



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a Meeting of the Planning and Regulatory Committee will be held on:-

DATE: **Tuesday, 13 December 2005** **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.

14 December 2005

Audrey Chan
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8603

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)

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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 A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON TUESDAY, 13 DECEMBER 2005
COMMENCING AT 9.30 AM**

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AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY, 13 DECEMBER 2005 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.



3 CONFIRMATION OF MINUTES

Meeting Minutes - Monday, 14 November 2005
Meeting Minutes - Monday, 26 September 2005
Reconvened - Wednesday, 23 November 2005

Meeting Minutes - Tuesday, 8 November 2005

RECOMMENDATION

That the minutes of the meeting of the Planning and Regulatory Committee (to hear submissions on the Draft Food Safety Bylaw) held on Monday, 14 November 2005, the minutes of the meeting of the Planning and Regulatory Committee (to hear submissions on Plan Change 12) held on Monday, 26 September 2005 and reconvened on Wednesday, 23 November 2005 and the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 8 November 2005, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE AS AT 25 NOVEMBER 2005

INTRODUCTION

The following is a list of legal actions in respect of matters 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, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes.

COURT OF APPEAL

(Changed) **Waitakere City Council v 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 in Council's favour. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued).

A hearing took place in the Court of Appeal on 1 September 2005. The Court released its decision on 11 November 2005. The Court overturned the decision of Justice Venning in the High Court. However, the Court of Appeal did not restore the Environment Court findings, but instead referred the case back to that Court to reconsider its decision. The Court of Appeal agreed that the Environment Court had not taken into account the District Plan requirement that subdivision roading patterns should maximise connections within and between local neighbourhoods ("connectivity"). However, the majority judgment held that it was for the Environment Court to decide what weight should be placed on this factor, rather than for an appellate Court to do so.

The problem is that the reasoning of the majority of the Court of Appeal equates Council's role when approving subdivision consents, (particularly as to the roading component) as engaging in the expropriation of private land for public use, and overlooks (or at least relegates) Council's district planning role. This has significant consequences especially as it carries the implication that councils may be required to compensate developers for the "public benefit" aspects of subdivisions. Officers are currently considering whether to appeal the decision to the Supreme Court. A decision has to be made before 8 December 2005.

HIGH COURT

(Changed) **Waste Management v Waitakere City Council, North Shore City Council, Rodney District Council and Christchurch City Council (August 2005)**

This is an action for judicial review by Waste Management seeking a declaration that the Local Government Acts 1974 and 2002 do not provide for that part of Councils' newly passed waste bylaws which make provision for imposing levies on waste for the purpose of providing economic incentives and disincentives under section 544 of the Local Government Act 1974. A timetable has been set for the matter. The Court has recently notified the parties that it can hear the matter in February 2006. The matter has been set down to be heard during the week of 13 February 2006. All four councils have retained Kensington Swan as solicitors and David Kirkpatrick as barrister.

(Changed) Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (August 2005)

This is an action for judicial review by Carter Holt Harvey alleging that the Local Government Acts 1974 and 2002 do not permit a waste bylaw which requires it to be licensed for paper recycling activities where that is a private relationship and to impose a levy on waste. There has been some consolidation of this proceeding with the Waste Management proceeding. The Court has recently notified the parties that it can hear the matter in February 2006. The matter has been set down to be heard during the week of 13 February 2006. All three councils have retained Kensington Swan as solicitors and David Kirkpatrick as barrister.

(Changed) Waitakere City Council v Peter William Mawhinney (July 2005)

The Council took enforcement action against Mr Mawhinney to require payment in respect of costs awards. The matter was heard on 28 September 2005. Mr Mawhinney was given 21 days to pay \$101,592.30. This includes approximately \$89,000 owed to Waitakere City Council with the remainder being owed to the Auckland Regional Council. Mr Mawhinney was required to pay interest on this amount until paid. Mr Mawhinney paid a bank cheque by the 19 October deadline but there were complications with this which required further directions from the Court. Payment of \$101,592.30 in costs and interest was received on Friday 21 October 2005.

Mr Mawhinney was also served with a bankruptcy notice on 21 October 2005 in relation to \$5,063.16. This is a costs award due to Council for it winning the security for costs application made in relation to Mr Mawhinney's civil damages claim. In response Mr Mawhinney has filed an application to have this notice stayed and set aside and Council has filed a response. This matter will again have to be determined by Court hearing. This has yet to be set down.

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

This claim was on hold pending the payment of security for Waitakere City Council's costs of \$60,000 ordered by Associated Judge Sargisson on 2 May 2005. Mr Mawhinney was to pay this sum no later than 16 November 2005, or Council is able to apply to strike out the claim. To satisfy this requirement a company, which Mr Mawhinney is a director of, has offered the High Court Registrar a mortgage over a leasehold interest in land which he contends is worth at least \$300,000.

Council objected to the security offered and set out a number of concerns with it. The Registrar rejected the security offered. Council has filed an application to have the proceedings struck out. Mr Mawhinney has filed an application for an extension of time in which to provide security.

ENVIRONMENT COURT

(Unchanged) Auckland Regional Council v Waitakere City Council (October 2005)

An appeal by the Auckland Regional Council against a decision of this Council to grant consent to a proposed college and associated facilities. The Auckland Regional Council opposed the consent application alleging that granting consent to a new school outside of the Metropolitan Urban Limits would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limits and would create negative precedent effects. A notice of reply is to be filed shortly.

(Changed) Denver Holdings Limited & J Baran v Waitakere City Council (October 2005)

An appeal by the applicant (Denver) against certain conditions imposed on a resource consent for a medium density housing development at 23 Denver Avenue, Sunnyvale. A related appeal by Mr J Baran against the Council's decision to grant the consent has since been withdrawn. We await case management directions from the Court. Notices of reply will be filed shortly.

(Changed) R Britten - 19 Church Street, Swanson (October 2005)

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Britten's property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. We are seeking final orders to require that the Brittens undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

The application and supporting evidence has been filed and served. A judicial conference was held on 1 November 2005. Mr Britten's lawyer confirmed that Mr Britten has retained a consulting engineer who will review the background reports and carry out his own assessment. Mr Britten is required to file any affidavit evidence in reply to Council's application within 6 weeks of the conference (to be confirmed at the next judicial conference on 12 December). The undertakings provided by Mr Britten to ensure no further vehicular use of the access road and no earthworks in the vicinity of the slip and surrounding (potentially unstable) land - are considered acceptable. Mr Britten's lawyer is to file a reporting memorandum with the Court on 1 December 2005 and a further judicial conference is scheduled for 12 December 2005 to determine how the matter is to progress.

Selak v Waitakere City Council (7 March 2002)

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

Appeals filed by the applicant Mr Selak and his neighbours, Mr Collett and Ms Nye. Both appeals relate to the operation of a go-kart track on Mr Selak's property at Kennedy's Road, Whenuapai. Mr Selak has appealed a condition disallowing use of the track on Sundays and public holidays. Mr Collett and Ms Nye have appealed Council's decision to allow the go-kart track. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impact of the go-kart track, which was considered by all parties at a Court assisted mediation held on 8 June 2005. The parties are preparing consent documentation in accordance with the agreement reached at mediation. The Council has granted consent for a noise mitigation fence. Consent documentation is to be finalised and filed with the Court shortly.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth structure plan proceedings (Resource Management Act 886/98) has been concluded.

(Changed) Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming consent conditions regarding financial contributions payable in respect of a proposed subdivision. This appeal has now been settled by consent - the consent holder has agreed to pay the reserves contribution required by Council and a reduced roading contribution, following independent advice provided to Council. The settlement reflects an earlier position put forward by Council at mediation in 2004.

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

This matter relates to a reference against the Council's decision approving Plan Change 2. It makes changes to the zoning of land in Harbourview on the Te Atatu Peninsula. The Plan changes the Living Environment and Harbourview South Special Area to 'Open Space Environment' and 'Marae Special Area' respectively.

Both parties have filed and exchanged evidence. The matter is set down for hearing in the week of 5 December.

(Unchanged) I & Z Farac v Waitakere City Council

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

(Changed) Waitakere City Council v Minister of Defence (February 2005)

Council filed a notice of appeal in relation to a proposal by the Ministry of Defence ("Defence") to remove St Mark's Chapel from the Hobsonville Air Base to its Papakura base. The Chapel is listed as a heritage building and is protected under the Waitakere City District Plan ("District Plan"). The Minister of Defence has rejected the Council's recommendation that the Chapel remain at Hobsonville. Defence is of the opinion that the Chapel is to be used by defence personnel and this use is best served at Papakura where the Chapel will be more appropriately preserved.

The Council has also filed an application for a declaration in respect of the ambit of Defence's designation and whether the proposed removal of the chapel is a "public work". The matters were heard in the Environment Court on 7-9 November. A decision is likely to be issued sometime early in 2006.

(Changed) South Kaipara Nominees Limited v Waitakere City Council (February 2005)

An appeal by the appellant company (Director: Peter Mawhinney) in respect of a decision by the Council to decline to grant a certificate of compliance regarding a proposed subdivision at Anzac Valley Road, for want of jurisdiction. The application sought to cancel an amalgamation condition that was imposed under subdivision consent; this could not be described as a permitted activity and accordingly did not meet the preconditions of the Resource Management Act 1991.

On 22 April 2005 the Council filed an application to strike out the appeal on the grounds that there was no jurisdiction to grant the relief sought or any right of appeal in respect of the Council's decision. Mr Mawhinney withdrew his appeal and the Council was awarded costs of \$5,700. The Council filed an application to liquidate the Company. The matter was heard on 10 November 2005 and the company was placed in liquidation.

Auckland Regional Council v Waitakere City Council (May 2005)

(Unchanged) Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. A judicial conference was held on 5 September 2005 to consider issues including whether these appeals should be heard following resolution of the appeals on the Swanson Structure Plan. The Court has directed that these appeals should be put on hold to await the resolution of the structure plan appeals.

(Changed) South Kaipara Nominees Limited and Others v Waitakere City Council (June 2005)

A further appeal by South Kaipara Nominees Limited (now in liquidation)/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. There are two alternative proposals; (a) to widen access lots of the subdivision and make various other consequential changes to the surrounding lots; and (b) a sequenced series of 10% boundary adjustments. Council has filed a notice of reply to the appeal opposing the relief sought and indicating that such boundary adjustments would require discretionary or non-complying consents. An application to strike out the appeal has been lodged with the Court and was part heard before Judge Shepherd on 21 November 2005. The hearing will be concluded on Friday 25 November 2005. Mr Mawhinney has lodged further rebuttal submissions and evidence with the Court which we have opposed.

(Unchanged) M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under s 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a 7 lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Inc have lodged applications with the Court in support of the Council as s 274 parties. A judicial conference took place on 5 September 2005 at which time the Court directed that this appeal be put 'on hold' to await the resolution of the Swanson Structure Plan appeals.

DISTRICT COURT

(Unchanged) Graham W Gordon - 159A Scenic Drive, Titirangi (October 2005)

This matter relates to breaches of the Resource Management Act and Building Act. The matter was set down and heard at the Auckland District Court on 7 October 2005. Mr Gordon entered not guilty pleas to all charges and confirmed his election of trial by jury in relation to the Resource Management charges. The matter was set for a pre-depositions hearing on 24 November 2005. A hearing has been set down for 6 December 2005, in respect of the building charges, and a tentative hearing has been set down for the Resource Management Act charges on 11 June 2006.

(Unchanged) G M and B K Wheeler - 21 Kirby Street, Glendene (October 2005)

Charges laid under the Building Act for unauthorised building work undertaken to remove an existing deck from the second story of the house and replace it with a new 2.4 metres high one. The new deck does not meet the standards of the building code and is considered to be unsafe. The matter is set down for a first call on 16 December 2005.

(Unchanged) M F and A S Khan - 18 Patts Avenue, Glendene (October 2005)

Charges were laid under the Building Act for unauthorised building work undertaken to convert and alter the downstairs area of the house into a separate dwelling. The Khan's have admitted to having undertaken the works. The matter is set down for a first call on 16 December 2005.

(Unchanged) McGuigan Syme Chilcott Limited, R McGuigan, G Chilcott, T Donald, G Pitts, M and J Engle, R Foster, D Owens Limited, D Owens - 71 Riverlea Road, Whenuapai (August 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work after the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was adjourned on 21 October to 16 December.

(Unchanged) P and D Clark, R Hawkins, R Johnston - 97 Shaw Road, Oratia (August 2005)

Charges laid under the Building Act for unauthorised building work. The nature of the work has been extensive extensions to create new rooms and move kitchen facilities. The matter was adjourned on 21 October to 16 December.

(Changed) Restaurant Brands Limited: KFC New Lynn - 3052 Great North Road, New Lynn (June 2005)

The Council filed a notice of prosecution alleging contravention of seven provisions of the Food Hygiene Regulations and two provisions of the Food Safety bylaw. These were filed against Restaurant Brands Limited which is the owner of KFC New Lynn. Restaurant Brands pleaded guilty to all charges and were convicted of all nine charges. For each of the seven charges under the Food Hygiene Regulations, a fine of \$150 was imposed (maximum being \$200) plus \$130 of court costs on each matter. On each of the two charges under the Food bylaw, a fine of \$350 was imposed (maximum fine being \$500 due to the bylaw having been adopted under Local Government Act 1974) plus \$130 of court costs on each matter.

As Council receives 90% of these fines, the total due to Council is \$2,628.

(Changed) G Nicola, P Freeman, A Casey, and Eurovision Building Removals Limited - 4 Bowers Road (June 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct pile foundations to support a relocated house which was relocated onto the foundations. No building consent was obtained for the construction of the foundation or the relocation. The matter was heard in part on 18 November. Charges were withdrawn against P Freeman, and the defendant Nicola pleaded guilty. The Court reserved its decision as to penalty. The defendants Casey and Eurovision Building Removals Limited pleaded not guilty. A defended hearing is set down for 4 April 2006 for the latter two defendants.

(Changed) A Mackinnon - 5 Armour Road, Parau (June 2005)

Charges were laid under the Resource Management Act for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. The matter was called on 4 November, and was referred to a restorative justice conference to be organised by the defendant's solicitor. A date is yet to be set down for the conference.

(Unchanged) R and P Chand - 16 Archibald Road, Kelston (June 2005)

Charges laid under the Building Act for unauthorised building work to create a residential unit by converting a downstairs garage, and under the Resource Management Act for the use of the unit in breach of the residential rules of the District Plan. The matter was called on 23 September where the defendant sought a further adjournment to undertake mitigation works. The defendants have now obtained building consent and are removing the unauthorised building works. The matter was transferred to the Auckland District Court before an Environment warranted Judge for a call over on 4 November. R Chand pleaded guilty to the charges, and charges against P Chand were withdrawn. The matter is set down for sentencing at the Auckland District Court on 15 December 2005.

(Unchanged) Sher Mohammad and Adbdul Hafeez – 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance, and earthworks. The matter was partially heard on 4 November 2005. The defendant Hafeez pleaded guilty to three charges of undertaking unauthorised building work and earthworks as well as vegetation clearance. All alternate charges against Hafeez were withdrawn. The matter is set down for hearing of the facts and may progress to sentencing on 15 December 2005.

Mohammad was not present and no solicitor was representing him, despite the Court's insistence of the necessity over the last six months of the need for a solicitor in this matter. A warrant was issued for Mohammad's arrest.

(Unchanged) John Steed – Public Places Bylaw (March 2005)

An application for an order pursuant to section 162 of the Local Government Act 2002, requiring Mr Steed to cease breaching the Council's Public Places bylaw (Bylaw No. 4, Ch 2, cl 233.1(b)). Mr Steed has been living in his caravan on roadsides and road reserves in various locations in the City in breach of the bylaw and has refused to comply with Council officers' requests to cease doing so, has contravened an abatement notice, and is generally causing a nuisance in the locations where he resides in the caravan (e.g. by burning his household rubbish on the roadside and emptying wastewater from the caravan into the stormwater drainage system). Council officers have tried to assist him with alternative accommodation but he refuses to consider such options. The Court has granted an interim order restraining Mr Steed from breaching the bylaw. The final order is to be considered when the matter is next called in January in February 2006 (date yet to be allocated), depending on whether Mr Steed is located before that date.

(Changed) D Thompson– 10 Pohutukawa Road, Whenuapai (March 2005)

Charges laid under the Building Act for unauthorised building work undertaken to create two residential units within an existing warehouse building, and under the Resource Management Act for the use of those units in breach of the residential rules of the District Plan. This matter will be called next on 16 December 2005.

(Unchanged) M K Kasprzak – 27 Bedford Street, Te Atatu South (March 2005)

Charges were laid under the Building Act and Resource Management Act in respect of a second minor household unit constructed without the requisite building and resource consents. Mr Kasprzak has entered not guilty pleas and the matter has been set down for a defended hearing on 12 December 2005.

(Changed) Lance Olsen – Dovey Place, Massey (February 2004)

Charges were laid against the building contractor who undertook work on five houses without building consent. A pre-trial issue has been raised by Mr Olsen regarding the validity of information as his company has been struck off the register - the Council seeks to have the charges amended so that Mr Olsen is personally liable for the alleged offences. This matter was heard on 21 November 2005. The District Court determined that the information were a nullity because the company as which Mr Olsen's liability as a director rested was not a legal entity and therefore could not be convicted. This in turn led to the conclusion that the charges against Mr Olsen did not disclose an offence that could ever be pursued. Council is currently considering whether to appeal the decision.

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

Charges have been laid alleging unauthorised building works. A defended hearing took place on 2 November 2005, at which time the District Court determined that the information were filed outside the statutory time period and were dismissed accordingly.

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

Charges were laid under the Resource Management Act 1991 regarding the contravention of District Plan Rules (as the property is being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent) and for contravention of an abatement notice. Mr Stanic pleaded guilty. A restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was reached that Council would assist the defendant to remove the vehicles from the property and that no further vehicle repair work would be undertaken at the property. The Council will seek an enforcement order to ensure that this occurs. Sentencing was scheduled for 7 June 2005 but Mr Stanic failed to appear and an arrest warrant was issued. A new date is yet to be set as the Police have not executed the warrant.

RECOMMENDATION

That the Legal Update (As At 25 November 2005) be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

5 ISSUES REPORT AND PROPOSED PLAN CHANGE TO ENABLE A SITE SPECIFIC SUBDIVISION IN THE BUSH LIVING ENVIRONMENT

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee an Issues Report and Proposed Plan Change to enable a two-lot subdivision consent application to be lodged in relation to a site at 35 Turanga Road, Henderson and seeks approval for the Proposed Plan Change to be publicly notified.

BACKGROUND

The property is currently identified as Bush Living Environment in the Waitakere City District Plan. The subject property shares its eastern and northern boundaries with the Auckland Regional Centennial Memorial Park (the Park). The other boundaries to the site are owned by individual ratepayers and are also located within the Bush Living Environment. The proposed Plan Change arises from a request by the land owner to make this specific addition to the subdivision rules relating to the subject land.

The site is legally described as Lot 84, DP 21508 and comprises an area of 1.0746 ha.

A1-A19

A copy of the 'Background Report and Section 32 Analysis' for the Proposed Plan Change is attached at pages A1 to A19. No changes are required to the relevant Planning Map, which is also attached at page A20.

A20

Background to Plan Change

In September 1988, subdivision consent was lodged at Waitakere City Council. The applicant proposed to subdivide a property she and her then husband owned jointly at 35 Turanga Road, into two lots. The survey undertaken as part of the subdivision application had revealed that the apparent rear boundary of the applicant's land, as defined by a post and wire fence, encroached considerably on to the adjoining Regional Park. The surveyor at the time also confirmed that the existing dwelling, together with some outbuildings, was partially constructed on the Park.

The applicant placed the Waitakere City Council subdivision application on hold as she sought to resolve the boundary issue with the Auckland Regional Council. It was initially thought that the boundary issues could be resolved through the transfer of a parcel of Parkland containing the areas of encroachment to the applicant, in exchange for Auckland Regional Council taking ownership of a parcel of the applicant's land of equal size. This exchange was to be achieved in reliance on Sections 40 and 42 of the Public Works Act 1981 which authorise the disposal of land to an adjoining owner.

However, on legal advice from Auckland Regional Council's solicitor (at the time), this proposal was abandoned following discussion with the applicants on possible alternative courses of action available to them. The alternative course of action involved the applicant making application to the High Court seeking an Order under the provisions of the Property Law Act 1952 (principally Section 129) to achieve a boundary adjustment by way of an exchange of lands based on her existing use of the land.

At its meeting held in December 1993 the Regional Parks Committee resolved as follows:

“that the General Manager, Parks be authorised to discuss with Mrs Axford, alternative means of dealing with the encroachment with a view to exchanging the grassed area surrounding the encroachment (but not bush) for other bush land which is suitable for Centennial Memorial Park purposes and, if agreement can be reached, that consent be given to a Court Order approving a boundary adjustment accordingly.”

The applicant was not subsequently in a financial position to pursue the recommended High Court action. Discussions continued over the next three years, involving Auckland Regional Council and Waitakere City Council officers, and the applicant to try to find a solution to the encroachment/subdivision issue.

It should be noted that at the time the proposed subdivision was lodged with the Council, it complied with the then operative current Waitakere City Council District Plan. A voluntary exchange of lands continued to be regarded by the respective Auckland Regional Council officers as offering the best and most economical vehicle available to regularise the respective land title boundaries and to achieve the subdivision. However, such an exchange required the statutory limitation imposed on the Auckland Regional Council relating to the disposal of land held under the Centennial Memorial Park Act and the amended Local Government Act to be overcome.

In 1994, the applicant reactivated the Waitakere City Council subdivision application, choosing to not pursue the boundary adjustment component, and in June 1994 consent was granted to a two lot subdivision, comprising a common access lot and two lots, one being vacant and the other containing the existing dwelling. There was an expectation that the existing dwelling would be modified so as not to encroach onto the adjacent Auckland Regional Council parkland.

In 1996, the applicant lodged a variation to the above consent. The revised survey plan provided for the subdivision of the applicant's land (the two lots, as previously granted), and a boundary adjustment, including the encroachment area and an area of land the applicant had agreed in principle to transfer to Auckland Regional Council. Waitakere City Council approved the revised subdivision plan in 1997, subject to the agreed areas for exchange and amalgamation being achieved as a condition of that approval. The Waitakere City Council approved plan, including the conditions, was accepted by Land Information New Zealand and lodged for deposit in January 1998 (DP 184035). The applicant proceeded to undertake the works required by the conditions of the Waitakere City Council consent, to obtain a completion certificate (224C). In 1999, Waitakere City Council released the 224C certificate to the applicant's solicitor.

The applicant had by that time settled the purchase of her property and anticipated proceeding with the High Court application to resolve the boundary issues. However, it was at about this time that Auckland Regional Council's inability to dispose of land held for Regional Park purposes became the subject of discussions between Auckland Regional Council officers, its solicitors, Wellington Regional Council officers and the Internal Affairs Department.

In January 1998, the applicant's solicitor advised Waitakere City Council, that due to the legislation issues surrounding the exchange of land with the Auckland Regional Council, (as outlined immediately above) the completion of the subdivision would not be pursued until the issues had been resolved with the Auckland Regional Council. (To complete the subdivision the 224C certificate would have to be lodged at the Land Transfer Office by May 2000). As outlined below as the applicant pursued other related aspects to the subdivision this did not happen and therefore the subdivision lapsed, notwithstanding that some of the required completion works had already commenced.

The applicant was advised that the two Regional Councils (Auckland and Wellington) intended to jointly promote a Local Bill to Parliament. The proposed bill would seek to amend the relevant provisions of the Local Government Amendment Act 1992 and, in Auckland Regional Council's case only, the Centennial Memorial Park Act, to authorise the disposal of land held for Park purposes under this legislation, in limited circumstances.

This draft bill was abandoned at the request of the Crown in 1999 in anticipation of the proposed creation and vesting of "powers of general competency" in local authorities. The enactment of the Local Government Act 2002 (Local Government Act 2002), while still containing provisions enabling Regional Park land to be held in perpetuity, removed the previous statutory bar to the disposal of land held for Regional Park purposes, for boundary adjustments such as is sought in this instance. With the enactment of the Local Government Act 2002, the Centennial Memorial Park Act is revoked in its entirety, thereby removing the previous impediment to disposal under that Act.

The applicant then requested the Auckland Regional Council Parks and Heritage Committee to revisit the December 1993 resolution with a view to formally authorising an exchange of lands on the basis set out below. In April 2004, the Auckland Regional Council advised Waitakere City Council of its approval to the land exchange, which would then be able to be given effect by the Waitakere City Council boundary adjustment consent.

In August 2004, the applicant sought re-approval of the 1997 consent, which had now lapsed, due to the time taken to resolve issues with the Auckland Regional Council. However in the interim, the Environment Court issued a Consent Order dated 20 July 2004, that resolved issues relating to an appeal to the Waitakere City Council District Plan. The Consent Order altered the subdivision rules of the District Plan and, in so doing, made the applicant's proposed subdivision a prohibited activity. The Consent Order related to Subdivision Rules 10 and 11 in the Waitakere Ranges and Bush Living Environment, and required that the minimum lot size for a new lot of 8000m². The proposed lots are likely to be (approximately) 4047m² and 5796m², this being the lot sizes of the previous Waitakere City Council consent. (However exact lot sizes will be finalised in the event of an application. This does not include the area being altered as part of the boundary adjustment with the Auckland Regional Council parkland).

As the applicant cannot make an application for an activity that is prohibited, she now seeks that the Council undertake a plan change, to enable a site specific subdivision to occur, to address this unusual chain of circumstances.

Site description

The enclave of development in which the subject rear site is located, is in the western portion of the Scenic Drive, and also covers the upper portion of Mountain Road that runs east from the Scenic Drive. Turanga Road, which is a no exit road, runs off Mountain Road, in a north westerly direction, and sits below the ridgeline. The subject site is not affected by any controls relating to sensitive ridges.

A predominant number of the sites in this area have a Bush Living identification, road frontage, and typically are just over 1000m². In addition, there are several larger front and rear sites in the vicinity. In the immediate area there are also a number of sites identified as Waitakere Ranges Environment that run off Mountain and Tawari Roads. The built development within this area is characterised by single dwelling houses, in an eclectic range of building styles. A large number of these dwellings have been erected towards the road frontage of the sites, and the significant level of primarily native vegetation in the area means that the built form of the houses is not readily apparent from the street.

The subject site is a rear site, accessed by a gravel right of way. The dwelling and various outbuildings are located at the top of the right of way, with the site extending beyond the dwelling to the northwest. There is a cleared area immediately adjacent to the dwelling to the north-west; otherwise the site is covered with a mixture of regenerating vegetation. From the eastern side of the existing dwelling the land falls away very steeply, and the applicant enjoys extensive, unobstructed views towards Auckland City, and the Hauraki Gulf.

The Bush Living Environment is described on the District Plan as an area that "includes the intensively settled areas within the Waitakere Ranges, where natural features dominate but settlement has substantially fragmented the bush. A partially residential but nonetheless, "non urban" character predominates as a result. The rules of the District Plan seek to protect the amenity values of these areas. In the case of the subject land, the character of the surrounding area means that the land even if subdivided as proposed, would continue to be representative of a traditional Bush Living Environment (subject to compliance with all other development controls).

STRATEGIC CONTEXT

The Long Term Council Community Plan has nine platforms that set out the Council's goals and actions for managing the social, economic and environmental wellbeing of the City. The Urban and Rural Villages pathway identifies the need for the Council to provide a range of lifestyle options. This proposal will provide the potential for an additional lot for a dwelling, which has resulted from an unusual series of circumstances. It is also considered that the proposal is not inconsistent with the Green Network Strategic pathway, as the proposal is considered to not have the potential for adverse effects on the natural environment in this instance.

ISSUES

General

The proposed Plan Change would alter the subdivision rules in order to provide the potential for completion of the two-lot subdivision of the property at 35 Turanga Road. The existing Bush Living Environment identification for the subject site would not change, and the zoning would therefore continue to be consistent with the proposed sites, and the surrounding environment, should the proposal succeed.

It is considered that this proposal would not undermine the direction sought by the draft Waitakere Ranges and Foothills Protection Bill. The need for this site specific subdivision, if enabled through the plan change process, is a site specific occurrence, which has arisen through an unusual set of circumstances, in that the Council has previously granted subdivision consent, and a further variation, to which the applicant has been unable to give effect because of the related situation of the boundary encroachment. It is therefore not anticipated that it would give rise to a precedent effect. It should also be noted that the Council is not aware of any other similar situations where a subdivision has been granted and a conditional 224C certificate issued, where the changed District Plan now precludes the completion of subdivision, therefore highlighting the unusual nature of this plan change.

The use of site specific rules, as is proposed as a method of resolution in this plan change has previously been successfully used in the Waitakere City Council District Plan. The most recent instance has been in the resolution of the appeals to the Waitakere City Council Proposed District Plan. These appeals were in relation to proposed rules that sought more restrictive subdivision controls to be applied within the Titirangi and Laingholm area. The use of site specific rules in that instance was a method that allowed the complexity of various situations to be acknowledged and resolved.

Statutory Considerations

Resource Management Act 1991

A1-A19

The Resource Management Act 1991 provides for changes to be made to the District Plan. The attached report at pages A1 to A19, entitled, 'Proposed Plan Change 21: A Site Specific Plan Change to enable a 2 Lot Subdivision' clearly identifies the relevant sections of the Act, and other statutory documents, that must be taken into account when notifying a Proposed Plan Change. Summaries of the relevant discussions from that report follow:

Waitakere City District Plan

The proposed Plan Change does not seek to amend any objectives, policies or maps of the District Plan. The proposed plan change will provide a minor change to rule 10 of the Bush Living Environment Subdivision Rules. In addition, because of the site specific nature of the change, brought around by a complex sequence of events these circumstances cannot be replicated therefore the integrity of the District Plan would not be undermined. It is considered that the rules of the District Plan will ensure that any effects of future consequential development resulting from the subdivision will be avoided, remedied or mitigated. Therefore it is considered that the proposed Plan Change is not contrary the existing objectives, policies and rules of the District Plan.

Auckland Regional Policy Statement

It is considered that the Proposed Plan Change is not contrary to the objectives of the Regional Policy Statement.

Section 32 of the Resource Management Act

Council's obligations under section 32 are divided into five parts that comprise the following:

- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
- taking into account the benefits and costs of the policies, rules or other methods;
- taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
- summarising the evaluation and reasons for evaluation.

A1-A19

An evaluation under each of the above subsections has been undertaken and is attached at pages A1 to A19. The evaluation fulfils Council's requirements with regard to section 32 of the Resource Management Act.

The section 32 analysis identified that the Proposed Plan Change would enable the correction of an historical boundary anomaly, whilst meeting the purpose of the Resource Management Act by allowing sustainable management of natural and physical resources. The associated 2 lot subdivision would not have adverse environmental effects (subject to compliance with all other rules of the Bush Living Environment). The section 32 analysis also concludes that the site specific subdivision would not undermine the consistent administration of the District Plan.

Further, it is intended that the evaluation will be available for public inspection at the same time as the Proposed Plan Change is publicly notified (in accordance with section 32(6)).

Actual or Potential Adverse Effects on the Environment

Under Section 31 of the Act Council's function includes "the control of any actual or potential effects of the use, development, or protection of land". Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment.

It is considered appropriate to propose that a site specific subdivision can occur, as it will not have adverse environmental effects. The Bush Living Environment includes specific rules to protect any adjoining land (in this instance being Bush Living and the adjacent Regional Park) from potential adverse effects such as shading or domination from large buildings, loss of privacy, and excessive impermeable surfaces. The additional traffic generation from the additional dwelling that could be established on the new lot is unlikely to compromise the functioning of the road. In addition the natural area rules will serve to protect the natural environment, through restrictions on bush removal and earthworks. Overall it is not expected that the proposed Plan Change would compromise any existing amenity or landscape values.

The proposed Plan Change has been reviewed by staff from areas of the Council that may have an interest in this proposal. Staff from the Strategy and Development Unit have indicated that they are not opposed to the proposed Plan Change as they recognise the unique and special circumstances that apply, and consider that this proposal should not set a precedent for similar occurrences.

The proposed Plan Change has been reviewed by the Council's Arborist. The arborist is in general agreement with the proposal and has advised that there are two potential building platforms available in the area of what is most likely to be the additional lot, one of which has been recognised in the previous resource consent. These areas do have some examples of native vegetation, but there is also ginger, blackberry, and other noxious plants. It is considered that the existing vegetation clearance and earthworks controls, which apply within the Bush Living Environment, will ensure that any actual or potential effects on the environment are avoided, remedied or mitigated

There are no known archaeological or heritage issues associated with the sites.

The land owner has agreed that the two lot subdivision and the boundary adjustment will occur as part of the same subdivision application, should the plan change be successful. This will assist towards making the circumstances and their resolution unique. It is proposed that this could become part of the site specific rule, if the plan change is accepted.

In summary, it is considered that there are no adverse environmental effects that will be generated by the boundary adjustment or the creation of an additional lot, which cannot be suitably avoided, remedied or mitigated through compliance with the Bush Living Environment provisions of the District Plan. It is considered that the existing provisions of the District Plan will ensure that the amenities of the surrounding Bush Living Environment are protected.

Consultation

Clause 3 to the First Schedule to the Resource Management Act states that during the preparation of a proposed plan, a local authority shall consult with the Ministry for the Environment, other Ministers of the Crown deemed to be affected, other Local Authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a proposed Plan Change.

The Council has written to the Ministry for the Environment, and any feedback will be reported to the Committee. Consultation will take place with local iwi, at the end of November as part of the Plan Change, and any concerns raised will also be reported to the Committee.

Given the nature of the proposed Plan Change, adjacent to the Auckland Regional Centennial Park, and the long history of the resolution of the boundary anomaly between the subject site, and the Park, the Auckland Regional Council were considered to be an interested party and have been included in the formal consultation.

Landowners and residents of the surrounding sites have been contacted via a letter of explanation, dated 22 November 2005. The letter informed the landowners and residents of Council's intention to provide for this site specific subdivision and sought comments regarding the Proposed Plan Change. The Plan Change process and timing was also summarised. Any responses to this letter will be reported at the time of the Committee hearing.

Further opportunities for residents and any other interested party will be available to those persons through the public notification process of this Plan Change.

RESOURCES

The proposed Plan Change can be accommodated within the current budget, and no additional staff funding or resources are required.

CONCLUSION

The purpose of this report is to present to the Planning and Regulatory Committee a proposed Plan Change relating to a site specific subdivision (and associated boundary adjustment) at 35 Turanga Road. The proposed Plan Change seeks to provide for a site specific two lot subdivision, where currently such a proposal would be a prohibited activity. No changes are proposed to any District Plan objective, policy or map. The proposed Plan Change involves a minor change to Rule 10, of the Bush Living Subdivision Rules.

The proposed Plan Change is considered necessary to achieve the purpose of the Act and is the most appropriate in terms of effectiveness and efficiency of Council exercising its function. In addition, the proposed Plan Change is consistent with the existing District Plan policies and objectives and it is considered that subject to compliance with all other rules, there will be no adverse environmental effects generated as a result of the proposed Plan Change.

RECOMMENDATIONS

1. That the Issues Report and Proposed Plan Change to Enable a Site Specific Subdivision in the Bush Living Environment report be received.
2. That pursuant to the First Schedule to the Resource Management Act 1991, the Planning and Regulatory Committee resolve to publicly notify the Proposed Plan Change to the Waitakere City District Plan, to amend Rule 10 of the Bush Living Subdivision controls, and to allow a site specific subdivision at 35 Turanga Road, Henderson as set out in page attached at A21.

A21

Report prepared by: Carolyn McAlley, Planner: Policy Implementation



6 ST MARKS CHAPEL - HOBSONVILLE AIRBASE

PURPOSE OF THE REPORT

The purpose of the report is to advise the Planning and Regulatory Committee of the outcome of the Environment Court case concerning St Marks Chapel, Hobsonville and the impending relocation of that building to the Papakura Military base.

BACKGROUND

St Marks Chapel is listed as a category III heritage item in the District Plan and is an interdenominational chapel that was constructed in 1942. The Chapel is one of seven such chapels built around the same time with similar ones at Whenuapai, Wigram, Harewood and Woodbourne Bases. Proposed Plan Change 13 and agreements reached with Housing New Zealand indicated that the church would continue to have a purpose in future as a cluster of historic buildings on a reserve capable of being used as part of the re-development of Hobsonville.

The Planning and Regulatory Committee received reports on the St Marks Chapel in March and June this year. The Council received an Outline Plan of Works application by the New Zealand Defence Force to relocate St Marks Chapel in January this year. The Minister of Defence has a designation over military bases at Hobsonville and Whenuapai enabling works for defence purposes and associated activities. The Council obtained a legal opinion from Matt Casey advising that the proposed relocation of the Chapel from one defence site to another in the Auckland region was outside the scope of the designation and that a discretionary resource consent would be required for this to occur.

The Council held preliminary discussions with Ministry of Defence, which were unsuccessful. The Council then lodged proceedings against the Minister's decision to relocate St Marks Chapel from the Hobsonville airbase to the SAS base at Papakura and sought a declaration on the scope of the designation and whether the relocation was outside the scope of the designation.

STRATEGIC CONTEXT

The Hobsonville airbase forms an integral part of the City's built heritage. Hobsonville was initially developed ahead of Whenuapai Airbase in the 1930s and had the advantage of allowing for seaplanes and conventional aircraft. The future planning proposals for Hobsonville intend to respect the unique heritage character of the site through the use of precincts, viewshafts and associated rules. The Hobsonville military base has associations for the broader community in terms of its social, economic and cultural significance.

ISSUES

The Environment Court case was heard before Judge Sheppard and two Commissioners on the 7-9 November 2005. Council presented legal submissions and called evidence from Councillor Linda Cooper (regarding the significance of the chapel to the Hobsonville community and the wider Waitakere City Community), Dinah Holman (presented evidence on the history of the Chapel, its design and built heritage context) and Peter Reaburn (presented planning evidence).

Crown Law presented the case for the Minister of Defence and called evidence from seven witnesses including the SAS, Chaplains, civilian property managers, a planner and heritage consultant. The Court decided in favour of the Minister of Defence over several issues, which are summarised below:

- The Court held that removal of the chapel is within the ambit of the designation for "defence purposes" irrespective of the proposed new military location of the Chapel.

- The Court decided that there was no legal requirement for Defence to lodge an outline plan of works to remove the Chapel from the base. This finding has implications for the possible re-location of other buildings by New Zealand Defence so long as their designation is in place.
- The Court made a legal finding that Waitakere City Council cannot refuse an outline plan of works, it can only alter or modify the proposed construction. Therefore even if Defence had to lodge an outline plan of works, it could not be refused.
- The Court found that resource consent was not required for removal of the Chapel as the works were within the designation and therefore the heritage provisions of the District Plan do not apply to the removal.
- Finally the Court decided that the removal of the Chapel would not breach the duty to avoid, remedy or mitigate adverse effects (section 17 of the Resource Management Act 1991). The Court had to evaluate several competing principles: the protection of historic heritage from inappropriate use and development, efficient use and development of natural resources, maintenance and enhancement of amenity values, and accepted best practice in heritage management. The Court put little weight on the association of the chapel building with Mill House and considered that it would not be missed. Furthermore, the Court doubted its ability to be maintained and used in a way that would be respectful of its history. The Court found that the continued use of the building as a military chapel would represent an efficient use of the building and would maintain and enhance its amenity value, and in that way contribute to the quality of the environment.

Following the release of the Environment Court decision on Friday 2 December, Council staff contacted legal counsel at Crown Law to explore the possibility of Defence agreeing for the Chapel to remain if Council and Defence could agree a value between what has already been committed for its relocation and the costs of a new chapel building in Papakura. That amount could have been recovered as reserves contribution when Housing New Zealand develops the site. The lawyer at Crown Law who conducted the case took advice from the property division and clarified that Ministry of Defence is not interested in any such proposal and wish to relocate the building at the earliest opportunity. It is considered that it would be redundant to pursue retaining the Chapel at Hobsonville.

RESOURCES

The costs associated with preparing expert evidence and legal representation has been met from existing budget administered by Legal Services.

CONCLUSION

The proceedings between the Council and Minister of Defence concerning St Marks Chapel were important in interpreting the provisions of the Resource Management Act 1991 relating to designations and the District Plan given that historic heritage is a matter of national importance. The case has several key findings that are summarised above but the most challenging finding from the Court is that no outline plan of works is required for re-location of buildings from one site to another for military purposes. It is possible that other heritage buildings may be re-located from Hobsonville without any formality.

RECOMMENDATION

That the St Marks Chapel report be received.

Report prepared by: Alina Hughes, Principal Advisor: Heritage.



PART D - CONFIDENTIAL ITEMS

7 GROWTH AND TRANSPORTATION INTEGRATION PROGRAMME - UPDATE

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely, Growth and Transportation Integration Programme - Update.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of each 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">• Growth and Transportation Integration Programme - Update | The withholding of information is necessary in order to: <ul style="list-style-type: none">• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations). | 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)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The report contains information which if released could affect Council's negotiations.*

