Page 10)

Paragraph three should be amended to read:

The Sale of Liquor Act and Resource Management Act do not allow the DLA to manage the location of licensed premises based on concerns about the social impact and do not allow the DLA to restrict the number of licensed premises.

6. Definitions and Process (Page 12)

On-Licence

This should be amended to read:

An on-licence provides for liquor sales and consumption "on" a particular premise. The area is specifically defined and may include some outside areas. Café's, restaurants, and entertainment venues in Waitakere City are required to have an on-license. Hotels.....

Off License (Page 12)

The last sentence should be amended to read:

Therefore, people cannot open a retail premises (bottle store) or supermarkets cannot sell alcohol in Waitakere City.

7. Process for New On-Licence, Off-Licence, Club Licence, Manager's Certificate, and Renewals and Variations (Page 14)

i) Should read:

i) Obtains reports from Police, Fire Service (renewals), Medical Officer of Health (On-Licence and Club only)

8. On-Licence Conditions and Assessment Criteria (Page 17)

Under 'Assessment Criteria':

The fourth paragraph should read:

Matters raised in objection to the application by the community, Police, Medical Officer of Health.

Paragraph five should read:

Applicant's Host Responsibility Policy

Paragraph ten should read:

Police and Medical Officer of Health reports.

Under Conditions:

Paragraph 4 should read:

The Licensee must ensure that staff and management are familiar with the minimum host responsibility requirements stated in this Policy.

Paragraph 5 should read:

The licensee must place appropriate signage on the premises (see minimum host responsibility requirements). The signage must be clearly visible and at each point of sale.

Paragraph 6 should read:

Only Hotels, Taverns and Nightclubs will automatically be granted a designation, other premises may be granted designations but this will be decided on a case-by-case basis.

9. On-Licence Host Responsibility (Page 18)

Point 1 should read:

1. Indicating the availability of non-and low-alcohol refreshments and a range of substantial food.

Point 5 should read:

5. Warning that patrons should not become intoxicated on the premises and that if they behave in a disorderly manner they will be asked to leave.

10. Recommended Host Responsibility Actions (Page 19)

The first point on the page should read:

- An Age Identification Policy. It is strongly recommended that premises have a policy of checking ID's of persons appearing to be under the age of 25 years, with signage to that effect for example "We ID under 25". The signage should be clearly visible and at the point of sale.

The second point on the page should read:

- Server and Security Staff Training. How training for staff will be managed to ensure staff receive training in issues such as preventing intoxication, identifying and dealing responsibly with patrons that show the warning signs of intoxication, refusing entry to intoxicated patrons, requesting identification.....

Point five should read:

- Food and Non-Alcoholic Drinks Promotion – covering measures beyond minimum such as having a water jug and glasses at the end of the bar so patrons can help themselves. A real commitment to providing a range of substantial food throughout the operating hours must be shown.

Point seven should read:

- Control of Patron Numbers – The licensee must know the maximum occupancy of the premises and display the number for staff, enforcement officers and patrons to see.

Point eight should be added stating:

- Drink Spiking - Measures that the licensee intends to put in place dealing with drink spiking especially in Taverns and Nightclubs, for example signage in toilets warning of drink spiking and leaving drinks unattended.

Point nine should be added stating:

Other Recommended Actions are:

Provide smoke-free environments for patrons and employees

Display maximum occupancy for staff, enforcement officers and patrons to see.

Provide posters or information that depict "safe limits" of drinking, i.e. standard drinks per hour.

Display pamphlets about treatment providers

11. Off Licence Conditions and Assessment Criteria (Page 24)

Under 'Assessment Criteria':

Paragraph 4 should read:

Matters raised in objection to the application by the community, Police and Fire Service (renewal only).

Paragraph ten should read:

Police, Fire Services (only renewal) reports.

Under 'Conditions':

Paragraph four should read:

The licensee must ensure that staff and management are familiar.....

Paragraph five should read:

The licensee must place appropriate signage on the premises (see minimum host responsibility requirements). Signage must be visible and at each point of sale.

12. Off Licence Days and Hours of Opening (Page 26)

Friday and Saturday Hours should read:

9.00 am till 11.00 pm

Added to the bottom of the page:

- Across the Bar sales will have the same hours as the On or Club Licence they are used in with the exception of Good Friday, Easter Sunday, Christmas Day and before 1 pm on ANZAC day.

13. Club Licence Conditions and Assessment Criteria (Page 27)

Under 'Assessment Criteria':

Paragraph eleven should read:

Police, Fire Service (renewal only) and Medical Officer of Health Reports.

Under 'Conditions':

Paragraph two should read:

The licensee must ensure that staff and management are familiar.....

Paragraph three should read:

The licensee must place appropriate signage on the premises (see host responsibility requirements). Signage must be clearly visible and at each point of sale.

Paragraph five should read:

The licensee, committee, club and secretary must have in place a regime for ensuring that only club members, the guests of club members and accompanied by the member, a member of another club who has arrangements for reciprocal visiting rights are sold alcohol. Prohibited persons are not to be served alcohol. Examples of such a regime are a visitor's book and proof of membership.

Paragraph six should read:

A club does not need a manager to be on duty while it is open to sell alcohol. However the manager must be available at all times. Every holder of a club licence shall appoint at least one manager. It is recommended that all clubs do have a manager on duty at all times when alcohol is sold.

Paragraph seven:

Delete

14. Club Licence (Page 28)

Point 1 should read:

Indicating the availability of non-and low-alcohol refreshments and a range of substantial food.

15. Special Licence Host Responsibility (Page 31)

Under 'Minimum Requirements':

Paragraph one should read:

Holders of Special Licences must make available low and non-alcoholic refreshments and a range of substantial food.

Under Recommended Actions:

Point three should read:

- The supply or availability of a substantial range of food throughout the duration of the event.

16. Renewals and Variation Criteria for On, Off and Club Licences (Page 35)

Under 'Assessment Criteria':

The third paragraph should read:

District Licensing Inspector, Police and Medical Officer of Health (not for off-licences)

17. Management Performance (page 38)

Under 'Requirements':

Paragraph four should read:

A club does not need a manager to be on duty while it is open to sell alcohol. However the manager must be available at all times. Every holder of a club licence shall appoint at least one manager. It is recommended that all clubs do have a manager on duty at all times when alcohol is sold.

Paragraph six should read:

It is highly recommended that clubs ensure that all members serving/selling liquor or working behind the bar receive appropriate host responsibility training.

18. Grounds for Objecting to New Licences (Page 42)

At the top of the page under 'For Club Licences' points 4 and 5 should be removed.

AMUSEMENT GALLERY BYLAW

As part of the consultation process on the Policy, public comment was sought on a proposal to amend the bylaw covering amusement galleries so that it will apply to premises licensed under the Sale of Liquor Act.

Only two submissions commented on the proposal (the Huia-Cornwallis and Whenuapai Ratepayers Associations). Both were supportive.

The Local Government Act 2002 has introduced a new bylaw-making process, which the Council must follow in order to make bylaws. The first step in that process is determining that a bylaw is the most appropriate mechanism for addressing the perceived problem. This involves:

- Identification of the problem
- Analysis of all practicable options for addressing the problem
- Consideration of whether the bylaw is the most appropriate way for addressing the problem.

If the Council determines that a bylaw is the most appropriate way of addressing the problem, the Council must then consider whether the proposed form of the bylaw is appropriate. If the Council decides to proceed with the bylaw, the bylaw must be made using the special consultative procedure.

It is proposed that staff undertake further analysis in accordance with the requirements of the Local Government Act and report back to the Committee in early 2004 on the appropriateness of the proposed amendments to the Amusement Gallery Bylaw in the context of the new Liquor Licensing Policy and proposed Citywide Alcohol Strategy.

CHANGES TO THE DISTRICT PLAN

The hours specified in the current District Plan Sale of Liquor Rule are more conservative than those proposed in the Policy. A plan change will be required to amend the Sale of Liquor Rule to achieve consistency between the two documents.

At the public workshop held on 4 April 2003, participants indicated that planning the city to make a safe drinking environment is a top priority. Participants requested that the Council address location and proliferation issues and to encourage open, inviting, mixed use environments (see page 2 of the Policy).

Alcohol Healthwatch, the Northern Regional Office of the Alcohol Advisory Committee, the Centre for Social and Health Outcomes Research & Evaluation, and the Auckland Regional Public Health Service all made submissions that the Council act proactively to manage the location and density of licensed premises.

The Sale of Liquor Act does not allow the District Licensing Agency to manage the location of licensed premises, nor can the District Licensing Agency restrict the number of licensed premises. The Policy addresses location issues to some extent, by linking days and hours of operation to the Human Environments in the District Plan, but it is not enough to control the location and proliferation of premises.

It is proposed that District Plan rules in relation to licensed premises be reviewed. For example, an explicit District Plan Policy on liquor sales may be required, along with consideration of the activity status, plus adding assessment criteria to the Sale of Liquor Rule that directly addresses the Resource Management issues related to the sale of liquor. Such a review of the District Plan rules would occur alongside the development of a citywide alcohol strategy. Any proposed changes to the District Plan would seek to be as consistent as possible with the Liquor Licensing Policy's objectives, while acknowledging that the regulatory frameworks of the Resource Management Act and the Sale of Liquor Act differ.

In the interim, Council officers are contributing to an issues paper on planning for the sale of liquor that is being prepared by the New Zealand Drug Foundation for the Ministry of Health. The paper looks at location and proliferation issues and proposes amendments to the Sale of Liquor Act to allow for greater regard to community concerns.

The Noise Rules in the District Plan were formulated in the mid 1990's, and were based upon the current understanding of the issues, as they were perceived at that time. Since then the emergence of low bass sound has become a matter of concern for many residents who live adjacent to noise making venues. The low bass noise does not necessarily exceed the decibel limits imposed by the District Plan, but can nevertheless cause a nuisance. It is considered that a review of the noise standards in the District Plan is also appropriate; to address this newly identified issue.

CITY WIDE ALCOHOL STRATEGY

The Policy that went out for public consultation included a set of issues tables that proposed the basis for developing a citywide strategy. The submissions have provided some excellent suggestions that could be incorporated into the development of such a strategy.

The Ministry of Health has approved funding for a two-year contract for a Safe Waitakere Alcohol Project Coordinator that will drive the development of the citywide strategy together with Council officers and community stakeholders over the next two years, as well as contribute to regional and national initiatives.

A project plan for the development of a citywide strategy will be brought to the Committee for approval as soon as the position has been filled.

IMPLEMENTATION & TRANSITION

It is proposed that the Policy will become operational by April 2004, which will provide the District Licensing Agency with enough time to develop the appropriate documentation for the new Policy.

All new applications from the operational date will be required to comply with the new Policy. Existing licensees will continue under the old Policy until they apply for renewal at which time they will be required to comply with the new Policy.

RESOURCES

The new Liquor Licensing Policy sets out criteria for assessment and conditions attached to the licence. In particular, the Policy's emphasis on host responsibility requires adequate resourcing to ensure that the Policy is implemented successfully.

CONCLUSION

The submissions were generally supportive of the approach taken in the Policy – particularly with regard to the Policy's emphasis on host responsibility. Many of the suggestions in the submissions have been included in the recommended changes to the Policy. Other suggestions will be included in the project plan for developing a citywide alcohol strategy.

Further consultation would be required before the Council could determine whether an amendment to the Amusement Gallery Bylaw is appropriate.

It is proposed that District Plan rules in relation to licensed premises be reviewed. A plan change will be required to amend the Sale of Liquor Rule to achieve consistency. For example, an explicit policy on liquor sales may be required, consideration of the activity status, amendments to the hours of opening, and adding assessment criteria to the Sale of Liquor Rule that directly addresses the Resource Management issues related to the sale of liquor. Such a review of the District Plan rules should include a review of the District Plan Noise Rules and would occur alongside the development of a citywide alcohol strategy.

RECOMMENDATIONS

1. That the information be received.
2. That the Environmental Management Committee approve the recommended changes to the draft Policy that are numbered 1-18 in this Agenda Report.
3. That the Environmental Management Committee adopt the Policy as a final Liquor Licensing Policy, subject to the recommended changes being incorporated by Council Staff.
4. That the Policy will become operative on 1 April 2004.
5. That the District Plan Rules in relation to liquor licensing be reviewed and brought into line with the new Liquor Licensing Policy, and that such a review would include a review of the District Plan Noise Rules.
6. It is proposed that staff undertake further analysis in accordance with the requirements of the Local Government Act and report back to the Committee in early 2004 on the appropriateness of the proposed amendments to the Amusement Gallery Bylaw in the context of the new Liquor Licensing Policy and proposed citywide alcohol strategy.
7. That a project plan for the development of a citywide alcohol strategy be brought to the Environmental Management Committee for approval in February 2004.

Report prepared by: Annika Lane, Senior Policy Analyst: Social Policy and Collett Taylor, District Licensing Inspector.



7 CONTROL OF LIQUOR IN PUBLIC PLACES BYLAW

PURPOSE OF THE REPORT

At its meeting on 24 September 2003, Council resolved:

“That the statement of proposal [in respect of the draft bylaw] attached to this report is approved in principle. Officers are directed to make any necessary editorial changes and to implement the special consultative procedure set out in s. 83 Local Government Act 2002.”

And

“That the Environmental Management Committee is delegated authority to hear any submissions during November 2003 with a final report in relation to the proposed bylaw to be brought back to Council at its meeting scheduled for Wednesday, 10 December 2003.”

1941/2003

The results of the special consultative procedure are set out below, together with the action to be taken for the making of a bylaw.

STRATEGIC CONTEXT

The availability and use of alcohol is linked to many of the Council's key objectives, including community safety and the general health and well-being of the community. The Council is intimately involved in liquor matters through its role as a District Licensing Agency and as a regulatory body policing licensing requirements and public health bylaws.

ISSUES

The issues relating to this matter were set out in the report to the Council meeting on 27 August 2003. In brief, the previous liquor ban powers under the Local Government Act 1974 (“LGA74”) are no longer available to the Council so that if there is a wish to impose liquor bans, a bylaw is needed for that purpose. The process to be followed to make a bylaw under the Local Government Act 2002 was also set out in that report.

PUBLIC CONSULTATION - SPECIAL CONSULTATIVE PROCEDURE

A76-A91

In accordance with the required Special Consultative Procedure, public notice of the draft bylaw and submission closing date was given in the New Zealand Herald (29 September), Western Leader (2 October) and Council website, which included information regarding obtaining a Summary of Information, Statement of Proposal (including draft bylaw) and submission form. In addition, as required by the Local Government Act 2002 (“LGA02”), a Summary of Information in respect of the draft bylaw was distributed to Piha licensed premises, Piha community representatives, Councillors and the Mayor, Waitakere Community Board members, relevant Council staff, and Youth Councillors. Copies of the text of those advertisements, the Statement of Proposal and the draft Bylaw are attached at pages A76 to A91.

SUBMISSIONS / AMENDMENTS TO THE DRAFT BYLAW

The closing date for submissions was 31 October. Only 2 submissions were received, and one of those was from the Legal Services Unit.

The external submission was from a Youth Councillor, who submitted that people should be able to transport liquor through banned areas to a private property. Section 147(3) LGA02 allows an exemption from the ban for this purpose. It is therefore suggested that no further action is necessary. The provisions of Section 147(3) have been pointed out to the submitter in the letter acknowledging the submission.

The Legal Services Unit made a submission as a result of Cr Battersby querying whether the maximum dollar amount of penalties had to be set out in a bylaw (currently the wording under the heading "*Breach of Bylaw*" states: "*Any person who acts in breach of any provision of this Bylaw commits an offence and is liable to a penalty*"). Despite research, nothing has been found to indicate the need to show dollars amounts. Leaving the bylaw silent allows movements in the statutory provisions to be accommodated without the need for amendment to the bylaw. It is however suggested that this provision could be amended by adding a reference to the relevant provision of LGA02 (Section 242(4)) in order to provide more information for people in the bylaw.

Councillors will recall some debate of the hours and periods of the ban at the Council meeting on 24 September 2003. It was suggested that Councillors who felt strongly about such issues might make a submission on the bylaw. No submissions were received on the public holiday periods and times for which the ban is to apply.

Councillors will be aware that in a Resource Management context it is not open to Councillors to amend a District Plan as notified beyond the scope of the relief sought in submissions (see clause 10 Part I First Schedule Resource Management Act). There are no equivalent provisions in LGA02. The issue therefore arises whether amendments may be made to a draft bylaw submitted to public consultation in the absence of submissions.

It is considered that amendments may properly be made, within the general purview of the proposal. If however it is proposed to change the underlying substance of the proposed bylaw a further round of consultation would seem necessary.

Examples of what would be considered to be amendments within the purview of this proposal are:

- a change by a few days of the beginning or end of a ban period;
- a change by a few hours of the commencement or termination of the hours of the ban within a specified period.

Examples of what would be considered unacceptable amendments ie. requiring further consultation are:

- extending the hours of the ban so that the ban at Piha becomes a 24 hour ban;
- extending the proposed ban to some other part of the City.

In this regard it needs also to be remembered that the original brief was to promulgate a bylaw which emulated the bans previously able to be imposed under LGA74. In that regard the draft bylaw already goes a little beyond that point. In addition the Council is still in the course of finalising its liquor policy. Once that is done it is anticipated that a district-wide bylaw may result, which will necessitate a review of the proposed bylaw in any event sometime next year (after there is practical experience of its operational effectiveness).

Finally, it is perhaps worth observing that the complete absence of submissions may represent community approval for what is proposed, without amendment.

ADOPTION OF THE DRAFT BYLAW

It is recommended that Council move to adopt a final draft bylaw (incorporating any amendments as agreed by this Committee in accordance with submissions received prior to and at this meeting) at its next scheduled meeting of 26 November 2003. Under Section 169 LGA02 the Police are authorised to search and seize liquor within the area of a ban. This can only occur if the bylaw refers to that power, public notice is given at least 14 days in advance and the ban area is the subject of appropriate signage. If action to adopt the bylaw is deferred to the next Council meeting on 10 December 2003, then there will be insufficient time to give the appropriate public notice before the start of the Christmas/New Year period.

RECOMMENDATIONS

1. That the information be received.
2. That Clause 9 of the draft bylaw be amended by adding at the end of the clause the words "as prescribed in Section 242 of the Local Government Act 2002".
3. That it be recommended to Council that the draft Control of Liquor in Public Places Bylaw, as amended be adopted in that form.

Report prepared by: Denis Sheard, Legal Services Manager.



PART II - DISTRICT PLAN / STRUCTURE PLANS

8 DISTRICT PLAN - FINANCIAL CONTRIBUTIONS APPEALS

PURPOSE OF THE REPORT

The purpose of this report is to recommend a way forward to resolve outstanding appeals relating to the District Plan financial contribution provisions.

BACKGROUND

Local Government Act 1974

Prior to 1991 financial contributions were based on provisions contained within the Local Government Act 1974 (LGA 1974). Those provisions enabled Council to require contributions for or towards capital works for water supply, drainage (wastewater and storm water) and roading, and for reserves (land or money, or a combination of these). Financial contributions could be collected through subdivision (imposed as a condition of subdivision consent) or, in prescribed cases, from proposals for land development (imposed as a condition of building consents).

For public infrastructure, the Council's general approach was to calculate the cost of works necessary in a particular part of the city, average that cost on a land area basis, and impose financial contributions on new land development - through subdivision and/or building consents. The contribution to be paid was generally set through Council resolution.

In later years, the contribution methodology and procedure became more sophisticated – for instance by allowing a reduction where wastewater or storm water mitigation mechanisms were incorporated in development proposals.

Resource Management Act 1991

The legislative basis for financial contributions was changed with the introduction of the Resource Management Act 1991. It was the expectation under the Resource Management Act that councils would prepare financial contribution provisions as objectives/ policies/ rules in district plans.

This Council proceeded to prepare financial contribution provisions and most of these appear in a separate chapter in the plan.

Proposed District Plan

The district plan 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 storm water), 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.

Transitional Provisions

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 are still subject to appeal.

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 use the old legislative basis for collecting financial contributions.

Local Government Act 2002

Many concerns were raised by a wide range of interest groups about the Resource Management Act being the sole legislative basis for developing financial contributions. Concerns about the Resource Management Act / District Plan approach included the cumbersome, costly and time-consuming process necessary for incorporating rules in district plans, the inflexibility of the district plan mechanism and various issues around whether it was appropriate to have Council funding mechanisms separated in quite different pieces of legislation (Local Government Act and Resource Management Act).

This Council was one of a number which made individual and collective submissions to government and select committees seeking that provision be made for financial contributions in the new Local Government Act 2002. As the Committee would be aware, this has now happened. Subject to various requirements and procedures, councils may prepare development contribution requirements for a wide range of public capital works (including community facilities).

Resource Management Act Amendment 2003

While there is now the ability to compile a development contributions approach under the Local Government Act 2002, the Resource Management Act financial contributions provisions remain. The Resource Management Act 2003 also allows such contributions to be imposed even if proposed plan provisions are still subject to submission or appeal.

There is now effectively a choice between the Local Government Act and Resource Management Act. That is in respect of all matters except for financial contributions relating to mitigation of environmental effects - which can only be imposed under the Resource Management Act / district plans.

THE APPEALS

There were a number of submissions, and later appeals, 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.

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.

ISSUES

Local Government Act v Resource Management Act

As noted above, in most areas there is now a choice between the Local Government Act development contribution provisions and the Resource Management Act financial contribution provisions.

For a number of reasons, the Local Government Act 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. A good example of the difficulties and costs associated with the Resource Management Act approach is the attempt by Rodney District Council to introduce "Plan Change 62" financial contribution provisions. That process has involved very significant costs for many parties over several years, including many appearances before the Environment Court. Note that Rodney's Plan Change 62 provisions were originally quite similar to those contained in this Council's district plan. Significant time and cost would almost certainly be incurred if Council was to pursue those provisions.
- 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 becomes 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 can be devised over a potentially wider range of public assets under the Local Government Act than the Resource Management Act. It would be easier, for instance, to introduce contributions relating to 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 Local Government Act allows contributions to be taken on building consents and service connections.
- 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.

Mitigating Environmental Effects

The Local Government Act 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 and this part of the appeals will need to be pursued.

Legal Issues

Legal advice has been sought regarding Council's options under the current appeals, the Local Government Act 2002 and the Resource Management Act Amendment 2003.

It is possible to achieve resolution of the appeals by simply deleting the financial contributions chapter. However this should be subject to the appellants agreeing to retain those parts of the plan relating to the mitigation of environmental effects.

Legal advice has confirmed that Council may continue to use the transitional provisions under Local Government Act 1974, so that Council would be no worse off than it has been up until now.

There would be an obligation to achieve a full development contributions regime under Local Government Act 2002 by mid-2006. It is Council's current intention to do that much earlier - in 2004.

CONCLUSION

With the introduction of the Local Government Act 2002, the possibility has become available to introduce a more comprehensive development contributions framework than was available under the Resource Management Act 1991. In turn, it appears possible to reach an agreement with District Plan appellants which would result in those appeals being settled. Essentially, that agreement would involve deleting the district plan's financial contributions chapter, on the understanding that Council would introduce comprehensive replacement provisions under the Local Government Act 2002, and that financial contributions could still be sought for mitigation of environmental effects.

It is suggested at this stage that Council only enter into discussions with the appellants with a view to possible settlement based on the issues and solutions outlined in this report. Those discussions would be reported back to this Committee with the hope that a satisfactory agreement can be achieved.

RECOMMENDATIONS

1. That the information be received.
2. That without prejudice discussions be held with the appellants to the district plan financial contribution provisions with a view to achieving an agreement based on deleting the district plan's financial contributions chapter, but retaining those provisions relating to mitigation of environmental effects.
3. That the outcome of the discussions around the district plan financial contribution provision be reported back to the Committee.

Report prepared by: Peter Reaburn, District Plan Co-ordinator (Acting).



9 CLOSED LANDFILL REGULATORY COMPLIANCE AND CONTAMINATED SITE MANAGEMENT

PURPOSE OF THE REPORT

The purpose of the report is to outline to the Environmental Management Committee the progress and status of the Aftercare programme with regard to regulatory compliance for all Council owned closed landfill sites and contaminated sites.

BACKGROUND

In 1993 Council was advised by the Auckland Regional Council that under the Resource Management Act 1991, they were required to identify any effects on the environment from its closed landfills and apply for consents where appropriate.

At the time there was very little information available within Council or within the industry and minimal experience with closed landfill consenting. In 1994 Council undertook a preliminary investigation of a limited number of its historical landfill sites. This identified 67 sites with 25 being clean fill and 42 containing refuse. From this investigation a prioritised plan for investigation and resolution was prepared.

STRATEGIC CONTEXT

In 1995 Council adopted a prioritised plan for the investigation and resolution of aftercare issues on closed landfill and baleful sites within Waitakere City. A strategic objective for waste, under the Zero Waste platform, is that all former waste sites are clearly identified and managed in a safe and environmentally acceptable manner.

Council's strategy is underpinned by the fact that landfill aftercare has statutory requirements under the Resource Management Act and the Proposed Regional Plan: Air, Land and Water.

PROGRESS

At the commencement of the 2002/2003 financial year Council had achieved regulatory compliance for three of its sites, namely Taipari Strand, Archibald Park and Kay Road. To this point, although the investigation programme had gone well, interpretation of the regulatory process under the Resource Management Act had been difficult which meant that enormous time and resource had been spent managing the consenting process for only three landfills.

With the issue of the Proposed Regional Plan: Air, Land and Water in October 2001 there were now specific rules in place for Council to benchmark its consent applications against so in the 2002/2003 financial year it was decided to perform a gap analysis and undertake a comprehensive investigation programme for all Council sites.

At this stage the number of Council owned sites was believed to be 50 and was based on the best information available at the time and it was decided to undertake a comprehensive programme to identify any other sites Council owned. The result of this was that a total of 64 sites were identified as being Council's.

With a complete list of sites and a defined set of regulatory standards, the Aftercare section was able to accurately plan and budget for its investigative programme and with the use of in-house expertise was able to exercise better control over the direction and quality of the outputs. This was done in a stage manner so as not to overwhelm the Auckland Regional Council with information and to spread the use of resources across the financial year.

By August 2003 Council had achieved regulatory compliance for all Council owned/responsible sites either by way of resource consent or by way of a letter notifying that no consent be required under the Proposed Regional Plan: Air, Land and Water. Due to the proposed nature of the Regional Plan the Auckland Regional Council was unable to give permitted activity status for these sites, however, the section of the plan in question is likely to become operative in March 2004 with no changes, which means that these sites will be granted permitted activity status.

Consents were required and achieved for Kay Road, Archibald Park, Taipari Strand, Waitakere Domain, Ceramco Park and Corban Reserve.

A92

Waitakere City Council is the first Council in the Auckland region to achieve this level of compliance for closed landfills and is possibly the first in the country, but due to differing rules in the different Regional Plans, this cannot be confirmed. In recognition of this achievement, the Auckland Regional Council issued a press release, as attached at page A92.

CONTAMINATED SITES - THE NEXT STEP

The issue of contaminated sites is an important one for Council. The Long Term Council Community Plan details the need for Council to work towards obtaining resource consents for all contaminated sites that are Council's responsibility. The Long Term Council Community Plan also states that it is Council's responsibility to develop policy, priorities and programmes for managing privately owned contaminated sites.

Council has also adopted the New Zealand Waste Strategy, which contains three targets for contaminated sites. These targets are;

- By December 2008, all sites on hazardous activities and industries list will have been identified with 50% subject to rapid screening process in accordance with Ministry guidelines;
- By December 2010 all sites on hazardous activities and industries list will have been subject to a rapid screening process in accordance with Ministry guidelines and high risk sites have remediation programmes in place; and
- By Dec 2015 all high-risk site contaminated sites will have been managed or remediated, with a programme for management of other sites instituted.

PROBLEM

Currently there is no coherent programme working to meet the above-mentioned targets. Numerous teams within Council conduct piece-meal work on contaminated sites issues, including contaminated site investigations, consenting of sites and cataloguing of sites, however there is little communication between these groups. In order to meet the above-mentioned targets, a centre for the oversight and administration of contaminated sites needs to be created.

ACTION

The management of this programme logically sits with Aftercare, as they are the current centre of expertise within Council for contaminated site issues. Aftercare has established strong working relationships and channels of communication with external parties such as the Auckland Regional Council and internal groups, including Strategy and Development, Consents, and Special Projects. Aftercare is involved in contaminated site consent reviews, contaminated site assessments, and oversight of external contaminated site programmes such as the Hobsonville Airbase project and has been approached for input into the Auckland Regional Council's contaminated site programme.

The contaminated sites programme will be run in the same successful manner as the closed landfills programme. A five-step programme will be instituted to achieve the above-mentioned goals.

- The initial step will be the coordination of all data available within Council into a useable database, likely building on the Special Features register and the Closed Landfill databases.
- Council responsible contaminated sites will then be characterised based on their ability to harm human health or the environment, the likelihood of an unauthorised release of a hazardous material, and other relevant information.
- Council sites deemed high risk will then be assessed through field investigations.
- Based on the results of the field investigations, consents will be sought, and if necessary remediation programmes will be developed and implemented.
- Compliance letters will be sought for the low priority sites.

Upon completion of the Council sites, a slightly modified programme will be applied to private sites. The modified programme will concentrate on identification and classification of the privately owned sites information, but will not involve Council conducting investigations or remediation.

RESOURCES

The long-term financial liabilities for closed landfills, reported as a net present value as at 01 July 2002, was \$ 16,817,000.

Following the investigation and consenting programme, the revised liability (Net Present Value) is \$7,836,00 as at 01 September 2003. This has come about from gaining a more accurate understanding of future requirements.

The Aftercare section within City Services consisted of David Nelson as the Closed Landfill Aftercare Engineer with Alan Tresadern as Section Manager. Matthew Eyer and Rebecca Hilton from Consultancy Services provided the in-house expertise with Rebecca looking after the site identification and Matthew being responsible for the investigations and report preparation.

The existing staff resource in the Aftercare Section who have been working on closed landfill aftercare issues will now be following a similar process with contaminated sites. The 2003/2004 aftercare budget is sufficient to support this process this financial year.

SUMMARY

In 1993 Waitakere City was approached by the Auckland Regional Council to investigate all of its landfills, identify all effects on the environment and achieve regulatory compliance. By August 2003 this had been achieved and Waitakere City Council are the first in the Auckland Region to achieve this.

The Long Term Council Community Plan and the New Zealand Waste Strategy require Council to identify and manage or remediate all of its contaminated sites. Council does not currently have a work plan or approved budget for meeting these targets. It is intended to utilise the Aftercare section resources to progress this work plan and a draft budget has been prepared for the 2004/05 Annual Plan. The proposed budget for this new programme will be offset by the overall reduction in the closed landfill liability.

RECOMMENDATION

That the information be received.

Report prepared by: David Nelson, Water Projects Manager: Project Services.



10 UPDATE ON PROGRESSING 'BABICH' APPEAL TO THE DISTRICT PLAN

PURPOSE OF THE REPORT

This report provides an update to the Environmental Management Committee on the outstanding District Plan appeals over the Babich Winery and adjacent areas and seeks the Committee's approval of the approach to resolve the appeal.

BACKGROUND

A93

There are outstanding District Plan appeals over the land referred to as the Babich Concept Plan area and an area to the south, as attached at page A93. The land is identified as Foothills Environment in the Proposed Waitakere City District Plan, and is outside the existing Metropolitan Urban Limits as currently defined and shown in the Auckland Regional Policy Statement. The appellants seek re-identification of the land as Living Environment. The Auckland Regional Council, Waitakere Ranges Protection Society and Paul Erceg are parties to the appeals.

These District Plan appeals are related to an earlier Metropolitan Urban Limit appeal lodged by Babich Wines to the Auckland Regional Policy Statement which was subsequently settled by Consent Order in 1996.

In February 2000, A Memorandum of Understanding was entered into by all parties to the District Plan appeal to address the issue of the location of the Metropolitan Urban Limit. It committed Council to undertake the following:

- Carry out studies on infrastructure, ecology and landscape of the site;
- Prepare a growth strategy for the City;
- Prepare a concept plan for to guide the future development of the site, as attached at page A94;
- Present the concept plan and growth strategy and supporting studies to the Auckland Regional Growth Forum later this year (2000) and request that the area be included within the Metropolitan Urban Limit;
- Subject to agreement to the above, the Regional Growth Forum will then recommend that the Auckland Regional Council should prepare a Plan Change to the Regional Policy Statement to shift the Metropolitan Urban Limit;
- EcoWater will submit to the Auckland Regional Council a Variation to the Comprehensive Discharge consent for the Paremuka Catchment; and
- Both the Auckland Regional Council and Waitakere City Council would initiate plan changes.

The appellants contributed \$25,000 towards the infrastructure studies and the Memorandum of Understanding allows all parties to the appeal to reserve their rights to litigation, in the event that a satisfactory resolution cannot be reached.

All of the above actions, except the final two items, have been completed. Subsequent to the above, the Waitakere City Council has received legal advice that confirmed that the necessary changes to the District Plan are within the scope of the appeals, and thus can be settled through consent order, rather than through a Plan Change process. (Movement of the Metropolitan Urban Limit would still necessitate a Plan Change to the Regional Policy Statement). Stormwater work is also ongoing.

The Memorandum of Understanding also identified that the primary interest of the appellants was restricted to that area north of Tasman Avenue, encompassing approximately 78ha bounded by Metcalfe Road, Simpson Road and Tasman Avenue, and the current line of the Metropolitan Urban Limit. Accordingly, the Concept Plan has been developed for this area only, although the appeal over the area south to Sturges Road is still 'live'. Subsequent work has identified that there are likely to be some geotechnical and storm water management constraints that would affect the potential for development of at least part of this southern area.

STRATEGIC CONTEXT

The Babich Concept Plan area has been identified and confirmed as a future urban growth area in the short term (1 - 5 years) in the Northern and Western Sectors Agreement (2001).

The Paremuka Stream and its remaining tributaries are a key Waitakere City Council Green Network area. Significant work and expenditure has already occurred to protect and restore the ecological and aesthetic values of these waterways. The District Plan provisions that will be developed to give effect to the Concept Plan will have a strong stream protection focus, and will confirm the importance of the Paremuka Stream as a whole.

ISSUES

Application to Move the Metropolitan Urban Limit

In order to implement the Babich Concept Plan, the Metropolitan Urban Limit must be moved to include this area (as urban development outside of the Metropolitan Urban Limit is not permitted under the Regional Policy Statement). Pursuant to Clause 21(3) of Part II to the First Schedule to the Resource Management Act 1991, Waitakere City Council is required to make an application to the Auckland Regional Council to request such a change. The District Plan provisions will be a key component of this application. There is in principle regional agreement to move the Metropolitan Urban Limit to include the Babich Concept Plan area. This agreement has been reached through the Northern and Western Sectors Agreement work. The assessment/evaluation of urbanisation of the Babich Concept Plan area against the Auckland Regional Growth Strategy vision and outcomes can be found in Appendix 3 of the Northern and Western Sectors Agreement document. However, the exact future position of the Metropolitan Urban Limit in this area has not been identified.

The Committee will be aware that there are a number of places in the City where the current position of the Metropolitan Urban Limit may be up for review. These can be generally identified as the Northern Strategic Growth Area, covering Hobsonville Peninsula, Hobsonville Corridor, Whenuapai/Waiarohia, Massey North and Redhills areas, and the area generally referred to as the western flank, from Titirangi, through the Babich area up to Birdwood. As regards the latter (the western flank), the Waitakere City Council has reached no conclusion that a movement is appropriate, except in the Babich area. Rather, the review is expected to be an open-minded examination of the current justification for the existing line, in light of a number of questions that have been raised at various locations. The comprehensive review could also look in more detail at the possibility of extending the Metropolitan Urban Limit up to Sturges Road, to include the entire Paremuka catchment. This review is in the Strategy and Development work programme for the next financial year.

Ideally, any movement of the Metropolitan Urban Limit in the Babich area should be as part of this comprehensive review of the western flank, particularly as there are still some questions as to the suitability of at least some of the land to the south of Tasman Avenue up to Sturges Road to accommodate further development. Certainly, Auckland Regional Council staff have indicated this would be their preferred approach. However, there are a number of reasons that it is considered appropriate that the Babich Metropolitan Urban Limit change can be progressed separately. There has been agreement by all parties to the appeals that some movement of the Metropolitan Urban Limit in the Babich area is appropriate, to accommodate the development indicated in the Concept Plan, and the landowners within the Concept Plan have thus been expecting for some time that this development will proceed, and have contributed significant funds towards the development of the Concept Plan. There is also some urgency to settle the outstanding appeals to the District Plan, and the Environment Court has indicated recently that an application to the Auckland Regional Council for a movement of the Metropolitan Urban Limit should proceed in the near future. The analysis and work necessary to support such an application has already occurred, or is ongoing, and to put on hold the progression of the Babich Concept Plan while the comprehensive review of the western flank occurs would likely mean a delay of up to two years. Such a delay is not considered appropriate. Auckland Regional Council staff have agreed that the Memorandum of Understanding commits the Auckland Regional Council to considering an application to shift the Metropolitan Urban Limit to accommodate the development indicated in the Concept Plan - ie. to lie along Tasman Avenue, and Waitakere City Council staff are confident a strong enough case can be made for this application to be successful. However, any application to amend the Auckland Regional Policy Statement by moving the Metropolitan Urban Limit is open to public submission, and will likely attract such submissions.

FURTHER WORK REQUIRED

Concept Plan and District Plan Matters

Council's Planning and Regulatory Committee adopted Concept Plan (Option 2a) as the basis to guide future development in the Babich area in September 2000. However, further work is required to translate this Concept Plan into District Plan provisions. To date, key roading and park requirements have been identified, and will accordingly be included in the District Plan as a regulatory requirement. The Committee may recall that there is also an issue with contamination of soils with agri-chemicals in some places. Agreement has been reached with the Auckland Regional Council that this matter can be adequately addressed through registration of appropriate areas as 'contaminated sites', as any development of these is a Discretionary Activity. No development will be able to occur unless the Waitakere City Council and Auckland Regional Council are satisfied that appropriate remediation can be done. Additionally, areas identified as stability sensitive will be registered as such on the Council's records.

The District Plan provisions will have a strong stream protection focus, reflected in both key policies and rules. These will be based largely on the ongoing storm water analysis, and will incorporate provisions reflecting the importance of the Paremuka Stream as a whole. This will also include identification of new riparian margins on most of the streams within the Concept Plan. However, the reference to medium density housing development currently shown on the Concept Plan will not be transferred to the District Plan provision as this is outside the scope of the relief sought in the appeal. Nevertheless landowners/developers can apply for a resource consent should they wish to pursue medium density housing development.

Stormwater

An appropriate storm water management regime is critical to the successful implementation of the Concept Plan, and protection and enhancement of most of the streams is a key component of this. All remaining streams will be incorporated into reserves, but the management of storm water on the adjacent new residential areas will determine how successful the stream protection approach will be. Accordingly, it is vital that effective and realistic storm water provisions are identified. Most of the approach to management of storm water in the Concept Plan area has been identified, but there is still work remaining on some of the detail, in particular towards Simpson Road, where the steep slopes and incised streams are somewhat problematic. This work will form a key part of the District Plan provisions, and in particular the rules applicable to the development. Additionally, there are ongoing negotiations regarding the potential impact on the western rail link of raising the level of the Paremuka Pond, as would be necessitated by development of the area. There is an estimated 4-6 weeks of storm water work remaining. Once this work is completed, the Council will be in a position to complete an application to the Auckland Regional Council to amend the comprehensive discharge permit.

Confirmation from Appellants

Although all appellants and interested parties have in the past indicated support for the Concept Plan, formal and final confirmation regarding the final Concept Plan/District Plan provisions is required before a consent order can be signed.

TIMELINE

It is expected that the storm water work can be completed by the end of the November. The District Plan provisions should be at least in draft form by the end of the year, and a draft application to move the Metropolitan Urban Limit is expected to be available to discuss with Auckland Regional Council staff by this time also. The final versions of both the District Plan provisions and the Metropolitan Urban Limit application are expected to be available for consideration by this Committee at its February meeting. Once the Committee has signed off on these, an application to the Auckland Regional Council to move the Metropolitan Urban Limit can be lodged, and if that is successful, the consent order can be signed. The timing of these latter processes will depend on how smoothly the application to move the Metropolitan Urban Limit goes, and, as a public process conducted by the Auckland Regional Council, is largely outside of the control of the Council. However, as indicated, Waitakere City Council staff are confident that a good case can be made for moving the Metropolitan Urban Limit to Tasman Avenue to accommodate the development indicated in the Babich Concept Plan.

RESOURCES

The resolution of the Babich appeal is budgeted for in the 2003/04 Annual Plan.

CONCLUSION

Resolution of the outstanding District Plan appeals over the Babich Concept Plan area requires a statutory process by Waitakere City Council to request a change to the Auckland Regional Policy Statement to move the Metropolitan Urban Limit to include the Babich Concept Plan area. Once this is achieved, the 'Babich' appeals can be settled through consent order.

RECOMMENDATIONS

1. That the information be received.
2. That upon completion of the additional technical investigations and any necessary amendments to the Babich Concept Plan, the Concept Plan, associated District Plan provisions, and the proposed application to move the Metropolitan Urban Limit be brought back to the Environmental Management Committee for approval.

Report prepared by: Jenny Fuller, Senior Policy Adviser, District Plan.



PART III - ENVIRONMENTAL MANAGEMENT

11 WATER SERVICES ASSESSMENT TIMELINE AND WATER FOCUS GROUP

PURPOSE OF THE REPORT

This report brings back the results of staff revisiting the proposed timelines for the Water Services Assessment project. This is part of the ongoing work with the Water Focus Group.

BACKGROUND

Council has worked for some time with a voluntary community group which has been brought together for the purposes of considering the water supply funding principles and options. This group worked with political representatives and staff over 2002 and developed three funding options which were taken out to the community for consultation as part of the Long Term Council Community Plan and Annual Plan 2003 - 2012.

As part of the deliberations for the Long Term Council Community Plan, Council resolved to maintain the current water supply funding mechanism ie. user pays, with the proviso that this would be reconsidered as part of the Water Services Assessment.

The Water Services Assessment project is a requirement of the Local Government Act 2002 and is scheduled to be completed by June 2005. This assessment requires that the territorial authority undertake an assessment of the water services and other sanitary services in their district to identify the adequacy of these services and any risks to the community of the absence of services. This assessment must include a statement of current and future demands relating to quality and adequacy of drinking water supply and the health and environmental impacts of the discharge of storm water and sewage arising from current and future demand. In making an assessment of current and future demands for water services and options to meet those demands, a territorial authority must consider the full range of options and their environmental and public health impacts, including (but not limited to):

- (i) On site collection and disposal;
- (ii) Grey water and storm water reuse or recycling; and
- (iii) Demand reduction strategies, including public education, information, promotion of appropriate technologies, pricing and regulation.

A meeting has been held on August 12, 2003 with the Water Focus Group during which the following options were discussed:

- Complete the Water Services Assessment by October 2004 (Citizens Against Privatisation preference).
- Complete by originally scheduled date i.e. June 2005.

It was pointed out that, in order to be completed by June 2005, the material needs to be ready for consultation by March or April 2005.

However, because of the inability of any funding mechanism to address the ability to pay issue fully, there is a case for developing a policy and identifying specific measures to address the ability to pay issues faced by some water users.

It was proposed to the Water Focus Group that this could be its main task, ie. investigating methods by which low income, high usage families could reduce their water bill. Some members of the group are keen to include consideration of water charges on businesses and not-for-profit community organisations.

Staff agreed to revisit the timeline, and members of the Focus Group agreed to discuss the proposed task with their respective memberships.

STRATEGIC CONTEXT

Water is critical for the maintenance of human life, and Council has acknowledged this through the process and analysis undertaken over 2002. However, there are members of the Water Focus Group, particularly representatives of the Citizens Against Privatisation, who equate user pays with the prospect of privatisation as well as unfairly burdening low income, high use families. Council received over 1000 submissions against user pays during the Long Term Council Community Plan and Annual Plan 2003 - 2013.

The current policy has played a critical role in achieving water use reduction, and enhancing environmental quality. Those households with reduced water bills have benefited socially and economically. It has empowered water users to reduce the cost of water by reducing their use of reticulated water - by reusing and recycling, and harnessing rainwater.

Council has stated quite clearly in the Long Term Council Community Plan platform called 'Three Waters' that it has no intention of privatising water supply, and the Local Government Act 2002 places obligations on Councils to retain ownership of water services and to ensure that the water service is not restricted or stopped, except under particular circumstances mostly relating to failure to undertake agreed actions or temporarily for repairs.

ISSUES

Ability to undertake project by October 2004.

As agreed with the Water Focus Group, staff have reconsidered the timelines for this project. This was completed by September 30, 2003. The milestones are:

- Options for service provision and funding options - March 2004
- Preliminary consultation - March 2004
- Preferred options clarified - June 2004
- Options tested with ballpark figures - September 2004
- Preparation of final consultation document - October 2004
- Cost reviews - December 2004
- Final consultation on draft assessment - March 2005
- Adoption of options under assessment - June 2005.

This will not be the final stage of the project, as further costings and testing will be undertaken in preparation for the Long Term Council Community Plan 2006. However, the work undertaken by June 2005 will be critical in determining the water supply options for Waitakere over the foreseeable future.

It would be possible in theory to do the work more quickly, but this could be at the expense of investigating innovative options, as well as at the expense of other projects.

RESOURCES

Staff resources for this project have been allocated and are included in current and future work programmes.

CONCLUSION

As part of the ongoing work with the Water Focus Group, staff have revisited the proposed timelines for the Water Services Assessment project.

The Water Services assessment is a considerable amount of work, and completion by June 2005 is considered a realistic time frame.

RECOMMENDATIONS

1. That the information be received.
2. That Council adopts June 2005 as the completion date for the Water Services Assessment.

Report prepared by: Cathy Kenkel, Group Manager: Strategic Planning and Policy.



12 OPTIONS FOR COUNCIL INVOLVEMENT IN APPLICATIONS FOR COMMERCIAL RELEASE OF GENETICALLY MODIFIED ORGANISMS

PURPOSE OF THE REPORT

The purpose of this report is to update the Environmental Management Committee on the lifting of the moratorium on commercial release of genetically modified organisms and the options for Council involvement in consideration of applications in Waitakere City.

BACKGROUND

A Royal Commission on Genetic Modification was held in 2000-2001. After extensive consultation and deliberation, the Royal Commission concluded that New Zealand should preserve opportunities by developing and using genetically modified organisms (GMOs) as well as maintaining existing methods of production. In drawing this conclusion, it rejected both the idea of a New Zealand free of all GM material and the option of unrestricted use of GM.

Genetic Modification

Genetic modification (GM) is defined by the Royal Commission on Genetic Modification as:

- The deletion, change or moving of genes within an organism; or
- The transfer of genes from one to another; or
- The modification of existing genes or the construction of new genes and their incorporation into any organism.

The terms GM and genetic engineering (GE) are often used interchangeably. For the purposes of consistency with national government policy, the use of genetic modification or GM in this report refers to both of these terms.

According to the Ministry for the Environment, most GM in New Zealand to date has been for research purposes, including research to:

- Identify genes and what they do;
- Investigate pest and disease resistance in plants and animals;
- Develop plants with new characteristics; and
- Help to understand, diagnose and treat human diseases.

GM is also used in teaching students at universities and other educational institutions and in producing some medical and drug treatments, e.g. insulin and vaccines.

Existing Legislation

GM in New Zealand is primarily regulated through the Hazardous Substances and New Organisms Act 1996 (HSNO). Other legislation that controls specific aspects of GM and environmental protection from the risks associated with GMOs include:

- The Biosecurity Act 1993, which relates to the exclusion, eradication and effective management of pests and unwanted organisms, including GMOs.
- The Food Act 1981 and the Medicines Act 1981 covering ingredients in food or medicine. The Food Act identifies the Australia New Zealand Food Authority as responsible for developing food standards and assessing the safety of GM foods.

Under HSNO, the importation, development, trial and release of GMOs are regulated by the Environmental Risk Assessment Authority (ERMA). Many of the applications regarding GMO importation, development or release must be notified to the public. Any person may provide a written submission to ERMA on publicly notified applications.

The amended HSNO (Genetically Modified Organisms) enacted in May 2002 provides for tighter mandatory controls on laboratory and field trials of GMOs to prevent accidental release. It also set in place a moratorium on the release of GMOs into the environment until 29 October 2003. This amendment prevents ERMA from considering applications to import or release GMOs until the moratorium end date, with the exception of GMOs used for medical and veterinary purposes.

New Organisms and Other Matters Bill

An amendment to the Hazardous Substances and New Organisms Act 1996, known as the New Organisms and Other Matters Bill is currently being considered by Parliament. This Bill sets out to amend the HSNO Act in order to streamline the approval of GM of new organisms in laboratories, provide for the approval of conditional release of new organisms, and clarify enforcement responsibilities. It also aims to improve the operation of the HSNO Act for new organisms (which includes but is not limited to GMOs). The Bill is into its third reading and is expected to be passed as law by 29 October 2003.

Implications for Local Government

In its submission to the New Organisms and Other Matters Bill, Local Government New Zealand argued that the responsibilities given to local government under the Local Government Act have not been fully recognised. In particular, the Bill does not:

- Provide explicit opportunities for the circumstances and interests of communities to contribute to the decision-making processes of ERMA in considering GMO applications, or
- Explicitly recognise the requirements that local government be consulted as part of ERMA decision making, and that local authorities should not be responsible for any monitoring, enforcement or clean-up activity.

The Select Committee has addressed this in part by recommending a new clause for the Bill, which requires ERMA to notify a relevant local authority of any notified applications in that district. However, while the commentary to the Bill acknowledges that there is a lack of clarity regarding the role of local government, and specifically the interrelationship between the HSNO, Resource Management Act and the Local Government Act 2002, Government members believe that the regime is clear and that local government does not have the power under the Resource Management Act or Local Government Act to regulate GMOs. Therefore, no other changes have been recommended to the New Organisms and Other Matters Bill on this issue.

STRATEGIC CONTEXT

Waitakere City Council declared the city GE-Free in field and food in November 2001 (2635/2001). At that time the Government had placed a moratorium on the commercial release of genetically modified organisms beyond the confines of a laboratory. Later this month that moratorium will be lifted and applications for the use of genetically modified organisms can be processed.

The City has confined its reservations regarding genetic engineering to the use of GM products in food and the use of GM plants and animals in the environment (agriculture and horticulture). Waitakere City Council is actively promoting an organics business cluster in collaboration with Rodney District Council and is also concerned to maintain the city's clean, green Eco-city image.

ISSUES

1. HSNO Act 1996 and GMOs

The New Organisms and Other Matters Bill, which is the amendment to the HSNO Act that deals with regulation of GMOs, is currently at its second reading stage of passing through Parliament. Both Environment Bay of Plenty and Local Government New Zealand, on behalf of Waitakere City Council and other local authorities, submitted on this Bill to the effect that local government wanted to play a greater role than just as a submitter on applications for GMO use in their districts.

Whereas it is considered to be entirely appropriate that ERMA has responsibility for assessing the potential ecological and human health effects of GMO use, which requires specialist expertise and significant financial resources and a role for which ERMA is funded, it is with respect to the potential economic and marketing impacts the GMO release may have on local industries that local authorities have sought involvement.

After its first reading, the Education and Science Committee has examined the New Organisms and Other Matters Bill and has recommended some amendments in light of submissions received. As part of the Committee's recommendations the new subparagraph to section 53 (4) is to be amended so that not only regional councils but territorial councils also shall be notified of applications for approval of a new organism in the following circumstance:

“(ii) any local authority (within the meaning of the Local Government Act 2002) if, in the opinion of the Authority, the local authority is likely to have an interest in the application.”

Therefore, any notified applications could be brought to the attention of Waitakere City Council if the Council declares that it would have such an interest.

The Council needs to determine its level of interest in any potential applications for commercial release of GMOs in Waitakere City. The range of possible concerns relate to:

- Possible cross-contamination by GM pollen of the same species but non-GM food crops eg. sweet corn.
- Compromise the organics industry, as products are certified organic and also marketed as GM free.
- Compromise the Eco-city image and the GE-free status of Waitakere City.

2. Local Government Act 2002 and GMOs

Council has the power to make By-Laws under Section 145 of the Local Government Act 2002 for one or more of the following purposes:

- Protecting the public from nuisance
- Protecting, promoting, and maintaining public health and safety
- Minimising the potential for offensive behaviour in public places.

If one or more of these purposes can be argued for restricting the field use of GMOs in Waitakere City, a by-law could be drafted.

Alternatively, if the economic impact on the nascent organics industry in Waitakere City can be clearly identified, a policy statement can be prepared in accordance with Sections 10(b) "promote the social, economic, environmental, and cultural well-being of communities," and Section 14, which requires that the community must be consulted on such a policy statement. This would satisfy the requirement for the local authority to be notified by ERMA for any conditional release applications.

3. Resource Management Act 1991 and GMOs

Whereas the Council carries the role of managing the environmental effects of land use under the Resource Management Act, it currently has no ability to have any influence over the use of genetically modified organisms within its jurisdictional boundaries unless it can argue adverse environmental effects not addressed by ERMA.

The purpose of HSNO specifically is to:

"Protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms."

If the Council did consider a Plan Change to make the growing of GM crops and farming of GM animals a prohibited activity, which means that a resource consent cannot be applied for, the applicant could gain approval from ERMA and this would circumvent the prohibited activity status.

If Council were to consider a Plan Change to require a resource consent for the growing of GM crops and farming of GM animals, this would not easily fit into the District Plan's current effects-based framework but would be as prescriptive as the old activity lists prepared under the Town and Country Planning Act 1977, effectively stating which crops could be grown and which not. It is hard to justify any environmental effects of, for instance, grazing GM sheep or feeding GM carrots to possums to induce sterility.

Some of the known risks of growing GM crops include:

- Pollen from GM crops (pollen carries the genetic material to the next generation via fertilisation of seed) fertilising seed of a non-GM crop of the same species.
- Pollen from GM crops modified to produce toxins resist insect attack containing toxins that also kill insect pollinators.
- GM plants modified for herbicide resistance becoming a weed species through their resistance advantage.

Some of the unknown risks of GM include:

- Horizontal gene transfer where the modified genetic information has the potential to be transferred to other organisms.
- Virus recombination where genetic material can be exchanged between virus strains or between viruses and bacteria.
- Toxicity and allergenicity of GM crops to human health.

These potential effects are generally beyond the scope of a District Plan to regulate and beyond the ability of most territorial authorities to assess. In addition, any such Plan Change would be likely to draw submissions across the full range of responses and being (a) contrary to Government policy, (b) regulated under legislation other than the Resource Management Act and (c) prescriptive rather than effects-based, would be unlikely to be upheld by the Environment Court.

4. Liability for Environmental Clean-up

Central Government advocates a precautionary approach to GM use indicating that it regards the HSNO framework as sufficient to minimise risk. Some parties have argued that risk needs to be considered within a wider sustainable development framework, including risk to the environment, people, economy and culture. In its report, the Royal Commission advocated to continue proceeding carefully "minimising and managing risks" in order to keep options open.

The New Organisms and Other Matters Bill does provide for an enhanced liability regime if rules are broken or approval is breached. Very high financial penalties are proposed for such circumstances. The New Organisms and Other Matters Bill has also determined that the Ministry of Agriculture and Forestry is the enforcement authority for GM.

The Law Commission considered liability issues for GM on behalf of the Government and, amongst other factors, considered that; under current law, liability rules do not provide compensation for every kind of harm; only personal injury, property damage and certain forms of economic loss. They are generally not capable of addressing harm that cannot be easily quantified or compensated in monetary terms.

Existing liability rules are not generally effective at encouraging precaution or providing compensation for environmental harm. This is primarily because there are often no identifiable individuals to bring proceedings and those that cause the harm may lack the means to pay. It is not obvious that changes to liability rules could address these effectively.

The Ministry for the Environment is developing a programme of longer-term work on environmental harm, including consideration of liability issues.

5. Effect of GMO Use on Waitakere City's Strategic Directions

Waitakere City is an Eco-city and continues to protect its clean, green image. To this end the City "honours its environment" and is building a "safe city." Its citizens look to the Council for leadership and the GM issue is a prime example where citizens look to their leaders for action.

RESOURCES

Some economic analysis of the effect of GMO use in Waitakere City on the organics cluster may be needed but no additional resources other than staff time will be required for the drafting of a policy statement.

CONCLUSION

There are some issues of concern for local authorities and somewhat limited options for addressing these concerns. The options currently open to Council are as follows:

1. Develop a policy statement around protecting the Eco-city image and fostering the organics industry.
Under this option, the Council would be in a position to respond to ERMA on any notified applications for release of GMOs in Waitakere City.
2. Develop a regulatory position.
As GM policy and legislation is currently a Central Government function, it is debatable whether this option is achievable through either the Resource Management Act (District Plan rules) or Local Government Act (By-law).
3. Take no further action and leave the issue to Central Government.
If the Council takes this approach, it would in effect be deciding that the GM issue is one for Central Government.

Officers recommend that Waitakere City Council actions option 1 and prepares its own policy statement around the GM issue to be consulted through the Annual Plan process. Such a policy statement is provided for in the New Organisms and Other Matters Bill and will ensure that local government declaring such an interest will be notified of any relevant applications. This intention could be communicated to ERMA in the mean time while the policy is drafted and consulted on.

Rodney District Council, Kaipara District Council and Northland Regional Council are all currently developing their GM approaches and it may be possible for some form of co-operative effort by interested local authorities.

RECOMMENDATIONS

1. That the information be received.
2. That a policy/position statement on the implications of commercial release of GMOs for the City be prepared for consultation through the 2004/2005 Annual Plan (year 2 of the Long Term Council Community Plan).
3. That the Council indicates to ERMA that, in the interim, it wishes to be notified of all applications for approval of a new organism within Waitakere City.

Report prepared by: Carol Bergquist, Senior Analyst Environmental Policy.



13 **PAINTED APPLE MOTH UPDATE REPORT FROM THE MINISTRY OF AGRICULTURE AND FORESTRY**

PURPOSE OF THE REPORT

A95

The purpose of this report is to present the nineteenth of the monthly Painted Apple Moth update reports from the Ministry of Agriculture and Forestry, as requested by the Council at its meeting of 17 August 2001. The Ministry of Agriculture and Forestry report is attached at page A95. Additional information on the painted apple moth eradication programme is also presented here.

BACKGROUND

Nine targeted aerial sprays against painted apple moth were completed over the period from January to September 2002. A combination of a fixed wing aircraft and a helicopter sprayed up to 900 hectares.

Eleven expanded aerial spray rounds have been completed from 23 October, 13-15 November, 2-3 December, 20-21 December 2002, 7 and 15 January 2003, 30-31 January, 16-17 February, 14-17 March, 2-3 April, 22-23 April and 14 May 2003. Three aircraft - a Fokker Friendship, an air tractor and a helicopter - have been used to spray up to 10,300 hectares. Aircraft have suspended spraying at 8.00 am - 9.00 am, 12.15 noon - 1.00 pm and 3.00 pm - 4.00 pm when children are walking to and from school and eating lunch.

The winter operation, from June to September, has included targeted aerial spraying of 892 hectares over five known hotspot areas; Ranui/Swanson, Riverpark, Waikumete Cemetery, Hobsonville and Meola Creek. Two targeted aerial sprays of 892 hectares were completed on 12 June and 3 July 2003 with the air tractor. Three further targeted aerial spray rounds were completed on 4 August, 26 August and 30 September 2003 using a helicopter alongside the air tractor in an effort to complete the winter aerial operations as quickly as possible. Aircraft have suspended spraying at 8.00 am - 9.00 am, 12.15 pm - 1.00 pm and 3.00 pm - 4.00 pm when children are walking to and from school and eating lunch, except over the school holiday period.

STRATEGIC CONTEXT

The Ministry of Agriculture and Forestry has an obligation to do all that is required in terms of its legal responsibilities under the Biosecurity Act 1993. Council has encouraged and facilitated this where possible.

Council has an obligation to protect native ecosystems, native flora and fauna habitat and the ecological processes associated with these systems both under the Resource Management Act 1991 and under the District Plan issues 5.2 and 5.5. Equally, Council has an obligation to protect and represent the residents of Waitakere City.

ISSUES

Current Aerial Spray Programme

The final winter targeted aerial spraying operation was scheduled for 16 September 2003. Two weeks of high winds and rain delayed aerial spraying until the 30 September 2003.

Moth Trap Catches

Cooler winter temperatures slow down, but don't stop, the lifecycle of painted apple moth. There have been no wild moths caught in traps for August or September 2003, up to and including the 25 September.

Weekly releases of sterile male moths at three hotspot sites have continued as part of the winter programme. In late September two of the sterile male moths released by Ministry of Agriculture and Forestry were caught in the normal moth trap grid. The significance of these captures indicates that temperatures are warming up enough for the males to start flying. If wild populations of painted apple moth still exist we could start to see them appear in the traps from now onwards.

Trapping grid for 2 years after last wild male moth caught.

Summer Operation

The Ministry of Agriculture and Forestry is expected to make an announcement about the contents of the summer operation in early October, following the completion of the winter targeted aerial spraying. The tools used in the summer operation will depend on where and how many male moths, if any, are caught over the early part of summer. Some targeted aerial spraying is anticipated but the exact size of the spray zone and number of sprays will be determined by trap catches.

Spring operation is 6500 ha on 21 Oct and 11 Nov using Fokker Friendship, air tractor OR Cresco and the helicopter.

Contents of the Aerial Spray Foray 48b

Previous attempts by Council and the community to have the ingredients of the aerial spray, Foray 48b, released to the public have been denied by the Ministry of Agriculture and Forestry on the basis of commercial sensitivity of the product.

Council has requested the release of the ingredients to nominated health professionals and Council staff in order for Council to discharge its statutory duty under the Health Act. To date the Ombudsman's office has not yet made a final recommendation and Council continues to communicate with the Ombudsman's office on an ongoing basis.

Wellington School of Medicine Health Study

The Ministry of Health has contracted the Wellington School of Medicine to undertake a review of health issues related to the aerial spraying of Foray 48b in Auckland. The review includes:

- An analysis of existing scientific information about the potential health effects of the spray;
- A summary of consultation with stakeholders and members of the public; and
- Recommendations for further study.

Waitakere City Council, along with other territorial authorities, stakeholders and Government agencies, has been invited to nominate peer reviewers. The peer reviewers shall be selected by the Ministry of Health and made public.

New Zealand Biosecurity Strategy

In August 2003 the Biosecurity Council, an independent body from the government, released the Biosecurity Strategy for New Zealand. The strategy identifies 57 expectations, the top 10 of which have been selected for implementation within the next year.

The Ministry of Agriculture and Forestry has clearly been identified as the lead agency responsible for biosecurity in New Zealand, although the Ministry of Health, Department of Conservation and Ministry of Fisheries will still be required to provide specialist input for health, native flora and fauna and marine biosecurity issues.

Pheromone Testing

Information not furnished to Ministry of Agricultural and Forestry from Dr John Clearwater.

RESOURCES

It is not expected that Council will put any additional financial resources into the eradication operation as it is a matter of national biosecurity and is under the jurisdiction of the Ministry of Agriculture and Forestry through the Biosecurity Act 1993. Council has made provisions in the 2003/2004 Annual Plan for some revegetation of Council land where host removal work has been undertaken by the Ministry of Agriculture and Forestry.

CONCLUSION

Fourteen rounds of targeted aerial spraying to eradicate the painted apple moth have been completed along with eleven expanded aerial sprays. A reduced winter operation ran from June to September 2003. The summer programme is to commence in October 2003 although the exact contents of this are yet to be announced by the Ministry of Agriculture and Forestry.

RECOMMENDATION

That the Painted Apple Moth Report be received.

Report prepared by: Kerry Bodmin, Landscape Planning Co-ordinator.



14 WAITAKERE RANGES PROJECT - CONSULTATION UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to provide the Environmental Management Committee with an update on the Waitakere Ranges project.

BACKGROUND

The Council is currently undertaking a project to determine whether long-term protection of the Ranges is adequate, and if not, what should be done. This has involved pulling together the research and information relating to the Ranges, looking at how the Ranges are currently managed, what gaps exist and how they might potentially be filled.

There are 3 key components to this project:

Research and Information Gathering

Work has been underway since April pulling together the various pieces of research and information on the Ranges held by a number of different agencies. It has been found through this exercise that the research is often site or project specific and fragmented, so that gaining a holistic picture of the health of the Ranges has been difficult. However, signals indicated that pressures do exist with the key ones including subdivision and development, animal pests, weeds, and visitor impacts. A discussion document has been produced and widely distributed as part of the community consultation. The more detailed report will be completed by mid November.

Community Consultation

A 3-phase community consultation process was signed off at the Committee's July meeting.

Phase One

Purpose: To share with the community information gathered, discuss issues and commence the preliminary discussion around possible responses. The messages to the community include the acknowledgement of the considerable work undertaken to produce the West Coast Plan and the good work happening, especially in relation to weeds and animal pests, without rules and legislation. The vehicle will be a series of workshops throughout the city. Community Boards will also take out displays to community events and sites.

Sixteen workshops have been organised throughout the city. At the time of writing the report the following workshops had been completed (with approximate attendee numbers):

Henderson/Kelston	(17)
Massey	(12)
Te Whanau O Waipareira	(15)
Swanson	(58)
Summerlands/Sturges	(3)
Karekare	(20)
Business group	(14)
Waitakere Township	(22)

Phase Two

Purpose: To discuss potential responses in more detail. Two to three community half-day workdays will be organised in late January and February 2004. These will be run as a series so that outcomes from the first day will feed into the second day for further work.

Phase Three

A consultation programme will be developed to take the preferred response(s) to the community for final comment.

Response Development

Policy work will be undertaken to support phase two of the community consultation process, and the decision making of the Council and its partners in this project.

STRATEGIC CONTEXT

The Waitakere Ranges Protection project is a key project within the Green Network platform of the draft 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. However, the tools for protection are many and varied, and community views diverse. A robust process is crucial for achieving community understanding of, and long-term commitment to, any solutions that might arise from the process.

RESOURCES

Budget for the Waitakere Ranges project has been fully expended. It is expected that the project will come in \$35,000 over the \$30,000 budget allocated. This has been identified as part of the quarterly review, which will be presented to the Finance and Operational Performance Committee meeting.

ISSUES

By the time of the committee's November meeting 14 of the 16 workshops will have been completed. An update on the results will be presented at this meeting. A presentation of the entire workshop results will be presented at the committee's December meeting.

CONCLUSION

Given the timeframes of the community consultation to be undertaken from late September through to mid November a verbal update of progress in the consultation will be presented at the Committee's November meeting.

RECOMMENDATION

That the Waitakere Ranges Project - Consultation Update Report be received.

Report prepared by: Kim Morresey, Partnerships and Advocacy Leader, Environmental.



PART I - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 29 OCTOBER 2003) - ESTATE HOMES LIMITED V WAITAKERE CITY COUNCIL (28 MARCH 2002) (RANUI STATION ROAD)

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

1. That the public be excluded from the following part of the proceedings of this meeting, Legal Update (as at 29 October 2003) - Estate Homes Limited v Waitakere City Council (28 March 2002) (Ranui Station Road).

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">• Legal Update (as at 29 October 2003) - Estate Homes Limited v Waitakere City Council (28 March 2002) (Ranui Station Road)	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none">• Maintain legal professional privilege.	<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)(g) 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 concern legal issues currently before the Environment Court.*
2. That Robert Enright, Kensington Swan be permitted to remain at this meeting, after the public has been excluded, because of their knowledge of each of the matters to be discussed. This knowledge, which will be of assistance in relation to the of the matter to be discussed, is relevant to that matter because of background information and advice which will be required by Environmental Management Committee when assessing the options available to it and in explaining any decision to the community.

