



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, 12 August 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.

6 August 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.)

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, 12 AUGUST 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, 12 AUGUST 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

Ordinary - Tuesday, 8 July 2003

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Environmental Management Committee held on Tuesday, 8 July 2003, as circulated, be taken as read and now be confirmed.



PART I - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 1 AUGUST 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

Birdwood Structure Plan

Kitewaho Bush Reserve Company Limited and Ors v Waitakere City Council

This was an application by the Council to strike out Kitewaho, Mr Mawhinney and associated entities reference on Variation 87 (Birdwood Structure Plan). The reference had sought that the Birdwood structure plan be extended to allow extensive subdivision rights throughout the entire non-urban parts of Waitakere City, including land holdings owned by Kitewaho et al in the Bethells/Waitakere area. The Court upheld Council's application and has struck out the entire reference by Kitewaho et al on the basis that it is an abuse of process. An application for costs against Kitewaho has now been filed with the Court and a decision will be released in due course.

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

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

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 and 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 and 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.

Mobil Oil NZ Limited v Waitakere City Council (Appeal filed late September/early October 2001)
Henderson Valley Developments Limited v Waitakere City Council (12 October 2001)

Both the above appeals relate to the proposed 264 residential unit development intended for 2-6 Henderson Valley Road. Henderson Valley Developments Limited has now withdrawn its appeal. The Court has asked Mobil if it intends to pursue its appeal.

Abacus Developments Limited and Ors v Waitakere City Council (Feb 2000)

This was an appeal by Abacus, Kitewaho and related entities (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 the last quarter of 2003.

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 27 August 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)

Appeal against consent conditions imposed for proposed subdivision at Ranui Station Road. The appeal primarily relates to financial contribution conditions imposed, as well as certain conditions relating to the provision of infrastructure (water mains and roading). The parties have been involved in negotiations over the appeal, but have not resolved matters. Council has now exchanged its evidence and the matter is set down for hearing week of 25 August 2003 (specific date to be advised by the Court).

Coastal Environments Limited v Waitakere City Council - Coastal Subdivision at Piha (5 March 2001)

Appeal against Council's decision declining an application by Coastal Environments Limited for subdivision consent. The Waitakere Ranges Protection Society and several residents' groups are parties to the appeal. A judicial conference occurred on 15 April 2003. On 27 June 2003 Coastal Environments withdrew its appeal, and has indicated it will 'start again' with a fresh resource consent application to Council.

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 (the agreement will be forwarded for approval by this Committee shortly).

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 and Others v Waitakere City Council (February 2003)

The above appeals relate to a decision granting resource consent to Richmond Eden Ltd for a 12-lot subdivision of a site at 39 Landing Road, Titirangi. The Waitakere Ranges Protection Society has opposed the decision; Pradhir and Others have opposed a condition that relates to parks and walkways; and Richmond Eden Limited (the applicant) has appealed a number of the conditions. A mediation date will be allocated for August 2003.

Poll v Waitakere City Council (January 2003)

Vicki Poll has appealed Council's 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". 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 and therefore the matter has been set down for hearing during the fortnight beginning 18 August 2003. It is anticipated that the hearing will take two days.

Cornerstone Limited v Waitakere City Council (February 2003)

Cornerstone Limited has appealed the decision by the Council to refuse an application for a land use consent to develop 6 office units at 120 Titirangi Road, Titirangi. This matter is set down for mediation before an Environment Commissioner on 13 May 2003. 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. Cornerstone yet to provide rebuttal evidence.

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. This matter has been listed for hearing during the fortnight beginning 18 August 2003 but has been adjourned due to the length of time taken by the appellants in the disclosure process, which preceded the preparation of evidence. The Court has set a revised timetable for the production of evidence and will be set down for hearing after 20 October 2003 when the parties' evidence has been completed. It is anticipated that the hearing will take two days.

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

These proceedings involve two references concerning subdivision, filed in relation to Variation 87 of the Proposed District Plan. Council's solicitors reported to the Court on 7 July 2003. The Waitakere Ranges Protection Society has proposed a meeting to attempt to resolve all matters including the Thompson reference and those of the Juderon Family Trust (a Section 271A party to the Waitakere Ranges Protection Society appeal). Council, the Thompsons and the Waitakere Ranges Protection Society are relatively close to finalising terms for an agreed settlement of the Thompsons' site-specific reference, and the Waitakere Ranges Protection Society reference; but the Juderon Family Trust's position and that of Kitewaho Bush Reserve Company Ltd (who have been joined to these proceedings by a previous Environment Court decision) have complicated this position. It is hoped that the Thompson and Waitakere Ranges Protection Society references, along with Juderon's interest, can be preliminarily confirmed before the Court addresses Kitewaho's concerns.

**Bay Olympic Sports and 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.

With Council's assistance, Bay Olympic and Friends of Crum Park have been involved in ongoing Council-facilitated mediation in an attempt to reach agreement. If agreement cannot be reached then Council intends to suggest that the parties undertake Environment Court-assisted mediation.

HIGH COURT

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

Notification has now been received that this matter is to be heard in the week beginning 17 November 2003. It has been set down for a four day hearing.

Bible College (NZ) Inc and 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. Discussions to occur shortly with a view to settlement.

ENFORCEMENT ORDERS

Waitakere City Council v Borrett - 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. Although this matter looked likely to settle, at the latest mediation the largely agreed position broke down. Council is currently reviewing this position in relation to these proceedings and in light of related prosecution proceedings

PROSECUTIONS

Barry Cargill - 58A Rauhuia Crescent, Huia (17 May 2001)

Informations have been laid against Mr Cargill (CRN Nos.1090017265 & 66) in relation to the clearance of bush in the Coastal Natural Area. The matter was set down for a depositions hearing on 14 June 2002, at which time the defendant conceded that he had a case to answer, and he was committed for trial. The defendant's representatives and Council are finalising a replanting plan to remedy the damage caused on the property. Mr Cargill has pleaded guilty. Sentencing submissions had been made and the hearing adjourned on a number of occasions for remediation to be progressed. The remediation package includes the gifting of land to the Auckland Regional Council that requires a subdivision consent, which has been granted by the Waitakere City Council, and then a Section 224(c) certificate. Mr Cargill has had difficulty progressing his subdivision plan due to difficulties with his wastewater disposal. In these circumstances the Court has further adjourned sentencing until 10 September 2003.

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 November 2003. It is anticipated that it will require a three day hearing.

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

Informations were laid for Resource Management Act offences for unauthorised vegetation clearance, earthworks and breaches of interim enforcement orders. The Borretts have entered a plea of not guilty and requested trial by jury. The Borretts have been committed to a jury trial, following depositions in February 2003. At this point the trial is scheduled for September 2003.

Lorenzen - 91 Kaurilands Road, Titirangi (November 2002)

Information has 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. The pre-conference trial occurred on 19 June 2003. The Crown Prosecutor has advised that the next call over will be on 10 September 2003.

Kearney - 6 Dawnhaven Drive, Te Atatu (January 2003)

Information was laid against Mr Kearney in relation to breaches of the Building Act. The matter was called on 12 June 2003, the defendant pleaded guilty and was fined \$3,500. At the meeting on 25 June 2003 Council resolved to appeal the District Court's decision as to the quantum of the fine imposed. The Solicitor General declined Council's application for leave to appeal as he did not consider that the fine imposed was excessively low.

Columbus Academy and Katsuo Kanamori - 113-117 West Harbour Drive (May 2003)

Information was laid against the Columbus Academy and Katsuo Kanamori as a director of the Academy. Council alleged that unauthorised building work has been undertaken on the properties and that the properties were unsafe and without sufficient sanitary facilities. Council further alleged that the properties were not used in accordance with the definition of "dwelling unit" under the District Plan. This matter was scheduled for plea and sentencing on 3 July 2003, at which time the defendants entered guilty pleas and were fined \$45,000 in total (\$30,000 was imposed for offences against the Resource Management Act; \$15,000 for the Building Act offences), 90% of which is to be paid to Council.

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

Information has 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, where the not guilty plea and jury trial election were confirmed. The matter has a pre-depositions call over date of 20 August 2003, at which time a deposition date will be allocated.

Meng Teck Yeo, Kee Bong Yeong and MTY Properties Limited - six properties at various locations (May 2003)

Numerous information was laid against the defendants for Resource Management Act and Building Act offences in relation to six properties that were rented to tenants. Each of the properties is alleged to be unsanitary and in breach of the District Plan requirements relating to the number of occupants allowed in dwelling units. Disclosure has taken place. The matter is due to be called on 29 August 2003.

COURT OF APPEAL - APPEALS FROM PROSECUTIONS

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

These defendants rented an unsanitary building, previously a garage, to a family of 6 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.0090028151 & 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 over three days from 24 to 26 July 2002.

On 16 August 2002 Justice Harrison gave a decision in Council's favour, and dismissed the appeal both in relation to conviction and sentence. The High Court found that the new evidence did not affect the fact that the building was unsanitary for the time that it was occupied, and that those conditions must have been obvious to the owners of the property. Accordingly, the High Court upheld the full level of the sentence that had been imposed in the lower Court, even though it was and remains the highest imposed under the Building Act.

Following the High Court's (Justice Harrison) 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.

On 17 June 2003 the Court of Appeal granted special leave to Law and 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 scheduled for a one-day hearing on 18 November 2003.

RECOMMENDATION

That the Legal Update report be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



5 PROPOSED RESOLUTION OF ENVIRONMENT COURT APPEAL

PURPOSE OF THE REPORT

The purpose of the report is to seek the approval of the Environmental Management Committee to settle an Environment Court appeal lodged by Philip Geoffrey Spencer against the Council's decision to refuse an application for subdivision consent.

BACKGROUND

In February 2000, Mr Spencer applied to the Council for consent to subdivide his property situated at 174 Lone Kauri Road, Karekare. The proposal was to divide the land into two lots, with each lot accommodating one of two lawfully established dwellings that existed on the site.

The application was publicly notified and attracted a number of submissions. The (former) Hearings Committee considered the proposal at a hearing convened in August 2000, and decided to refuse consent. Mr Spencer appealed the Council's decision to the Environment Court.

The Waitakere Ranges Protection Society and a number of Karekare residents subsequently advised the Court of their intention to be heard as interested parties in relation to the appeal.

All of the parties, including the Council, agreed to participate in a mediation process facilitated by the Court, in the hope that an agreement could be reached without the need to proceed to a hearing. The mediation has been progressing for some considerable time, and it now appears that a solution can be achieved that is likely to be acceptable to all of the parties.

The Court has requested that the parties report back in August to advise the outcome of mediation, with a view to issuing a consent order if an agreement has been reached.

STRATEGIC CONTEXT

Subdivision in the non-urban areas of the City is carefully managed through the District Plan in order to avoid and mitigate adverse environmental effects. This approach recognises that subdivision of land will create opportunities for development to occur, as houses are constructed on land that was previously vacant.

This particular situation is somewhat unique however, as the appellant's land already contains two existing houses that were lawfully established some years ago. As such, the act of subdivision in this instance is unlikely to give rise to any significant effects, given that development has already occurred.

ISSUES

The mediation has progressed to a point where it appears that an agreement can be reached.

The draft agreement would allow for the subdivision to proceed, although with strict conditions addressing the concerns of the submitters and the Council. In particular, the agreement would include extensive covenants that would manage potential future effects by preventing any further subdivision, prohibiting the erection of any minor household unit on either lot, and through restricting building coverage and vegetation clearance.

In addition, the agreement would establish a means by which shared driveway maintenance could occur. While this would not address a resource management concern, it would resolve what has been a contentious issue for a number of years between the appellant and other residents who share the driveway that serves several properties in this part of Karekare.

It is noted that the draft agreement would effectively represent a reversal of the Council's original decision. It is for this reason that the matter has been referred to the Committee, despite the fact that senior staff hold the necessary delegations to resolve the appeal. However, it is considered that a decision by the Court to allow the appeal would be acceptable as all parties now support the subdivision (subject to the conditions agreed through the mediation). In addition, the Committee can be confident that the outcome can be supported at a professional level, given that the original officer's report recommended approval.

In these circumstances, it is recommended that the Committee provide its approval for staff to advise the Court that the Council is prepared to accept the draft agreement, subject to any necessary fine-tuning of consent conditions. If all parties endorse the draft agreement, the Environment Court will issue a consent order that would replace the original decision of the Council.

RESOURCES

No resources are required, other than staff time and funding for legal costs that is already available within existing budgets.

CONCLUSION

Mediation convened in relation to this appeal has been successful in producing a draft agreement that is acceptable to all of the parties. The Committee's endorsement is sought to settle the appeal.

RECOMMENDATIONS

1. That the information be received.
2. That the Environmental Management Committee endorses the proposed settlement of the appeal lodged by Philip Geoffrey Spencer (RMA 701/00), and requests that the Group Manager: Planning and Community Services take all necessary action to finalise resolution of the appeal through the Environment Court mediation process.

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



6 PROSTITUTION REFORM ACT 2003

PURPOSE OF THE REPORT

This report discusses the adequacy of Council's existing regulatory framework to control the activities of the sex industry activities legalised by the Prostitution Reform Act 2003.

BACKGROUND

A memorandum prepared by Brigid McDonald has already been circulated to Councillors, summarising and providing initial analysis of the new statutory provisions. In the time since that report, there has been an opportunity for mature reflection. Between the date of this report and the Committee meeting there will be further discussion of the issues by officers. Council is also represented on a regional working party looking at the issues on a regional basis. This working party will also be a useful reference point for best practice guidance on a wide range of issues including decision-making principles and option analysis and selection. An oral report can be provided to the Committee in relation to the nature of officer discussion, and the activities of the regional working party.

STRATEGIC CONTEXT

The Council's strategic objectives are to encourage social and economic activity in its urban and rural centres, to encourage the development of strong communities and to provide a home for innovative economic activities.

The Council has a range of regulatory mechanisms available to it for achieving its objectives and controlling the negative effects associated with activities. These mechanisms include the District Plan, bylaws and Council policies. Council policies that are currently under development, and which are linked with issues arising out of the Prostitution Reform Act, include the Liquor Licensing Policy (through the Sale of Liquor Act 1989), a proposed citywide alcohol strategy and a Gambling Venue Social Impact Assessment and Gaming Venue Policy (Responsible Gambling Bill). Any regulatory response by the Council to the PRA needs to be considered in the context of policies.

DISCUSSION

Prostitution Reform Act 2003 legalises the soliciting and provision of sexual services for reward. It is now just another "commercial" activity. The place where prostitution will occur is defined in Prostitution Reform Act 2003 as a "brothel". Within this definition there is a "small owner-operator brothel", which is a brothel at which no more than four sex workers work, and where each of the sex workers retains control over his or her individual earnings. The distinction between these two classes of brothel is not only important for the purposes of the discussion which follows but also for the purposes of the Prostitution Reform Act 2003 itself. Section 5 of the Act provides that a sex worker who works at a small owner operator brothel is not an operator of that business of prostitution, so that a small owner-operated brothel does not have an "operator" as defined in Section 5. This distinction is very important in understanding the way in which the Prostitution Reform Act 2003 works. Part 3 which requires certification of "every operator of a business of prostitution" will not apply to small owner-operated brothels.

This report will discuss the existing regulatory instruments in the Council's "toolbox" and analyse the ability, if any, of those instruments to respond to changes which may arise as a consequence of the Prostitution Reform Act 2003. In the course of that discussion there will be some preliminary identification of possible courses of action. The next step, not addressed in this report, will be for the Council to decide the extent to which, if any, it will initiate immediate action and what steps it may propose in terms of monitoring matters for the future.

Throughout this discussion it needs to be remembered, as pointed out in Brigid McDonald's paper, that the process for implementing a bylaw under LGA02 is now very similar to the process of implementing a change to the District Plan under Resource Management Act. Only rarely will it be appropriate to take action in either direction without first undertaking a careful analysis of the nature of the problem, identifying the solution and then adopting the best practical regulatory method to deal with that issue. Care must be taken to avoid both a knee jerk reaction to a perceived risk which never materialises and the implementation of a regulatory regime which may be expensive of both staff time and budget but not essentially necessary for the protection of community mores or the achievement of community outcomes.

DISTRICT PLAN

The District Plan was however prepared when prostitution was unlawful and such sexual activities as did occur on a "lawful" basis occurred within the confines of massage parlours licensed under the Massage Parlours Act 1978. Massage parlours will continue to be licensed under that Act until 27 December 2003 (6 months after the Royal assent to Prostitution Reform Act 2003) and will thereafter be subject to the certification procedures of Prostitution Reform Act 2003, (assuming of course that the particular massage parlour does not fall to be classified as a small owner-operated brothel). Not surprisingly therefore the District Plan is silent as to the activities of the pre-Prostitution Reform Act activities of the sex industry. The circumstances where a district plan makes express provision for such activities is not likely to be common. (In making this observation it is noted however that the Manukau City District Plan for example contains a definition of "personal and other services" which is extended to include "escort agency services and massage services". Interestingly enough, the effects of those activities are equated to the provision of services such as laundry or dry cleaning, gardening, hairdressing, beauty salon and chauffeur services. The relationship between the former activities and the latter is not immediately obvious at first glance.) So for example in the District Plan:

- (a) There is no definition of "commercial activity" which might include a reference to the sex industry.
- (b) The definition of "home occupation" extends to include "any commercial activity profession or service" which is language wide enough to include the provision of commercial sexual services.
- (c) "Retail sales" and "retail services" are separately defined.
- (d) The signage rules focus on the dimension and type of sign rather than content.
- (e) There are no rules in the community or working environment sections of the plan which might restrict the location or operation of either brothels or small owner-operated brothels.
- (f) There are no rules in the living environment sections of the plan which might restrict the operation of small owner-operated brothels.

This final observation needs some further explanation. The rules in the living environments permit non-residential activities which fit within the definition of a "home occupation". The rules permit such activities when no more than five persons are engaged in the home occupation "at least one of whom resides on the site". The home occupation must be carried on within an existing building and not involve heavy traffic vehicle generation. In addition "any retail sales and services" must be confined to front sites with individual driveway access, on sites where the minimum site area of 405m². The relevant rules also provide that "the home occupation, apart from parking of one vehicle (must be) screened from the adjoining sites and the road".

From this it follows that if no action is taken to amend the district plan a small owner-operated brothel might now lawfully establish in a living environment within the city. Those provisions in PRA which permit the imposition of conditions on a resource consent will not be relevant because of the permitted nature of that activity. Furthermore, existing use rights can be acquired so that any subsequent changes in the District Plan may be ineffective to control existing activities. However there is a small measure of control exerted by the home occupation requirements as outlined above. One might also reasonably expect that activities of this type conducted in a residential zone will be conducted with a measure of discretion and on a low scale. While PRA legalizes prostitution, there is as yet no evidence to suggest that legalization will result in a proliferation of businesses offering those services.

There is one further observation that might be made in respect of District Plan rules. For many years massage parlours have been a common mechanism by which commercial sexual services have been delivered, notwithstanding that prostitution remained unlawful. It is understood that Parliament intended that the six month delay in relation to the repeal of the Massage Parlours Act and the commencement of the certification regime in respect of brothels was intended to enable a council the opportunity either to notify proposed District Plan rules or to promulgate bylaws to enable regulation of the location of commercial brothels. It is possible that this well intentioned arrangement is misconceived. The certification process under Prostitution Reform Act 2003 is concerned with the identity of the operators of the business rather than the premises from which the business is operated. In the interim, ie. prior to 27 December 2003 the legal status of the provision of commercial sexual services from licensed massage parlours becomes a matter of debate. On one view those activities are now lawful and have enjoyed existing use rights since 27 June 2003. If that is correct, then it may be possible for existing massage parlour operators to argue that they have existing use rights so that any steps taken by Council by way of District Plan rule, for example to require brothels to relocate into a single red light district, may not be as effective as might otherwise be the case. These issues will only be of concern if Council was inclined to attempt to regulate existing facilities. In the meantime it is understood that Local Government New Zealand is seeking advice on this issue and will circulate that advice to Councils.

SIGNAGE

As noted above, signage control in the District Plan is solely concerned with the type and dimensions of signs. The Public Places bylaw (Bylaw no. 4, Chapter 2) also exercises some control over the location of signage in or invisible from public places, but again those controls are concerned with the location and appearance of the signage rather than content. Section 12 Prostitution Reform Act 2003 specifically permits the making of bylaws to control the contents of signage advertising commercial sexual services if the content "is likely to cause a nuisance or serious offence to ordinary members of the public using the area or is incompatible with the existing character or use of that area". Section 12(3) authorises a bylaw which prohibits signage, as well as bylaws which regulate signage by imposing restrictions on content, form or the amount of signage on display.

Some thought will be needed to be given to whether or not signage control is required in Waitakere City. If there has not been a problem with massage parlours, then it may well be possible to argue that “do nothing” is a viable option at this time. It is the experience of some Councils that a bylaw developed in response to particularly suggestive advertising does no more than highlight the issues to the industry, with competitors then vying to push the boundaries of what is or is not acceptable under the bylaw. In addition there is the problem of enforcing such a the bylaw by way of prosecution. Matters of “nuisance or serious offence to ordinary members of the public” while arguably objectively tested, are invariably viewed subjectively. What may offend one person may be perfectly acceptable to another, and the exercise of prosecutorial discretion will be difficult even with an appropriately worded bylaw. However, a blanket prohibition of advertising signage might be seen as going too far. Indeed, advertisements of mundane products can often invoke public debate and condemnation on the grounds of “nuisance” or “serious offence”. A difficult judgment call is required.

STREET TRADING

The Council has a bylaw (Bylaw no.4, Chapter 4) dealing with the activities of hawkers and keepers of mobile or travelling shops. The bylaw is typical of the type of control commonly exercised by local authorities over the conduct of retailing activities undertaken in a public street. In the past street corner soliciting for prostitution has not been an issue for the making of Bylaws or District Plan rules because of the inherently unlawful (although “tolerated”) nature of that activity. It is not however difficult to imagine that with legalised brothels there will be calls to control soliciting on the street, particularly by certified brothel operators. (The analogy here is with the owner of the corner dairy complaining that the mobile ice cream trader has parked his vehicle outside the corner dairy and is taking all the custom.) The rules in the District Plan do not control soliciting. The transport environment rules have a section on “street trading”, which is defined to mean “retail sales conducted within a road and exceeding one hour’s duration in any one location”. That definition does not refer to the soliciting for the provision of retail services and therefore those activities are permitted under the District Plan. The street trading bylaw is similarly focussed on retail sales activity. It follows therefore that any street corner soliciting which occurs before action (if any) is taken to regulate or control soliciting may attract arguments as to existing use rights under the district plan. Such arguments are more likely to arise if a bylaw, or district plan rule, seeks to achieve a complete prohibition. If however the control mechanism seeks only to regulate activities (for example to hours of activity and location) then the prospect of sex workers complying with the regulatory requirements without debate is likely to be increased. If a bylaw or district plan rule of this type is to be introduced then Council must be prepared to commit the resources to policing the Bylaw and District Plan rule on a consistent basis. One might imagine that the Police will not be particularly interested in controlling such activities, and administering bylaw or district plan rules on behalf of the Council. In that case Council would need to commit resources to the employment of enforcement officers operating seven days a week.

It also worth noting that Councils have always had and continue to have the law of injunction as a remedy available for the enforcement of Bylaws. The likely scenario is that regulation of soliciting will be breached by one or two determined sex workers. If the breaches are flagrant and consistent then an injunction may be able to be obtained to prevent such activity. However, the costs incurred obtaining an injunction are not minor. There is always a risk that relief may not be granted by the judge. Inevitably such action is likely to bring a challenge to the vires of the bylaw.

GENERAL OBSERVATIONS ON BYLAWS

Councillors will be familiar with the process for making rules under the District Plan and the requirement for Section 32 analysis as a pre-condition to the development of policies and objectives and rules meeting those policies and objectives. The Local Government Act 2002 has changed the way in which bylaws are made. Not only are there are differences in process but also differences in the decision making steps. The outcome is a process which is similar to the district plan rule making process.

A1-A2

From a process point of view there are two stages. At the first stage council's enquiries are directed to whether or not a bylaw is the most appropriate way of addressing the problem. Consultation is required to identify the problem and to work out what the solutions might be. In the second stage consideration turns, assuming a bylaw is the preferred regulatory tool, to whether the proposed bylaw is in the most appropriate form and that whether there are implications under the New Zealand Bill of Rights Act. (In relation to Prostitution Reform Act 2003 however a bylaw under Section 12 may be inconsistent with the New Zealand Bill of Rights Act.) Once those decisions have been made the form of bylaw adopted then proceeds for adoption using the special consultative procedure. At the same time, in making all of its decisions in respect of these matters, Council is required to have regard to the statutory decision making principles. Attached at pages A1 to A2 is an extract from the Local Government Know How booklet on Regulation and Enforcement summarising these principles.

Clearly these steps will take time to work through. The process will be much longer than that which existed under the Local Government Act 1974. A measure of urgency will be needed to achieve a December deadline for the promulgation of a bylaw (so too for notification of a plan change) if that is the path down which Council proposes to pass.

Finally under this heading it is noted that the law relating to the review of bylaws is unchanged. The Bylaws Act 1910 remains in force. Bylaws may now therefore be challenged not only upon the traditional grounds of reasonableness but also upon the grounds of a failure to comply with the somewhat complex new process and decision-making requirements.

CONCLUSION

There are a range of options available to the Council:

- do nothing;
- wait and see, with a view to responding to any problems, if and when they arise;
- wait and see, while in the meantime actively monitoring the steps taken by other local authorities, the success or otherwise of those steps and the nature of the problems (if any) occurring in Waitakere City;
- take immediate steps to develop district plan rules or bylaws in respect of anticipated problems;
- any combination of these approaches in respect to individual issues.

Among these options the last seems inherently the most attractive since it allows a sort of “pick and mix” approach. For example it might be felt: that immediate action is required by district plan rule in relation to the location of brothels (perhaps also small owner-operated brothels?) by requiring that a resource consent is necessary for the establishment of a new operation; wait and see, with monitoring, is the appropriate action for signage issues; and do nothing is appropriate in respect of soliciting on the street. There are however likely to be a range of views on such issues.

For that reason this report does not put forward specific resolution recommendations for future action, to avoid the risk of appearing to favour one option over another. It is considered that any resolutions are best developed following some discussion of the issues. However, if following discussion it is thought that the best way forward is for an in-depth investigation of options to be undertaken, then this is a case where a working party or parties comprising both elected members and/or staff would seem to be both sensible and desirable.

RECOMMENDATIONS

1. That the information be received.
2. That the Council continue its active involvement with the regional working party and that the outputs from it be reported back to the Environmental Management Committee.

Report prepared by: Denis Sheard, Legal Services Manager.



PART II - DISTRICT PLAN / STRUCTURE PLANS

7 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

The Acting District Plan Co-ordinator will provide a verbal update to the Environmental Management Committee on progress in dealing with the appeals on the Proposed District Plan.

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

RECOMMENDATION

That the information be received.

Report prepared by: Owena Schuster, Committee Secretary.



8 LOWER ORATIA STREAM RESERVES MANAGEMENT PLAN

PURPOSE OF THE REPORT

The purpose of this report is to request that the Environmental Management Committee appoint a representative to the sub-committee established to oversee the preparation and adoption of the Lower Oratia Stream Reserves Management Plan.

BACKGROUND

EcoWater Solutions are proposing to develop a Reserve Management Plan for the Lower Oratia Stream Area. The Management Plan is being developed under the umbrella of Project Twin Streams, an ecological improvement and stormwater management initiative for the Oratia and Opanuku Streams catchments in Waitakere City.

Project Twin Streams is an initiative by Waitakere City Council to restore the riparian margins and improve the stream ecology and water quality along the Oratia Stream (including the Waikumete Stream), the Opanuku Stream, Swanson Stream and Henderson Creek. This project is set within the wider context of the Eco City and its nine strategic platforms. The project was launched in October 2001 in partnership with Landcare Research and links with the overall Green Network vision and other interconnected programmes initiated by Council.

The purpose of Project Twin Streams is “to develop and implement a comprehensive management strategy and works programme to mitigate adverse effects in the Oratia and Opanuku Streams (known as the Twin Streams).” These adverse effects include flooding, erosion, deterioration of water quality and the ecology of the streams. Project Twin Streams is aimed at enabling communities to develop understanding, ownership and uptake of these issues in their local catchments.

The Council has considered a number of options to address these adverse effects and has resolved to proceed with a combination of the following:

- Low impact future development;
- Riparian corridor restoration;
- Vegetation clearance and re-planting;
- Mimicking of existing run-off behaviour; and
- Protection of restoration of ecosystems.

A key to achieving this vision is the engagement of local communities. The development of a Lower Oratia Stream Reserves Management Plan will be a step in implementing this large project and will be the main focus for gaining community involvement in the design and planning for this part of the Twin Streams Project.

The Reserves Management Plan will provide direction for proposed planting and landscape plans (Lower Oratia Catchment), and ecological improvement for the Lower Oratia Stream.

The Management Plan will include the existing reserves along the lower Oratia Stream situated between Parrs Cross Road and Great North Road and will also encompass 23 privately owned lots situated along the lower Waikumete Stream between the confluence of the Waikumete and Oratia Streams and Parrs Park. Council resolved to purchase these properties in June 2003 for riparian planting and stormwater management improvements. Negotiations are currently taking place with property owners and the first of 23 properties settled on 3 July 2003. They are included in the Plan, as they will eventually be vested as reserves.

Currently there are no operative Reserve Management Plans for any of the reserves. The reserves proposed to be included in the Management Plan include the following;

- Oratia Esplanade
- Serwayne Walk
- Millbrook Esplanade
- Millbrook Road Reserve
- Railside Road Reserve
- Hart Domain
- Catherine Esplanade Reserve
- Vitasovich Esplanade

A3

Map attached at page A3.

It is proposed that the preparation of an integrated Management Plan for the Lower Oratia Stream area, incorporating significant stretches of riparian margin, both reserve and future reserve, will enable Council to develop and manage the esplanade reserves in a way that reflects community desires and provides direction for the proposed planting and landscape plans for Project Twin Streams (Lower Oratia Catchment).

STRATEGIC CONTEXT

The Lower Oratia Stream Reserves Management Plan will be prepared in the context of the Parks Strategy, which provides guidelines on the management of parks within the City.

Policies outlined in the Plan will be guided by the objectives of the Parks Strategy which aims to improve the quality of parks and provide parks services in a fair and equitable way for Waitakere people within financial constraints.

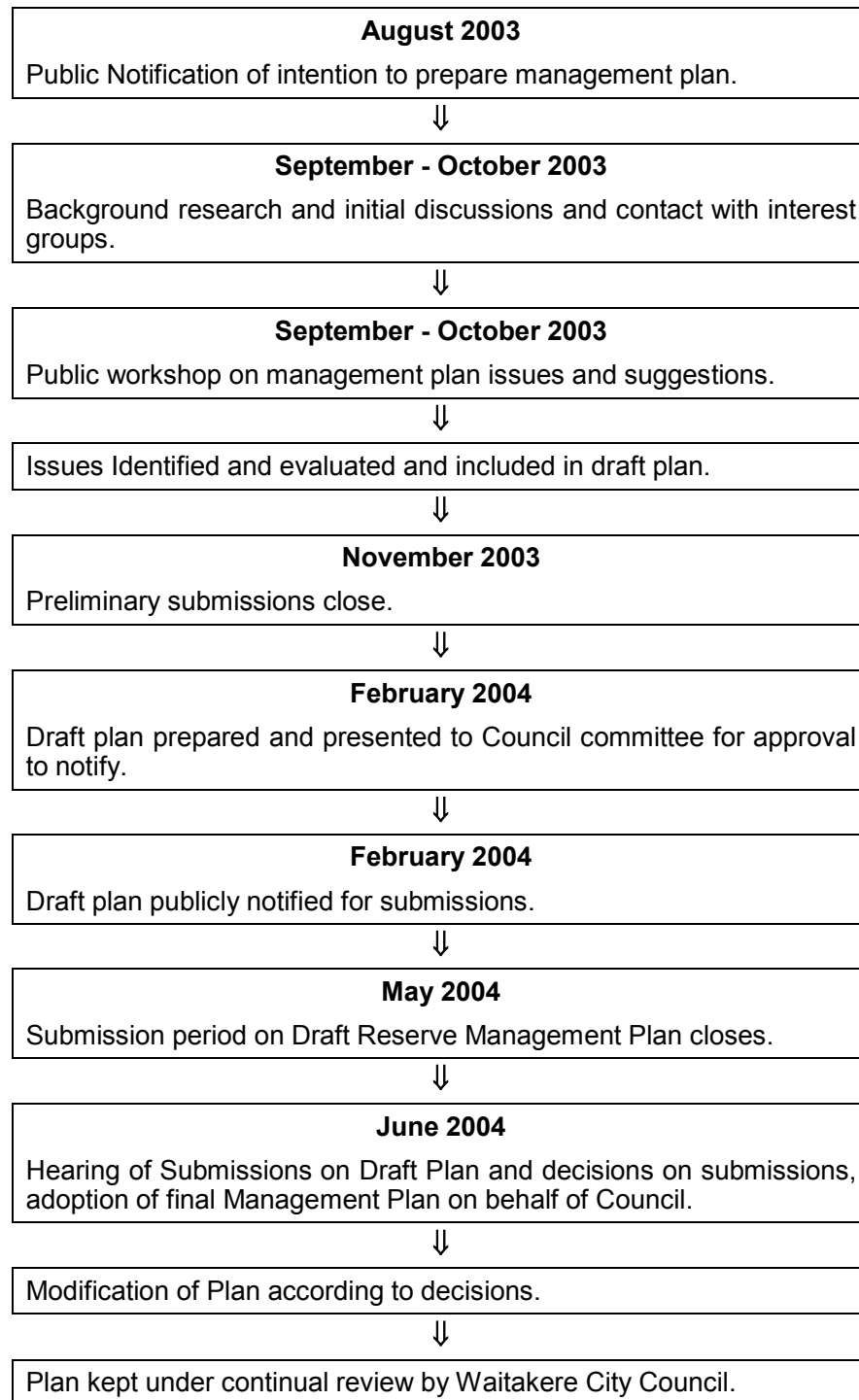
The Plan will also promote the Green Network, which is an approach to integrate native ecosystems on private and public land by recreating a vegetated link between the Waitakere Ranges and the city's harbours. The goals of the Green Network, to be incorporated into the Plan are to: provide ecosystem protection, form ecological corridors, enhance the landscape, enhance public access to natural areas, mitigate hazards and protect water quality.

ISSUES

The delegated authority to oversee and adopt Management Plans generally lies with the Community Boards. The authority to classify or reclassify local reserves also lies with the Community Boards. All other matters pertaining to reserves, such as acquisition, are delegated to the Environmental Management Committee. In addition, the Environmental Management Committee have had input into decisions relating to Project Twin Streams.

The Lower Oratia Stream Reserves Management Plan spans two Wards, requiring input from two Community Boards, as well as input from the Environmental Management Committee.

All reserves (other than Local Purpose reserves) are required under the Reserves Act 1977, to have a current Reserve Management Plan. The process of developing a Reserve Management Plan is set down in the Reserves Act 1977 and includes a public consultation process, including two rounds of public submissions. The second round of submissions is to a draft Plan and at this stage, submitters have the opportunity to speak at a hearing where the Community Board then deliberates on proposed amendments to the Draft Management Plan and pending amendments, adopts the Plan.



In this case, the hearing for submissions to the Plan would involve the two Community Boards. Under Section 120(1)(c) of the Reserves Act, Council, as the administering body, is authorised to appoint a special committee to hear the submissions.

As the Lower Oratia Stream Reserves span both the Henderson and Waitakere Wards and encompass the issue of reserves acquisition and Project Twin Streams, it is proposed to establish a subcommittee with delegated authority to oversee the passage of the Plan, including the hearing of submissions to the draft Plan and make recommendations on amendments and the subsequent adoption of the Plan. The Henderson and Waitakere Community Boards have established a sub-committee for this purpose and it is recommended that, due to the consideration of other issues, the Environmental Management Committee have a representative on this subcommittee.

RESOURCES

The Plan is being prepared by EcoWater Solutions through Project Twin Streams funding with peer review and management by Landscape Development who are responsible for the preparation of Reserve Management Plans.

The acquisition of land to be vested as reserve and included in the plan is to be jointly funded by the Reserves Contribution Fund and EcoWater Solutions. Infrastructure Auckland has recently approved funding of \$8.9 million for the Lower Oratia catchment. This includes funding for revegetation and land acquisition.

LOWER ORATIA RESERVES MANAGEMENT PLAN SUBCOMMITTEE

(A subcommittee of the Henderson and Waitakere Community Boards.)

SCOPE

The Lower Oratia Stream Reserves Management Plan Subcommittee shall report to the Henderson and Waitakere Community Boards. Where the Subcommittee is not empowered to act it shall report to the Community Boards and make recommendations as necessary.

FIELD OF ACTIVITY

To prepare and recommend the preparation of the Lower Oratia Stream Reserves Management Plan, including preparing the consultation plan and programme and the hearing of submissions to the draft Plan and to make recommendations to the Henderson and Waitakere Community Boards regarding the adoption of the Lower Oratia Stream Reserves Management Plan.

MEMBERSHIP

The Subcommittee shall comprise:

- Two members appointed by the Henderson Community Board;
- Two members appointed by the Waitakere Community Board;
- One member of the Environmental Management Committee;
- The Mayor (ex officio).

Quorum: 3 members.

DELEGATED POWERS

1. To prepare and recommend the preparation of the Lower Oratia Stream Reserves Management Plan, including the adoption of the draft Plan.
2. To hear the submissions to the draft Reserves Management Plan and make recommendations to the Henderson and Waitakere Community Boards regarding the adoption of the Lower Oratia Stream Reserves Management Plan.
3. To classify or reclassify local parks included in the Management Plan as recommended by the draft Plan and required by the Reserves Act 1977.
4. To appoint a Chairperson.

CONCLUSION

The Lower Oratia Stream Reserves Management Plan is made up of the reserves that bound the lower Oratia Stream between Parrs Cross Road and Great North Road and spans two Wards. In addition, the Management Plan includes properties to be purchased along the riparian margin of the Waikumete Stream. The Plan involves Twin Streams and Green Network issues as well as issues of reserves acquisition and classification.

Community boards have delegated authority to approve Reserve Management Plans and exercise the powers of the Council under the Reserves Act 1977 relating to local parks and reserves. The Environmental Management Committee have delegated authority over all other matters pertaining to reserves, including reserves acquisition. Under the Reserves Act, the administering body are authorised to establish a subcommittee with authority to hear submissions on the Draft Management Plan and make recommendations as appropriate. In view of the range of responsibilities of the various delegations involved in the preparation of this plan, a subcommittee has been established including representatives of the Waitakere and Henderson Community Boards and it is suggested that the Environmental Management Committee appoint a representative to this subcommittee in order to oversee the passage of this Plan.

RECOMMENDATIONS

1. That the information be received.
2. That the Environmental Management Committee appoint a representative to the Lower Oratia Stream Reserves Management Plan Sub-committee, to prepare or recommend the Lower Oratia Stream Reserves Management Plan.

Report prepared by: Mandy McMullin, Reserve Management Planner.



9 **PROPOSED PLAN CHANGE 7 - CHANGES TO THE NOTIFICATION REQUIREMENTS OF THE DISTRICT PLAN**

PURPOSE OF THE REPORT

The purpose of this report is to seek the Environmental Management Committee's approval to publicly notify a Proposed Plan Change to the District Plan to make the notification rules within the District Plan consistent with the Resource Management Amendment Act 2003.

The Amendment Act introduces a new concept called "limited notification". This was not envisaged when the District Plan was prepared, and consequently the Council's District Plan has a gap. Limited notification will further assist the community to be involved in resource consent decision making when the resource consent application is being processed as a discretionary or non-complying activity.

A4-A13

A copy of the proposed Plan Change, is attached at pages A4 to A13.

BACKGROUND

The Resource Management Amendment Act 2003 ("the Amendment") comes into force on 1 August 2003 and affects the Council's functions in relation to heritage, Section 32 analysis, plan monitoring, resource consents, notification, cost and time, financial contributions, subdivision, designations, Environment Court proceedings, forms and regulations.

The most pressing issue for the Council in terms of the Amendment is to ensure that Council's notification procedures and the District Plan will be in line with the changes to public notification. The current process is that applicants can expect controlled and limited discretionary activities to be non-notified (as outlined in the Resource Management Act 1991 and provided for in the District Plan). This approach is taken unless there are special circumstances that require notification. Activities that are discretionary or non-complying may be publicly notified, meaning that anyone may make a submission on the application, a sign will be erected on site, submissions received and there will subsequently be a hearing and decision with the associated prospect of appeals to the Environment Court.

The Amendment has its genesis in the "McShane Report" in 1997, the Ministerial Panel on Business Compliance (the "Upton Reference Group") and other general concerns expressed about the costs of compliance and timeliness of granting resource consents.

Amongst the various amendments to the Resource Management Act, the concept of "limited notification" is introduced. This concept was originally supported by most councils in New Zealand (and still is). The Select Committee process did, however, lead to some amendments to this concept that were not anticipated by most councils.

Section 94 of the Resource Management Act now states that, if public notification is not required under section 93, (ie. because the effects are minor or it is a controlled activity), notice of the application must still be served on all persons who may be adversely affected by the activity, unless all those who may be adversely affected have given their written approval. What this means is that if one or more affected party does not give their written consent, all adversely affected parties will be notified (but not the public at large), and have the opportunity to make a submission and attend a hearing. This applies even if some persons (but not all) have given their written approval.

TRATEGIC CONTEXT

The notification or non-notification of resource consent applications is a key part of the resource management process. Council must determine whether to notify each resource consent application, based upon the requirements of the Resource Management Act, the notification guidelines in the District Plan and the assessment of the adverse effects that the activity will create. The decision to notify a resource consent application enables the public to make a submission on the application, and is a fundamental component of the inclusive nature of the Resource Management Act. Notification of a resource consent application does, however, add significant costs to the applicant.

The decision to not notify a resource consent application leads to a much shorter and cheaper process for the applicant, and is a process enabled by the Resource Management Act. The new approach of "limited notification" seeks to create a "half-way house" for notification, where only the adversely affected people may make a submission, rather than the public at large.

WHAT THE RESOURCE MANAGEMENT ACT AMENDMENT REQUIRES FOR LIMITED NOTIFICATION

The District Plan currently provides for controlled and limited discretionary activities to be processed on a non-notified basis, in accordance with the requirements of the Resource Management Act. Under Section 77D of the Amendment, a rule for a controlled or limited discretionary activity "may" allow an application to be decided without notification under s93 or without service of notice under Section 94(1). Thus a discretionary power is conferred upon Council to prepare rules in a plan or proposed plan that allows for the waiving of notification of controlled or limited discretionary activities, or the serving of notice of an application on adversely affected persons.

Section 93(1) of the Amendment creates a presumption that Council shall publicly notify unless:

- The application is for a controlled activity or
- The adverse effects on the environment will be minor.

Section 94(1) of the Amendment then creates a presumption that limited notification of directly affected persons shall take place where the adverse effects are minor but there are persons who 'may be adversely affected by the activity', even if they have provided their written approval. Thus limited notification is required for all activities from controlled to non complying that have minor or more than minor environmental effects, unless all affected persons provide their approval.

However Section 94D creates three exceptions to the presumption in Section 93(1). These are:

1. Council can notify a controlled activity application if the plan expressly requires it to be notified;
2. Public notification is not required if a rule in a district plan "*expressly provides that such an application does not need to be notified*"; and
3. Limited notification is not required if a rule "*expressly provides that notice of such applications does not need to be served*".

It is the third of these presumptions that is important to this plan change. Sections 94D(2) & (3) plainly distinguish between a rule that exempts notification and a rule that exempts service of affected persons. This deliberate separation confers a clear Parliamentary intention that the District Plan rule that states that applications 'need not be notified' does not meet the requirements of the Amendment.

WHAT THE DISTRICT PLAN CURRENTLY STATES ABOUT NOTIFICATION

Notification is addressed in a general fashion in the "Introduction to the Rules" Section of the District Plan, and more specifically as Rule 1 in each Human Environment or Natural Area. The "Introduction to the Rules" Section indicates that Controlled and Limited Discretionary applications need not be notified, and written approvals will not be required from any adversely affected parties. This approach is taken because it is considered that the effects that are created by Controlled or Limited Discretionary activities are generally very minor, and this approach is consistent with the current legislation. The District Plan also sets out guidelines about which Discretionary and Non-complying activities will be notified.

More specifically, Rule 1 in each of the Human Environments and Natural Areas states:

"In relation to controlled activities and limited discretionary activities under the following rules ... applications for consent need not be notified and the written consents of affected parties will not be required".

This text was drafted having regard to the wording contained in the current section 94 of the Resource Management Act, that will be replaced by the 2003 Amendment Act. The current wording is adequate to prevent public notification under the second presumption of Section 94D (identified above), however it is not when applied to the third. The statement that "**written consents will not be required**" in Council's District Plan does not correlate with the s94D(3) requirement that a consent application "**does not need to be served ...**".

Once the Amendment comes into force on 1 August 2003, the District Plan text will not be sufficient to ensure that limited discretionary activities will not have the potential to require limited notification.

DISTRICT PLAN TERMINOLOGY: LIMITED DISCRETIONARY ACTIVITIES

The District Plan uses the term "limited discretionary", rather than "restricted discretionary" as is used in the Amendment. The District Plan was prepared when both of these terms ("limited" and "Restricted") had entered the resource management vocabulary, but before one or the other had been codified in the Resource Management Act.

The term "restricted discretionary" has been codified in section 77B(3) of the Amendment. For the avoidance of any doubt, the District Plan definition of "Limited Discretionary Activity" needs to be amended to refer to the definition that will be contained within the Resource Management Act when the Amendment comes into force on 1 August 2003.

DISTRICT PLAN TERMINOLOGY: PARTIES VS PERSONS

The District Plan uses the term "parties" in its notification rules. It is considered that it is more appropriate to use the term "persons", as this term is used in the Resource Management Act.

CHANGES TO THE DISTRICT PLAN TEXT

The following are the proposed changes to the District Plan required as a result of the introduction of the concept of limited notification into the Resource Management Act by the Amendment.

Introduction To The Rules Section

1. Where notification of Controlled and Limited Discretionary Activities is referred to in the "Types of Resource Consent" sub-section, amend the text as follows:

*"... need not be publicly notified, and written consents will not be required, **nor will the service of notice to adversely affected persons under the limited notification provisions of the Act be required ...**"*

2. In the "Notified/Non-Notified Resource Consent Application Procedure" sub-section, there are two flow diagrams (entitled Diagram 1 and Diagram 2) that trace the path of resource consent applications that are processed on a non-notified and a notified basis. These two diagrams are rendered out of date by the Amendment, and it is considered appropriate to delete these from the District Plan. If they remain, they may serve to mislead plan users about the process they must follow.

Revised and updated flow diagrams will be prepared for the notified, limited notified and non-notified procedures. This will be made available as District Plan brochures, and on the Council's Internet site. Given that the case law and procedures for these Resource Consent processes are continually evolving, the use of the District Plan Brochures rather than the District Plan as the media to communicate the process is cheaper and more efficient than the inevitable plan changes to update the flow charts.

There is also a typographical error in the "Notified/Non-Notified Resource Consent Application Procedure" sub-section, where the fifth (5th) bullet point refers to "Section 35 of the Act". This should be "... Section 357 of the Act". The Plan Change will seek to correct this minor error.

City Wide Definitions Rule

Amend the definition of "Limited Discretionary Activity", by adding a new sub-paragraph (e) as follows:

*"(e) which, for the avoidance of doubt, is the same as an activity referred to as a **"restricted discretionary activity" in the Act.**"*

Amendments to the City Wide Heritage Rule, All Natural Areas Rules, All Human Environments Rules, Scheduled Sites Rules, Special Areas Rules and Subdivision Rule 1

Amend the specific Rule 1 relating to Notification / Non-notification in each of these Rules of the District Plan to include the following (additions in bold):

*"...applications for resource consent need not be notified and the written consents of affected ~~persons~~ ~~parties~~ will not be required, **nor in terms of limited notification under the Act, will notice to adversely affected persons need to be served.**"*

A4-A13

This amended text is indicative, a full list of all amended Rules with the specific wording identified is attached at pages A4 to A13.

STATUTORY CONSIDERATIONS

District Plan Changes

Section 73 of the Resource Management Act 1991 provides for changes to the District Plan. The First Schedule of the Act sets out the process, which must be followed for plan changes. The Council must have regard to Section 74. Matters to be considered by territorial authority -

- “(1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.*
- (2) In addition to the requirements of section 75(2), when preparing or changing a district plan, a territorial authority shall have regard to-*
 - [(a) Any-*
 - (i) Proposed regional policy statement; or*
 - (ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV; and]*
 - (b) Any-*
 - (i) Management plans and strategies prepared under other Acts; and*
 - (ii) Relevant planning document recognised by an iwi authority affected by the district plan; and*
 - [(iia) Relevant entry in the Historic Places Register; and]*
 - [(iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing)],-*
to the extent that their content has a bearing on resource management issues of the district; and
 - (c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.*
- [(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition.]”*

Section 5 of the Act sets out its purpose as follows:

- “(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while-*
 - (iii) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

- (iv) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (v) *Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

Section 32 Analysis

Section 32 of the Act States that:

“In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall -

- (a) *Have regard to-*
 - (i) *The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and*
 - (ii) *Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information services, or incentives, and the levying of charges (including rates); and*
 - (iii) *The reasons for and against adopting the proposed objective, policy, rule or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and*
- (b) *Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy, rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and*
- (c) *Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)-*
 - (i) *Is necessary in achieving the purpose of this Act; and*
 - (ii) *Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.”*

Section 32 of the Resource Management Act 1991 requires a rigorous test to ensure that before any objective, policy, rule or other method is adopted, a local authority has had regard to:

- The necessity of the objective, policy or rule or other method;
- Other means of achieving the purpose of the Resource Management Act 1991;
- Reasons for and against adopting the proposed objective, policy or rule or other method;
- Evaluation of the likely costs and benefits of the principal alternative means; and
- Consideration of effectiveness and efficiency.

The Extent to Which the Proposed Plan Change is Necessary in Achieving the Purpose of the Act

The presumption in the District Plan that controlled and limited discretionary activities are processed on a non-notified basis has been a cornerstone of determining what activity status each activity is assigned. This presumption means that the vast majority of resource consent applications are processed on a non-notified basis. To not amend the District Plan, thereby ensuring that a far greater number of controlled and limited discretionary applications will require limited notification, unreasonably skews the District Plan in favour of notification. Further to this the proposed Plan Change to the notification rule will make the District Plan consistent with the amended Resource Management Act.

Other Means Apart From Regulation to Achieve the Purpose of the Act

Council is required to have regard to means other than regulation, which may be used in achieving the purpose of the Act. In this situation, other means could be removing all guidance on notification from the District Plan or simply retaining the existing rules.

In this instance, removing all guidance from the District Plan (thereby relying solely on the Resource Management Act for guidance will not assist most District Plan users, in that they will need to refer to two documents, and goes against Ministry for the Environment best practice advice, which encourages the inclusion of such guidance in district plans.

As discussed above, retaining the existing rules will lead to the District Plan being unreasonably skewed in favour of notification, and would not be consistent with the Amendment. On the other hand, the amendment to the notification provisions will provide certainty to the Council, community and applicants on what they can expect in terms of the types of consents that will be processed on a non-notified basis, on a limited notification basis, or on a fully notified basis.

Alternative Means

There are no alternative means to enable the Council to determine whether or not a resource consent should or should not be notified. This is not a matter that can be simply addressed by a Council resolution or the establishment of an internal procedure, as those processes would leave the Council not fulfilling its obligations under the Resource Management Act.

Reasons For and Against Adopting the Proposed Plan Change and the Principal Alternative Means, Cost / Benefit Analysis

Amending the Rules will ensure that appropriate notification assumptions and assessments are applied to all resource consent applications, and to clarify an anomaly in the District Plan that has been created by the codification of the term "restricted discretionary activities".

Retaining the existing rules would lead the Council towards initiating unnecessary numbers of limited notification applications. Further, the uncertainty associated with applying the rules would lead to time delays and additional costs to applicants, without any obvious significant environmental benefits.

Discretionary and Non-complying activities will continue to be notified where appropriate, as it is these types of activities that are most likely to generate significant adverse effects on the environment. Any risks that controlled or limited discretionary applications that have significant adverse effects on neighbours (but not the public at large) are not notified are low. The Council will always have the discretion to use the limited notification process if that is considered appropriate.

It is considered more efficient to pursue the proposed Plan Change, given that the Council seeks to ensure that resource consent applications are dealt with in a timely and cost efficient manner, and in accordance with the Resource Management Act.

RESOURCES

No specialist reports are required for the proposed Plan Change. Council has already obtained legal advice that recommends that the Plan Change proceed. Processing the plan change through the statutory process can be adequately resourced from existing budgets. No additional staff funding or resources are required.

NOTIFICATION

It is important to publicly notify this plan change as soon as it is possible, given that the Amendment came into force on 1 August 2003. This Plan Change is of a City-wide nature, and will consequently be advertised in the New Zealand Herald, and the statutory bodies and District Plan holders will be individually notified.

CONCLUSION

The Resource Management Amendment Act 2003 comes into force on 1 August 2003 and affects the Council's functions in relation to notification (amongst other things). The Amendment has left the Council in the position of needing to undertake a Plan Change as a matter of urgency. This Plan Change seeks to ensure that the effectiveness and certainty of the District Plan is not compromised by containing text that has been superseded by the new legislation.

The concept of limited notification has considerable merit, and most councils have welcomed this. However, this Council's District Plan is based upon a presumption that Controlled and Limited Discretionary resource consent applications will not be publicly notified. The introduction of limited notification skews this premise, and has the potential to add time and cost to resource consent applications where previously those consents would have been processed on a non-notified basis. The proposed plan change will signal Council's intention to make the District Plan consistent with the Amended Resource Management Act 1991, and provide certainty to all plan users about when limited notification will be applied in the resource consent process.

RECOMMENDATIONS

1. That the information be received.
2. That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Council resolve to publicly notify proposed Plan Change 7 to the Operative Waitakere City District Plan as attached at pages A4 to A13.

A4-A13

Report prepared by: Eryn Shields, Service Planner.



PART III - ENVIRONMENTAL MANAGEMENT

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

PURPOSE OF THE REPORT

A14

The purpose of this report is to present the seventeenth 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 A14. 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 900ha.

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, a small, fixed wing aircraft 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 pm - 1.00 pm and 3.00 pm - 4.00 pm when children are walking to and from school and eating lunch.

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 operation on the 14 May 2003 marked the end of the summer eradication programme and expanded aerial spraying. Cabinet met in May 2003 and approved a winter operation that included targeted aerial spraying of 5 known problem areas from June to September; Ranui/Swanson, Riverpark, Waikumete Cemetery, Meola Creek and Hobsonville. The total area sprayed is 892 ha and has been completed in five hours, including one hour no flying between 8.00 am - 9.00 am.

Two targeted aerial sprays have been completed on 12 June and 3 July 2003 with the air tractor. After a week's delay due to poor weather conditions a third targeted aerial spray was completed on 4 August 2003 using a helicopter alongside the air tractor. It is anticipated that both aircraft will be used in future targeted aerial spray operations for the winter programme.

Winter Eradication Programme

The Ministry of Agriculture and Forestry has now entered the winter eradication programme which will run from June through to September. The winter programme consists of:

- Targeted aerial spraying;
- Weekly releases of sterile male moths at previous hotspot sites;
- Servicing of the trapping grid;
- Vegetation control zone.

Cooler winter temperatures slow down, but don't stop, the lifecycle of painted apple moth. There have been no moth trap catches in June or July 2003. Since March 2003 there have been no live caterpillar finds and since early May there have been no moth trap catches, therefore no ground spraying operations or host removal work has occurred.

The scale and activities of the eradication programme will be reviewed in September as warmer temperatures approach with spring.

Reinstatement Issues for Council

Council and the Ministry of Agriculture and Forestry have resolved the reinstatement issues. Approximately 50,000 ecosourced native plants were ordered from local nurseries in June 2003. Ground preparation work, including weed control, and planting will commence in August.

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

Twelve rounds of targeted aerial spraying to eradicate the painted apple moth have been completed along with eleven expanded aerial sprays. The winter eradication programme runs from June to September with some changes to the programme likely in spring.

RECOMMENDATION

That the Painted Apple Moth Update report be received.

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



11 WAITAKERE DAMS RESOURCE CONSENTS

PURPOSE OF THE REPORT

The purpose of this report is to update the Environmental Management Committee on progress regarding Watercare Services Limited applying for resource consents for their five dams in the Waitakere Ranges.

BACKGROUND

Watercare Services Limited applied in May of last year for resource consents from the Auckland Regional Council to: dam and take and dam water, to discharge water from the dams, and to operate the raw water pipelines, associated with the five Waitakere water storage dams. These dams are the Upper and Lower Huia dams, the Upper and Lower Nihotupu dams, and the Waitakere dam.

As per Section 93 of the Resource Management Act the Auckland Regional Council will not notify the resource consent until it is satisfied that it has received adequate information. Technical studies and 'Assessment of Environmental Effects' reports have been completed by Watercare Services Limited and these reports have been reviewed by the Auckland Regional Council. The next stage is a consultation process, and Watercare Services Limited hope that this will be completed by December 2003. Notification of the consents and public submissions will follow in 2004. Resource consents have a maximum duration of 35 years.

Watercare Services Limited support the provision of compensation flows from their water storage dams as this is in accordance with their environmental policy. The outcome of similar resource consents for Watercare's Hunua dams was the requirement for compensation flows from the dams.

Compensation flows are minor water flows provided immediately downstream of a dam, to restore and rehabilitate the stream.

STRATEGIC CONTEXT

The Green Network strategic platform of Council states that:

'Stream and forests will be full of life. The Waitakere ranges will be permanently protected and a Green Network will link the Ranges and the sea, connecting the everyday lives of the people of Waitakere with a natural world.'

The Green Network strategic platform includes protecting and enhancing the range of native plants, wildlife and ecosystems in Waitakere City and adjoining harbours and oceans, and working with tangata whenua to find ways to assist them in their kaitiaki or guardianship role. Managing and protecting the Waitakere wetland is specifically mentioned.

The Council's strategic platform for the three waters is that Waitakere is a centre of innovative water management. Some of the success measures that contribute to this platform and which are relevant to this issue are as follows:

- Average domestic water use per person in the city is reduced to 160 litres or less per person per day.
- 60% or more of residents are aware of actions they might take to conserve water or protect water quality in streams.
- Stream protection and restoration.

Reducing water use is a specific objective along with ensuring the sustainable management of water, and continuing to implement and integrate the Water Cycle Strategy.

ISSUES

Some of the main issues relating to these Resource Consents are:

Compensation Flows Environmental Impacts:

Under the Resource Management Act, Watercare will be required to avoid, remedy and mitigate the effects of any proposal. Given that the dams are existing, it may not be possible to avoid adverse effects.

Providing compensation flows will improve the quality of the streams below the dams, consistent with Council Green Network objectives. However, providing compensation flows will marginally reduce the yield from the Waitakere dams. It is considered that demand management initiatives aimed at reducing water use will potentially offset the reduced yield of the dams.

The Te Henga wetland is a significant ecosystem and there is need for extreme care to ensure preservation of the wetland. Also, the Waitakere Falls will be affected by compensation flows.

Financial Implications:

There may be a financial cost associated with releasing compensation flows, but this will be very minor and is unlikely to affect the bulk price of water.

Stakeholder Engagement:

There will need to be a process to understand the social/cultural and environmental effects and views of stakeholders and to define who are the stakeholders. There may be different stakeholders for -

- Lower Huia, Upper Huia dams;
- Lower Nihotupu, Upper Nihotupu Dams;
- Waitakere dam.

In order to provide meaningful consultation, stakeholders need to understand the effects and the trade-offs required. It may be that a combination of methods may be necessary -

- Do nothing;
- Planting programmes;
- Restoration works;
- Water conservation to offset water lost or compensation follows.

At present, there is no formal Council position on this issue. The consultation process outlined below will assist Council to establish a position prior to the Resource Consents being processed.

CONSULTATION PROGRAMME

The consultation process being undertaken by Watercare Services Limited is in stage one of a three stage process:

- Stage One: Issues Identification;
- Stage Two: Steering Committee - Identify and address community concerns;
- Stage Three: Wider Consultation - Involving other stakeholders.

A Steering Group to work with Watercare Services Limited on this process has been formed comprising representatives from local residents and ratepayers groups, environmental groups and stakeholders, and including two elected members. Iwi representatives were initially involved in the Steering Group, but are now working directly with Watercare Services Limited.

The Steering Group has been meeting approximately every three weeks since May 2003. The purpose of the Steering Group is to facilitate the process of identifying and assisting stakeholders to develop a meaningful consultation process, and to ensure that the key issues are resolved prior to the processing of the consents by the Auckland Regional Council. The purpose of the Steering Group is also to assist Council in formulating position on the issue.

A document for consultation is currently being prepared by Watercare Services Limited, with input from the Steering Group. In addition to the specific community group meetings being facilitated by Watercare Services Limited, there will be opportunity for Waitakere residents to respond individually as part of this stage of the consultation process. Once the resource consents are notified there will be further opportunity for individuals or community groups to make submissions.

The proposed timeline for the remainder of the consultation programme is as follows:

Tasks	Milestones	Details
Watercare Services Limited produces Issues Document.	18 June 2003	✓
Steering Group feedback of the Issues Document and identification of information gaps.	9 July 2003	✓
Watercare consolidates issues and presents proposal to Steering Group.	30 July 2003	Steering Group Meeting
Steering Group Feedback of preferred option to Watercare Services Limited and discussion.	13 August 2003	Steering Group Meeting
Watercare Services Limited make changes as necessary and present Steering Group with preliminary proposal to go to wider community.	27 August 2003	Steering Group Meeting
Huia/Little Huia/Cornwallis consultation.	2 September 2003	Huia Hall
Waitakere River/Bethells consultation.	3 September 2003	Waitakere Hall or Bethells Fire Brigade
Parau/Laingholm consultation.	4 September 2003	Laingholm Hall
Watercare to mail-out consultation minutes and proposed position to Steering Group week beginning 8 September.	Week beginning 8 September	

Tasks	Milestones	Details
Watercare Services Limited and Steering Group to finalise respective positions.	17/09/03	Steering Group Meeting
Watercare to address Community Boards with proposal.	29, 30 Sept 1, 2 Oct	Waitakere City Council
Watercare to present proposal to Environmental Management Committee at Waitakere City Council.	7 Oct	Waitakere City Council
Watercare Services Limited provide evidence of consultation to Auckland Regional Council seek notification for month of November.		Auckland Regional Council

RESOURCES

The estimated budget for this project is \$10,000 to cover the cost of consultation with Waitakere residents and has been included in the 2003/2004 Annual Plan.

CONCLUSION

Watercare Services Limited have lodged resource consents for the five Waitakere Dams and are in the initial consultation stage. A Steering Group has been formed to facilitate this stage of consultation and to recommend a council position on the issue. It is proposed that the matter be reported back to the Environmental Management Committee in December 2003.

RECOMMENDATIONS

1. The information be received.
2. That the consultation programme outlined above be approved by the Environmental Management Committee.
3. That the matter be reported back to the December 2003 meeting of the Environmental Management Committee, including a recommended position for Council on this issue.

Report prepared by: Richard Taylor, Assets and Network Manager.



12 WAITAKERE RANGES PROTECTION - CONSULTATION CONTENT UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to gain the Environmental Management Committee's approval for the proposed consultation content for the Waitakere Ranges Protection project.

BACKGROUND

The Council is currently undertaking a project to determine the long-term protection of the Ranges. A key part of this project is identifying if there are problems in the current management of the Ranges and if so what these are. This work includes identifying what tools currently are used in the protection of the Ranges, evaluating how they are working, and what are the gaps and potential solutions. The community consultation process will be a key part in the project. The three key purposes of the consultation would be:

- to ensure that all parties are starting with the same information base;
- to provide the community with the opportunity to work with the Council in developing options;
- to provide the community with an opportunity to have their say on their preferred options.

A number of reports on the Waitakere Ranges Protection project have been brought to this Committee, including a background report in September 2002, a report on issues and status of the Ranges and on the process in April 2003, and an update report in May, which discussed the study and the landscape Conference in July. At the June meeting the Committee resolved:

“That the Environmental Management Committee approves the timeframe for the Waitakere Ranges project as set out on Page A1 to the agenda report.”

1186/2003

The timeframe saw investigation of the issues in the Ranges through to July, community consultation occurring through August to January with policy and options work evolving alongside. Identification of potential options throughout the process would culminate in specific options going out to the community for comment during March/April 2004.

Structure of Consultation

At its July meeting the Environmental Management Committee resolved:

“That Council approves the consultation process for the Waitakere Ranges Protection Project.”

1427/2003

A summary of the consultation process is detailed below:

Phase One:

Purpose: Share information gathered with community and commence the preliminary discussion around possible options. This will be a mixture of information and research gathered and anecdotal information from community. Anecdotal information will be gathered from community interviews and a phone survey.

The material will be presented in a series of workshops in the following form:

- Snapshot of the Ranges - report for interested parties.
- A summary document.
- Powerpoint presentation for workshops.
- Supporting visual displays.

Using this range of materials will provide the community with various ways of accessing the information, enabling a greater range of people to participate.

Phase Two:

A series of smaller focus groups discussing the available options will be held. These groups will become more focussed in their discussion as preferred options become clearer. This phase will be supported by Council policy work aimed at researching and refining options. The two processes will sit alongside and feed into each other, filtering and defining the preferred options.

Phase Three:

A wide community consultation programme will be developed to take the Council's preferred option(s) to the community for comment.

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.

The 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 that need to be protected, there is much that is already being done to achieve protection, that the tools for protection are many and varied, and the community views diverse. A robust process is crucial for achieving community understanding of, and long-term commitment to, solutions arising from the process.

ISSUES

Structure of the Snapshot Report

The cornerstone of the project is the identification of what is happening currently in the Ranges, the pressures that exist and current responses. The management of the Ranges and foothills environment is undertaken by various organisations. Information is being collected from the Auckland Regional Council, Watercare, Department of Conservation, community groups and others. This work will be presented as a snapshot report of the Ranges, which will form the basis of the consultation. This snapshot report will be available to interested parties and a summary report, powerpoint presentation and display materials will be produced to support the community consultation.

The report will be structured around 5 key attributes of the Ranges identified through previous consultation for the District Plan and West Coast Plan. These attributes are biodiversity, landscape, cultural heritage, mauri and freshwater resources. In the report key pressures on each attribute will be identified, information available on the current state of each attribute presented along with the current management responses. As stated in the State of the Environment (The Ministry for the Environment, 1997) *"much of our information on the environment is unconnected. Sorting through it and making sense of it is difficult without some organised framework or plan of attack. The Pressure - State - Response framework is based on a concept of causality developed by the OECD. The information is organised according to its ability to tell us about the pressures on the environment, the state of the environment and society's responses to environmental problems."*

As implied in the above quotation, much of our information on the environment is in fact unconnected. Historically, research and monitoring has not been gathered in the context of the Auckland Regional Council parklands, coastal villages, foothills and Watercare catchments as a whole. Information and research has been gathered but only on defined areas and for specific purposes, so is fragmented and piecemeal. Gaining a holistic, complete picture of the state of the Ranges is difficult. The snapshot report will pull together the information that has been able to be collected within the timeframe but should not be seen as a definitive record of all that is being undertaken. Its key purpose will be to act as a discussion document from which to engage the community. To add to the information and research gathered community comments and perceptions of change will be collected through a regional phone survey and community interviews.

A verbal presentation of the key points of the summary document will be presented at the Environmental Management Committee's 12 August meeting for sign off. These will be the key issues that will be discussed with the community. An Environmental Management Committee workshop has been arranged for **Tuesday, 5 August 2003 at 9.30 am - 12.00 noon** in the Council Chambers for a preliminary discussion on some of the issues. The larger snapshot report will require editorial sign off in late August so it is suggested that up to four Councillors are delegated authority for this.

RESOURCES

Budget for the Waitakere Ranges project is allowed for in the 2003/2004 annual plan.

CONCLUSION

The Snapshot of the Ranges report is a cornerstone of the Waitakere Ranges Protection Project. The area included in this project is managed by a number of different agencies. The information and research undertaken is often site specific and gathered for a defined purpose so a complete picture is difficult to paint. To add to this layer of information and research, community anecdotal information is also being gathered to gain a sense of perceived change.

A summary document, powerpoint presentation and display materials will be produced as the major tools of the community consultation. The summary document's key issues for consultation will be presented at a workshop on 5 August for discussion and a final presentation at this committee's 12 August meeting for sign-off. The editorial sign-off of the more detailed snapshot report would need to occur in late August.

RECOMMENDATIONS

1. That the Waitakere Ranges Protection report be received.
2. That the Environmental Management Committee approve the key issues for consultation for the Waitakere Ranges Protection Project as presented at the 12 August meeting.
3. That the Environmental Management Committee nominate up to four Councillors delegated authority to sign-off the more detailed Snapshot of the Ranges report.

Report prepared by: Kim Morreseey, Partnerships and Advocacy - Environment.



13 THE BIG CLEAN UP TRANSPORTATION CAMPAIGN - PARTNERSHIP PROJECT WITH THE AUCKLAND REGIONAL COUNCIL AND THE ENERGY EFFICIENCY AND CONSERVATION AUTHORITY

PURPOSE OF THE REPORT

The purpose of this report is to inform this committee about the Destination Marketing partnership project about to commence in New Lynn and to ask for authority to be given to the chief executive to negotiate and sign a Memorandum of Understanding with the Auckland Regional Council setting out both parties roles and responsibilities in relation to this project.

BACKGROUND

As part of its Big Clean Up campaign the Auckland Regional Council is developing a personalised transportation campaign to be implemented in a targeted location within the Auckland Region. At the same time Waitakere City Council is planning a similar destination marketing campaign for the New Lynn area. After negotiations between the Auckland Regional Council and the Waitakere City Council it was agreed to combine the two projects and to run the campaign in the New Lynn and Kelston areas. The combined campaign will start in September and run for six months. It is predominantly funded by the Auckland Regional Council.

STRATEGIC CONTEXT

The New Lynn destination marketing project forms part of Waitakere City Council's climate change action plan approved by Council in November 2002 and funded through the 2003/2004 Annual Plan. From a climate change perspective the objective is to reduce car travel in order to reduce greenhouse gas emissions. In the wider strategic context of Waitakere City Council there are a number of specific objectives:

- To market New Lynn as an attractive local centre, easily accessible by walking, cycling and public transport.
- To reduce trip length through encouraging people within the catchment to access services in New Lynn.
- To encourage walking, cycling and public transport use to and from New Lynn.
- To complete a walking and cycling map for the New Lynn ward, which will later be integrated with a citywide map.
- To engage the community in discussions about transport choices and identify barriers to sustainable transport choices with the aim of removing those barriers where possible.
- To evaluate whether destination marketing programmes can successfully be applied to a town centre.

These destination marketing objectives coincide with the Auckland Regional Council's Big Clean Up Transport Campaign objectives for New Lynn and Kelston which include:

- Measurably change transport behaviour amongst a targeted population in a defined geographical area.
- Show actual reductions in congestion and environmental impact.
- Improve perceptions of alternative transport options.
- Increase awareness of transport and transport related issues including air quality, health and safety.
- Develop a blueprint for replication for Travel Demand Management and other initiatives.
- Test community response to a single issue focus.
- Identify perception of transport's place in a sustainable Auckland region.

Waitakere City Council and Auckland Regional Council have agreed to work together where possible to achieve these outcomes. A Memorandum of Understanding between the organisations will be developed to define their relationship, roles and responsibilities in regards to this project.

PROJECT ELEMENTS

Before And After Evaluation Survey (Led By The Auckland Regional Council)

A detailed survey to 330 households measuring changes in travel patterns resulting from the overall campaign.

Personalised Marketing Campaign (Led By The Auckland Regional Council)

The personalised marketing strategy forms a core component of the campaign. It aims to provide the community with appropriate information and incentives to help people make informed travel choices. This is achieved by:

- Identifying a target audience from among 3500 households in the community who are interested in, and are able to, change their travel behaviour.
- Developing 'quality' information that assists people to make informed travel decisions.
- Providing the target audience with selected information based on their specific requirements through information request forms.
- Providing behaviour change incentives to the target audience (i.e. trial bus tickets to non-regular users of the bus service, incentive/merchandise for potential walkers and cyclists).

Community Engagement and Participation (Led By The Auckland Regional Council)

Households

A series of advanced public participation activities will be carried out to facilitate community ownership of transport solutions. This includes collecting information on barriers and motivations to choosing alternative modes of transport. These tend to be specific to the local area (eg. safety, public transport service provision, infrastructure, maintenance, development and access).

Schools

Parallel with the household participation processes, schools will be approached to participate in interactive sessions to capture motivational and barrier data specific to "travel to education". As part of the campaign Auckland Regional Council and Waitakere City Council staff will work with New Lynn Primary School to identify appropriate travel options.

Businesses

Given the relatively short timeframe, the business component of the scheme concentrates on selling the 'travel-plan' concept to targeted organisations in the area and supplying them with a travel 'kit' and advice on implementation.

Public Events

Information and material gained from the above community participation processes will form the basis for wider public consultation to take place through publicised events. These events will review the findings of the consultation and advance wider community ownership of identified solutions.

Rideline Stall at Lynnmall (Led By Waitakere City Council)

Rideline is a service provided by the Auckland Regional Council and offers public transport, walking and cycling information tailored to the individual's needs. A Rideline stall will be set up in Lynnmall over two days in October. The availability of this service will be promoted to the local community and businesses.

New Lynn Map (Led By Waitakere City Council)

The map is a key vehicle to promote New Lynn as an attractive destination easily accessible by public transport and alternative modes such as cycling and walking. Sponsorship of the map at a reasonable cost will be available to local businesses. The map will show shops, restaurants, services, playgrounds, toilets, historic sites, walkways, pedestrian crossings, parks, bus stops, railway stations and any other useful details that are identified.

Advertising (Led By The Auckland Regional Council)

A social marketing campaign will be carried out using localised media and other channels such as on-bus advertising, billboards etc.

Evaluation (Led by the Auckland Regional Council)

Evaluation will be both quantitative and qualitative including the 'before' and 'after' travel diary evaluation as described above. Additional planned evaluations will include vehicle, walking and cycling counts and changes in public transport patronage. Qualitative data from the focus groups, workshops, and a follow-up questionnaire will assist in describing the results of the quantitative monitoring.

INTEGRATION WITH THE WIDER NEW LYNN TOWN CENTRE PROJECT

Waitakere City Council and the Auckland Regional Council are working in close partnership on all aspects of the project to ensure that it is integrated and complimentary to the New Lynn Town Centre project. It is expected that the public engagement component of the project will provide valuable information for the town centre concept work.

RESOURCES

Waitakere City Council is contributing up to \$15,000 to this project, budgeted in the current financial year. The Auckland Regional Council is contributing \$300,000 from its Big Clean Up campaign.

RECOMMENDATIONS

1. That the information be received.
2. That the Chief Executive be given authority to negotiate and sign a Memorandum of Understanding with the Auckland Regional Council setting out both parties' roles and responsibilities under the Big Clean Up Transport Campaign.

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



14 **DISTRICT PLAN - PENIHANA APPEAL**

This item will be considered in the Confidential Supplement of the agenda, this report was not available at time of printing and will be circulated to members separately.

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely District Plan - Penihana Appeal.

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">District Plan - Penihana Appeal	The withholding of information is necessary in order to: <ul style="list-style-type: none">Maintain legal professional privilege.	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.

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; and a mediation process, part of which contains an agreement between reference (appeal) parties that discussions and material will not be disclosed to other than the parties to that mediation.*

