



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF THE FIRST MEETING OF THE 2004-2007

PLANNING AND REGULATORY COMMITTEE

Pursuant to Clause 21 of Schedule 7 of the Local Government Act 2002, I hereby give notice that that the First Meeting of the 2004-2007 Planning and Regulatory Committee will be held on:-

DATE: Tuesday, 16 November 2004 **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.

10 November 2004

Charlie Inggs
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8854

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairperson)
	RP	Dallow, QPM, JP (Deputy Chairperson)
	DQ	Battersby, JP
	PJ	Booth, OBE
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	PA	Hulse
	JP	Lawley
	CA	Stone

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

(Quorum 5 members)

★★★★★★★★★★

(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 THE FIRST MEETING OF THE 2004-2007 PLANNING AND REGULATORY
COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE,
LINCOLN, WAITAKERE CITY, ON TUESDAY, 16 NOVEMBER 2004,
COMMENCING AT 9.30 AM.**

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AGENDA FOR THE FIRST MEETING OF THE 2004-2007 PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY, 16 NOVEMBER 2004, COMMENCING AT 9.30 AM.

PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information 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 Committee by resolution so decides; 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 and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

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



PART B - REGULATORY / ENFORCEMENT

3 LEGAL UPDATE (AS AT 4 NOVEMBER 2004)

Introduction

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

ENVIRONMENT COURT

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

Following the Council's success in the High Court (where it won its appeal, and successfully defended the cross-appeal - see later agenda item below, for more information), the Council has reignited its costs application against Mr Mawhinney et al in the Environment Court. Council is seeking approximately \$140,000. A hearing date was set down for 30 August 2004 but this was adjourned in light of the delay in receiving the Court of Appeal's decision on Mr Mawhinney's application for special leave to appeal. This proceeding along with all others involving Mr Mawhinney in the Environment Court has been consolidated by Judge Whiting and will be heard in February 2005 with exchange of submissions to occur later this month.

Selak vs Waitakere City Council (7 March 2002)

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

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

Abacus Developments Limited & Others vs Waitakere City Council (February 2000)

An appeal by Abacus, Kitewaho and related entities (associated with Mr Mawhinney) against subdivision consent conditions imposed for a subdivision at Bethells/Waitakere. The appeal was to be heard in February 2003 but has been adjourned pending the outcome of the High Court appeal referred to below in this report. This proceeding will be heard in the Environment Court, with other proceedings involving Mr Mawhinney in February 2005. Mr Mawhinney must file and serve his evidence by 26 November 2004 and Council is required to respond by 23 December 2004.

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

An appeal against a joint Waitakere City Council / Auckland Regional Council decision refusing consent for an alternative healing centre at 34-36 Grassmere Road. The Environment Court hearing took place between 24 and 31 August 2004 and the Court reserved its decision. The decision is expected by late November 2004.

Juderon Family Trusts vs Waitakere City Council (December 2003)

An appeal against the Council's decision confirming the consent conditions regarding financial contributions payable in respect of a proposed subdivision. The parties attended a Court-assisted mediation on 7 September 2004; however, no resolution was achieved. The parties are in discussions regarding timetabling for a hearing on this matter.

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

A reference against the Council's decision approving Plan Change 2, which re-identifies the Harbourview land on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area. A Court assisted mediation occurred on 16 July 2004 and 20 October 2004. Progress has been made regarding some issues. This matter will be the subject of a confidential item on the December 2004 agenda.

I & Z Farac vs Waitakere City Council

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

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

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

Auckland Regional Council vs Waitakere City Council (September 2004)

An appeal by Auckland Regional Council against a decision by the Council to grant approval to a subdivision by Mr P Lipsham, relating to the property at 146-148 Parker Road, Oratia. Timetabling orders are yet to be made for the exchange of evidence in this matter, which is expected to proceed to a hearing in mid 2005.

CDL New Zealand Limited vs Waitakere City Council (October 2004)

An appeal against Council's decision granting subdivision consent; the appellant opposes the financial contribution condition in respect of stormwater. Council is to file a notice of reply and it is expected that the matter will proceed to a meditation shortly.

HIGH COURT

Waitakere City Council, Auckland City Council & Rodney District Council vs Hickman & Spargo (December 2003)

This is an application by Council for declarations in the High Court relating to the meaning of "immediate pool area" under the Fencing of Swimming Pools Act. There are four other parties namely, Auckland City Council, Rodney District Council, and two defendants against whom the Council has already initiated minor prosecutions for alleged failure to comply with the Fencing of Swimming Pools Act. Council's application is supported by Auckland City Council & Rodney District Council. The matter was heard on 2 August 2004 before Justice Randerson. A decision was issued on 1 October 2004 in which the Court rejected the defendants' argument that pool fencing may follow the boundary line of a property with pool owners being free to choose their owned fenced area; accepted Council's argument that "utility area" including clothes lines, vegetable gardens, vehicle or pedestrian accessways, and landscape planting falls outside the immediate pool area; rejected Council's argument that an area must be exclusively used in conjunction with the pool, to be within the immediate pool area, and partly upheld/partly declined Council's argument about the fencing of entertainment areas. The Court reserved leave for Council to seek a formal declaration in the light of the ruling, which Council is considering currently.

As a result of the decision, Council is reviewing all current prosecutions under the Fencing of Swimming Pools Act; it is expected that many of the existing prosecutions will still be pursued.

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

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

Mr Mawhinney's application for leave to appeal was heard before Justice Randerson on 14 May 2004 and dismissed with costs to the Council. Mr Mawhinney subsequently filed an application for special leave with the Court of Appeal (which includes an application for extension of time for filing) which was heard in Wellington on 16 August 2004. The Court of Appeal refused to grant Mr Mawhinney leave to appeal the decision. This matter is now completed.

In relation to costs, Justice Randerson has awarded above scale costs of \$48,502.52 in favour of Council and the Court of Appeal has awarded \$3000 plus disbursements in Council's favour. The costs order has been made against Mr Mawhinney and the current trustees of the Waitakere Forest Land Trust.

P W Mawhinney (substituted plaintiff) vs Waitakere City Council (February 2002) (Civil Proceedings)

This is a claim for damages by Peter Mawhinney (as substituted plaintiff by Kitewaho et al) and is related to the matters addressed in the other High Court proceedings. In short Mr Mawhinney claims losses arising from alleged breaches of statutory duties, negligence and misfeasance in public office by the Council in the processing of various subdivision applications.

The matter was recently a subject of half day settlement conference at the High Court before Associate Judge Sargisson. Although a settlement was not able to be reached, some progress was made and it has been agreed to have a further half day conference shortly. The parties will be filing statements of position in advance of that conference. Various interlocutory matters (including security for costs and a strike out application) also need to be resolved if the case is unable to be settled.

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

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004. This decision was in Council's favour and reversed the decision of the Environment Court. Since the release of the decision Estate Homes has been granted leave to appeal to the Court of Appeal (on one issue, out of an original 7 pursued). Estate Homes Limited is seeking leave from the Court of Appeal to pursue an additional two issues with a preliminary hearing scheduled for 15 November 2004.

Estate Homes Limited vs Waitakere City Council (Sturges Road)

This is an arbitration concerning the valuation of reserve land, Lockington Green at Sturges Road, Henderson. The value of the reserve is to be offset as a credit against payment of reserve contributions by the developer, Estate Homes. The arbitration was to have happened on 21/22 October 2004, but was adjourned at the last minute as Estate Homes served substantial rebuttal evidence on the Council only 24 hours prior to the commencement of the hearing (in breach of the timetable). The matter has been rescheduled to be heard on 24/25 November 2004.

PROSECUTIONS – DISTRICT COURT

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

Charges were laid against Mr and Mrs Covich alleging that the Covich's operated a cleanfill in contravention of an abatement notice requiring them to cease this activity. Mr & Mrs Covich pleaded not guilty and elected trial by jury. A depositions hearing took place on 11 November 2003, with counsel for the Covichs conceding that there was a case to answer. The matter was set down for a trial during the week beginning 20 September 2004 but the Covichs changed their pleas to guilty and the matter has been referred to a restorative justice conference scheduled for 16 November 2004, with sentencing to occur on 18 November.

MT Yeo, KB Yeong, MTY Properties Limited – various properties (May 2003)

Charges were laid against Messrs Yeo and Yeong, and Mr Yeo's company MTY Properties regarding alleged unauthorised building work, failure to comply with notices to rectify, and unsafe buildings, in respect of seven properties owned by the defendants. The matters have been adjourned to 9 November 2004 at which time it is expected that sentencing will take place in respect of a number of the charges.

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

Charges were laid against Mr Fowler for alleged offences under the Building Act (unauthorised building work) and RMA (breach of various district plan rules, including doing building work on the road reserve and in a stability sensitive area). A defended hearing occurred on 8 July 2004 following which the defendant was found guilty on all charges of contravening District Plan Rules and undertaking building work without building consent. Partial sentencing occurred on 26 July, at which time his Honour Judge McElrea made the enforcement order sought by Council ordered the defendant to pay legal costs and the costs of Council's expert witnesses (in accordance with the specified maximum fees payable under the Costs in Criminal Cases Act). Sentencing on the four charges under the RMA has been adjourned to 8 November 2004 to allow time for compliance with the enforcement order and for consideration of issues arising under the Protection of Personal and Property Rights Act. The Judge has indicated that the offending will be taken very seriously by the Court given that the defendant has wilfully re-offended; the Judge has stated that a fine will be imposed in respect of the RMA offences.

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

Charges were laid against the owner of a number of properties at Dovey Place (Dovey Place Developments Limited) and the contractors responsible for the foundation and building works for undertaking the construction of five houses without building consent. On 27 September 2004, the Court heard a pre-trial argument by two of the defendants who alleged that Council had filed the information's outside the 6-month statutory time period; the Court found in Council's favour and accepted that Council did not have sufficient knowledge of the offences until early September 2003. A further pre-trial issue has been raised by another defendant regarding the validity of information's where the contracting company has been struck off the register; this will be heard on 9 February 2005. The charges against the other defendants have been adjourned to a status hearing on 26 November 2004.

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

Charges have been laid alleging failure to comply with a notice to rectify building work. The matter is listed for call in court on 26 November 2004.

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

Charges have been laid alleging unauthorised building works and failure to comply with a notice to rectify building work. The defendants are preparing to lodge a building consent application to remove the unauthorised works. The matter is listed for call in court on 26 November 2004.

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

Charges have been laid alleging unauthorised building works. The defendants have entered not guilty pleas and the matter has been adjourned to a status hearing on 26 November 2004.

Yamms Investment Limited – 76-78 State Highway 16, Whenuapai (March 2004)

Charges laid under the Building Act in respect of the defendant's failure to provide a current building warrant of fitness to Council. The matter has been adjourned to 24 January 2005 as the defendant is to complete works to the building.

I R Stanic – 11 Orchid Place, Henderson (May 2004)

Charges laid under the RMA alleging contravention of District Plan Rules, as the property being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent, and for contravention of an abatement notice in respect of such activities. The matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 3 December 2004 with pleas to be entered then.

Future Developments Limited & P Slimo – 221 Scenic Drive, Titirangi (June 2004)

Charges have been laid under the RMA alleging various District Plan breaches and under the Building Act alleging various instances of unauthorised building work and allowing the use of an unsafe building (in respect of fire safety concerns) for residential purposes. The matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 3 December 2004 with pleas to be entered then.

Auckland Reblocking & Houselifting Limited, G F Harvey, M A Trebilco – 137 Titirangi Road, New Lynn (June 2004)

Charges laid under Building Act alleging unauthorised building work. The matter was called in the District Court on 1 October 2004 at which time the defendants entered not guilty pleas; adjourned to 26 November 2004.

M Trebilco – 137 Titirangi Road, New Lynn (June 2004)

Charges laid under Building Act alleging unauthorised building work. First call scheduled for 26 November 2004.

J & G McGee – 884 West Coast Road, Oratia (June 2004)

Charges laid under the RMA alleging contravention of an abatement notice issued in respect of unauthorised earthworks in the Managed Natural Area. The matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 3 December 2004.

L A Green – 9 Herrings Cove Lane, Titirangi (July 2004)

Charges laid under RMA alleging contravention of an abatement notice which required the installation of erosion/sediment control, removal of earth deposited at the site and revegetation works. Matter adjourned for first call on 24 January 2005.

K & P Regeling – 3 Rayner Road, Piha (July 2004)

Charges laid under Building Act for alleged unauthorised building work. The defendants completed remedial work under a building consent and the charges were withdrawn on 29 October 2004.

G S & V M Trichon – 70 Tirimoana Road, Glendene (July 2004)

Charges laid under RMA alleging contravention of an abatement notice which required the stabilisation of the filled area or in the alternative the removal of the fill deposited at the site and revegetation works. The prosecution matter has been adjourned to 24 January 2005. The defendants have since filed (well out of time) in the Environment Court seeking a stay of the abatement notice and appealing against the abatement notice. A judicial conference occurred on 2 November 2004 at which time Judge Whiting referred the matter to a Court-assisted mediation to occur on 17 November 2004.

MJS & YC Seymour – 39 Onedin Place, Titirangi (July 2004)

Charges laid under Building Act for alleged unauthorised building work. The matter was called on 29 October 2004 at which time the defendants entered not guilty pleas; a defended hearing is scheduled for 15 February 2005.

MG & KL Trubuhovich; Taylor Built Limited – 18 Brigham Creek Road, Whenuapai (August 2004)

Charges laid under the Building Act and the RMA in respect of the unauthorised construction of numerous poly/shade houses, which were built without building consent and which breach various District Plan Natural Environment Rules. Matter adjourned for first call on 24 January 2005.

S & U Kumar – 24 Te Muri Place, Glendene (August 2004)

Charges laid under the Building Act for unauthorised building work (including extension to house and change of use of lower level of dwelling to create separate residential unit). First call scheduled for 26 November 2004.

C Nisbett, Progress Construction Limited (Directors: PB Christensen, KG Mormon, IF Stead) – Dovey Place, Massey (September 2004)

Charges laid under the Building Act for continued building work on two unauthorised houses. First call on 26 November 2004.

EA Haines – 80 Hobsonville Road, Hobsonville (September 2004)

Charges laid under the RMA in respect of unauthorised removal of protected trees. First call on 26 November 2004.

DP Kiely – 60 Wisely Road, Hobsonville (September 2004)

Charges laid under the RMA in respect of unauthorised removal of protected trees. First call on 26 November 2004.

J & M Activities Limited (directors: MR Hannett & JM Timoteo) – 77 Fruitvale Road, New Lynn (September 2004)

Charges laid under the Building Act for using/permitting the use of an unsafe building. First call 26 November 2004.

Ngee Properties Limited (Director: GW Chappell) – 21 Enderby Drive, Te Atatu Peninsula (September 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of a garage to a residential unit). First call on 26 November 2004.

AR & NT Dean – 30 Edmonton Road, Henderson (September 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of the basement area of a house to form a residential unit). First call on 26 November 2004.

BA Collins, RC Gasson & S Newby – 169 Kauri Road, Whenuapai (October 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including additions to house, plumbing and drainage work, partitioning, new cladding etc). First call on 26 November 2004.

RECOMMENDATION

That the Legal Update (as at 4 November 2004) report be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

4 AIR, LAND AND WATER PLAN - ENVIRONMENT COURT APPEAL

PURPOSE OF THE REPORT

The purpose of this report is to seek approval to lodge an Appeal with the Environment Court on the Auckland Regional Council's decision on the Air, Land and Water Plan.

BACKGROUND

The Auckland Regional Council notified Variations to the Proposed Regional Plan: Coastal and Proposed Regional Plan: Air, Land and Water on 21 June 2002 and Council made submissions by the closing date of 16 August 2002.

The Variation has effect from the day it is notified and must be taken into account in subsequent resource consent processes.

A report was submitted on this issue to the Environmental Management Committee on 9 September 2003 and the Committee approved a submission to the Auckland Regional Council Hearings in October 2003. The Chair of the Environmental Management Committee presented Council's case to the Auckland Regional Council.

A further report was submitted to the Environmental Management Committee on 7 September 2004 in anticipation of the Auckland Regional Council's decisions being released during the election period and the Committee resolved as follows:

"That the Chief Executive be delegated authority to lodge an Appeal with the Environment Court with regard to the Auckland Regional Council's decision on the Air, Land and Water Plan, if considered necessary."

1725/2004

Subsequently, the Auckland Regional Council publicly notified its decision on 8 October 2004, with a closing date for appeals of 22 November 2004 and therefore is appropriate that the Plan and Regulatory Committee considers Council's position on this matter.

STRATEGIC CONTEXT

Council's strategy is to integrate the management of the water cycle including stormwater and the green network, with the following objectives:

- The City's native plants, animals and their ecosystems are cared for and protected. Stream and coastal areas are replanted and protected from erosion and natural links and wetlands are re-established;
- Council and private landowners work in partnership to ensure that our native and other ecosystems are protected from threats to their ongoing survival;
- People have better access to the City's parks, streams and green corridors, which are well managed to provide improved standards of amenity and ecological health;
- The management of stormwater keeps up with the growth of the City and remains in harmony with the natural water cycle. Land slippage and erosion is reduced and people's health and safety is protected.

The water which runs off the City's roads, roofs and car parks creates flooding and pollution problems if it is not well managed. As an area becomes more urbanised, there is more of this runoff and less opportunity for the water to soak naturally into the ground, or to find its own way along creeks and streams to the sea.

Auckland Regional Council sets standards for stormwater, which require local councils to show they are addressing the flooding and pollution problems in their areas. To meet these new requirements, Council will need to obtain and implement resource consents for 1400 to 1800 stormwater discharge points in the City. It will also need to demonstrate that it is making progress towards sustainably managing stormwater and wastewater overflows and reducing environmental effects.

Stormwater works do not need to be pipes in the ground. Natural creeks and streams are part of the beauty of the City and a habitat for native plants and animals, and many of the stormwater systems being developed in the City now mimic these natural areas and include plantings, walkways and wetland areas. These have the advantage of removing much of the pollution from the stormwater as well as reducing the potential for flooding.

Council has put in place a long-term plan to manage stormwater in the City, focussing first on the problems of the older urban areas and on catchments experiencing a lot of building and development, including parts of the Outer Area such as Huia and Piha. There will be further work and fine-tuning of this plan with the development of a computerised stormwater modelling system and to take into account the Auckland Regional Council's requirements.

ISSUES

The key objectives of Council's submissions were as follows:

- Greater recognition of Best Practical Option as a key driver;
- Removal of prescriptive network criteria, particularly within the policy framework;
- Recognition of the importance of stormwater and wastewater networks within the region;
- Recognition of funding limits, and affordability;
- Providing a clearer, workable and more certain statutory framework.

The key issues which have not been addressed by the Auckland Regional Council essentially relate to the affordability and effectiveness of the environmental outcomes in the Air, Land and Water Plan and are summarised as follows:

- There is a requirement to adopt Best Practical Option and meeting certain environmental bottom lines as a minimum. This is not Best Practical Option as intended by the Resource Management Act and the minimum bottom lines are not achievable in any event.
- The proposals for managing contaminants are uncertain in their implications and unacceptable in a number of respects as they are too onerous with no justification as required under Section 32 of the Resource Management Act. In spite of request for a cost benefit analysis, the Auckland Regional Council has not been able to produce a convincing argument.
- In this context, the cost of addressing stormwater to the standards required by the Air, Land and Water Plan cannot be accurately quantified, but a report by The Boston Group has identified that the cost to the region could be in the order of \$3 billion to \$11 billion.

- There are several aspects of stream management that are unacceptable from a practical management point of view.
- There is a requirement to define 12-year work programmes. At present, as the Auckland Regional Council has not established an agreed process for integrated catchment management planning, it is not feasible to develop a definite 12-year programme of physical works. As well, this raises the issue of the Auckland Regional Council establishing priorities for Council's works programme without taking into account affordability issues.
- The Auckland Regional Council would reserve control over project funding priorities.
- There is a requirement for network operators to provide financial contributions in certain circumstances.
- Greater clarity is required on what is intended with regard to dry weather overflows.

Given the time constraints, it has not been possible to fully prepare Council's submission as there is a work programme under way with other councils and local network operators to develop a common submission. This will be presented at the meeting.

RESOURCES

An amount of \$13,000 is included in the 2004/2005 Annual Plan to cover legal costs associated with the Appeal. In order to minimise expenditure, costs are being shared with Watercare Services Limited and the Local Network Operators.

CONCLUSION

The Auckland Regional Council's Air, Land and Water Plan Hearing decision has now been released and it is likely to impose significant costs on Council and the regional community without any certainty as to the environmental improvements.

Council has clearly signalled through the Long Term Council Community Plan that it wishes to promote sustainable development and is not philosophically opposed to the Air, Land and Water Plan but wishes to ensure certainty around the costs and environmental outcomes.

It is recommended that an appeal be lodged with the Environment Court to enable the issues to be progressed and achieve a solution that addresses affordability and effective environmental management.

RECOMMENDATIONS

1. That the Air, Land and Water Plan - Environment Court Appeal report be received.
2. That the Chief Executive be delegated authority to lodge an Appeal with the Environment Court with regard to the Auckland Regional Council's decision on the Air, Land and Water Plan.

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



5 ALTERATION OF TRANSIT DESIGNATION FOR WESTGATE STORMWATER POND

PURPOSE OF THE REPORT

The purpose of the report is to seek confirmation of the Planning and Regulatory Committee's agreement to an alteration of the current SH16/18 Motorway Designation to include an extended stormwater detention pond at Westgate.

BACKGROUND

A1-A65

Transit New Zealand ("Transit") intends to construct a stormwater treatment pond to provide stormwater management for the proposed improvements at SH16 in the vicinity of Westgate and for part of the development on the adjacent property known as the Boron & Neon land (Lot 1 DP 205681). The extended stormwater detention pond is located on land legally described as Lot 1 DP 177892 CT 109C/955, Lot 84 DP 201496 CT 130A/660 and a portion of Lot 1 DP 205681 CT 133C/740 a full copy of Transit's application and maps are attached at pages A1 to A65.

Transit is a 'requiring authority' under the Resource Management Act, which gives them the power to 'designate' land for public works. In 1999, Transit lodged a Notice of Requirement with the Council. The Notice sought that a designation for the new motorways be incorporated within the Council's Proposed District Plan. Transit has successfully negotiated the relevant statutory processes, and the Environment Court has confirmed the designation.

The effect of the SH16/18 designation is that it will allow Transit to construct the motorways without being subject to the rules of the District Plan.

The original concept for stormwater treatment in this area involved development of the existing pond immediately behind the Westgate shopping centre. This option was not feasible and alternatives were investigated. Transit NZ examined several options on the southern side of the stream of varying shapes utilising either one or both of the Council reserve and the Boron and Neon Land. The pond has to be at a low level to collect runoff from the motorway. The revised position of the pond on both the Boron and Neon land and the Council reserve allows a rounded pond that better fits with the existing terrain reducing the amount of earthworks and retaining walls. Furthermore by vesting the additional land with Council and allowing Transit entry for construction and an easement for maintenance, the overall area of the reserve is dramatically increased. Furthermore Transit has agreed to landscape the pond and develop a path to improve the overall quality of the reserve.

The Massey Community Board considered an item on the stormwater pond in February 2004 and resolved:

- "1. That the information be received.
2. That the Massey Community Board approves in principle the stormwater pond proposed by Transit New Zealand as outlined in this report."

66/2004"

STRATEGIC CONTEXT

The proposed SH18 realignment has become an important catalyst for future development in the northern area of the City.

The establishment of the proposed motorway is provided for in the Regional Land Transport Strategy. In addition, the land between the proposed motorway and the existing alignment of Hobsonville Road has been identified in the Regional Growth Strategy and Northern and Western Sectors Agreement as an area of future urban expansion.

The designation alteration proposal is of particular relevance for the Westgate area. The extended detention pond would partly occupy reserve land near Westgate Drive and partly occupy the adjacent property essentially providing treatment for stormwater from both the motorway and privately owned site.

ISSUES

Proposed Alteration

A15 Transit proposes to alter its designation for SH16/18 Upper Harbour Corridor: Westgate to accommodate an extended detention wetland pond. The pond will provide stormwater management for the proposed improvements at SH16 in the vicinity of Westgate and for part of the development on the adjacent property known as the Boron & Neon land. The extended stormwater detention pond is located on land legally described as Lot 1 DP 177892 CT 109C/955, Lot 84 DP 201496 CT 130A/660 and Lot 1 DP 205681 CT 133C/740 as indicated on the plan attached at page A15.

The pond would be located at the south side of the Manutewhau Stream on land between SH 16 and Westgate Drive. The area identified for pond development will mostly occupy private owned land, but would also occupy part of council owned reserve. The physical works will enable the reserve to be enhanced through planting and landscaping as part of this proposal and Transit NZ has obtained affected parties consents.

The total parcel of land defined for the proposed pond (inclusive of water surface, batter slopes and formation limits) amounts to 6,273m². This area is made up of 4,674m² of privately owned land (Boron & Neon), and 1,599m² of WCC reserve land. It is proposed that the pond perimeter would be landscaped to include appropriate landscape planting at the pond, and enhancing the reserve by developing a perimeter walkway.

Statutory Process

Once a designation is in place, the Resource Management Act provides a relatively simple procedure for making minor alterations. Section 181(3) of the Act states as follows:

“181(3) A territorial authority may at any time alter a designation in its district plan if-

- (a) The alteration-*
 - (i) Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
 - (ii) Involves only minor changes or adjustments to the boundaries of the designation; and*
- (b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*

- (c) *Both the territorial authority and the requiring authority agree with the alteration-
and sections 168 to 179 shall not apply to any such change.”*

A3-A9

The information provided by Transit in support of the designation alteration proposal is thorough, and addresses all the relevant issues. A copy is attached to this agenda at pages A3 to A9. Council staff are satisfied that the correct procedure has been followed in relation to the proposal.

The alteration is minor in terms of its environmental effects and in terms of its extent. The Council and the registered proprietors of the Boron & Neon land are the only owners of land that would be affected by the proposal, and both parties have agreed to the alteration. There is no reason to suggest that the Council would hold a different view in its role as territorial authority.

Land will be vested with Council in compensation for the pond occupying part of the Council owned reserve. This will allow Council to have a net gain of 1300m² of active reserve.

CONCLUSION

Transit proposes to alter the existing SH18 designation in the vicinity of Westgate. The alteration is relatively minor and will provide for the development of a stormwater detention pond at this location. The stormwater treatment pond would allow Council to provide an integrated stormwater management facility in the most effective manner, increase buffering between SH16 and Westgate Drive and widen and improve the ecological corridor at the Manutewhau Stream. Overall, it is considered that the alteration offers significant benefits to all the affected parties.

RECOMMENDATIONS

1. That the Alteration of Transit Designation for Westgate Stormwater Pond report be received.
2. That the Council recommend to Transit New Zealand that the alteration to the designation be confirmed without modification.

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



6 HORTICULTURAL SOILS

PURPOSE OF THE REPORT

The Principal Planner will provide a verbal update to the Planning and Regulatory Committee on progress related to the horticultural soils issue in Waitakere City.

An up-to-date progress report will be brought to the Committee Meeting outlining the current status of this matter.

RECOMMENDATION

That the Horticultural Soils report be received.

Report prepared by: Charlie Inggs, Committee Secretary.

