



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: **Monday, 26 September 2005** **TIME:** **9.30 am**

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

to hear submissions on Plan Change 12 and to take any necessary action connected therewith.

19 September 2005

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

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)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON MONDAY, 26 SEPTEMBER 2005 COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	APOLOGIES	1
2	URGENT BUSINESS	1
3	PROPOSED PLAN CHANGE 12 OPEN SPACE ENVIRONMENT PROVISIONS IN THE DISTRICT PLAN	1

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON MONDAY, 26 SEPTEMBER 2005 COMMENCING AT 9.30 AM

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 PROPOSED PLAN CHANGE 12 OPEN SPACE ENVIRONMENT PROVISIONS IN THE DISTRICT PLAN

1.0 INTRODUCTION

This report addresses the issues that relate to Proposed Plan Change 12. The Proposed Plan Change seeks to amend the provisions relating to the rules of the Open Space Environment and the Natural Areas to better facilitate development and general maintenance within parks and reserves in the City.

This report sets out the background to the Proposed Plan Change, the various statutory requirements and policy framework, the background studies undertaken and the consultation carried out. Furthermore the report addresses Section 32 issues and provides an analysis of the various submissions that were received.

2.0 SUMMARY

Council's Environmental Management Committee approved Plan Change 12 for notification on 10 August 2004. Subsequently the Plan Change was publicly notified on 1 December 2004 and eight submissions were received. A summary of submissions was notified on 18 February 2005 and nine further submissions were received, which were all from the original submitters.

The issues raised in submissions ranged from minor amendments to the wording of new definitions, and the assessment criteria associated with the Natural Area rules, to proposals for new policies, new rules for Harbourview - Oringahina and to the abandonment of the Plan Change in its entirety. The submissions received that were generally in support of the Plan Change, subject to amendments were from statutory bodies - Auckland Regional Council (ARC) and Department of Conservation (DoC). The network utility operator Watercare Services Limited opposed one part of the Plan Change. The Te Atatu Residents and Ratepayers Group and Ms Anne Grace opposed the entire Plan Change.

Having considered the Proposed Plan Change against the relevant statutory criteria, and having regard to the submissions received, it is recommended that, subject to any contrary or additional evidence submitted at the hearing, the Proposed Plan Change be approved with some amendments.

3.0 LAND AFFECTED BY THE PROPOSED PLAN CHANGE

The Proposed Plan Change would affect all the land identified as Open Space Environment, which is located in Waitakere City. The land in the Open Space Environment is publicly owned by Waitakere City Council, publicly owned and or managed by the Auckland Regional Authority or Department of Conservation and constitutes the parks and reserves estate. The majority of this land administered by Waitakere City Council is vested in the Council although it holds some land in fee simple. (Private sports fields and golf courses such as Titirangi Golf Club are not in the Open Space Environment). There are area approximately 991 hectares of parks with 550 reserves in the Open Space Environment.

4.0 BACKGROUND INFORMATION

The planning process to develop Proposed Plan 12 was initiated in 2002. Following a number of reports by the Parks Planning Section of the Council relating to the development and management of parks and reserves in the City within the framework of the current provisions of the District Plan, an analysis of resource consent applications on land in the Open Space Environment over a two year period (2000-2002) was undertaken. The concerns which related to the rules for the Open Space Environment and Natural Areas which require resource consents for a wide range of activities on parks and the associated costs were clarified and a report was prepared for the Committee's consideration in December 2003.

When the District Plan was formulated the intention was to prepare a Parks Strategy followed by the preparation of reserve management plans for all of the City's parks and reserves. Reserve management plans are prepared under the provisions of the Reserves Act. The reserve management plan mechanism is designed to provide a means of involving the public in the strategic management of reserves and in the allocation of land within reserves where there are competing interests. However, the reserve management approach is not intended to address the effects of various activities that are conducted on reserve land, this being the domain of the Resource Management Act.

Each reserve management plan that was prepared was expected to outline specifically what activities/development would be provided on the park. The Waitakere City Council Parks Strategy was completed in April 1999, however, currently only 24% of parks and reserves in the City have Reserve Management Plans. Several of these are due for review. The Open Space Environment makes no provision for permitted activities on a park or reserve without an Operative Reserve Management Plan. Reserve Management Plans relate to the classification and purpose of the reserve and consequently the provisions for future development are often generalised which prevents proposals from being assessed as Permitted Activities under the rules of the Open Space Environment and necessitates resource consent applications. Reserve Management Plans also may not adequately address potential adverse effects on the surrounding environment. Thus both the lack of reserve management plans for the City's parks and reserves and the lack of detail for future development in existing reserve management plans necessitate a large number of resource consents. The rules for the Natural Areas in the District Plan control vegetation alteration and earthworks, and without an Operative Reserve Management Plan there is limited provision for general maintenance to be undertaken in parks without resource consents being required. The end result for the Parks Section is that the number and cost of obtaining resource consents to undertake work in parks and reserves is a significant annual cost. As all parks and reserves are publicly owned it is ultimately the Council that meets most of the costs for resource consents.

The reliance on the District Plan Open Space rules was only considered an interim measure. As the Decision notice states "In the interim until the (Reserve Management) Plans are operative the District Plan bulk and location rules for the Open Space Environment apply to all reserves. These rules will be reviewed as the Reserve Management Plans are implemented."

Section 35 of the Act requires that Council monitor the suitability and effectiveness of its District Plan and take appropriate action to ensure that it can effectively carry out its functions under the Act where this is shown to be necessary. The concerns raised by the Parks Planning Section of the Council were investigated and amendments to the provisions of the District Plan have been formulated.

The Proposed Plan Change will ensure that the provisions for the development and management of open space in the City are appropriate, and effective in achieving Council's strategic objectives. The revised rules will enable routine works to be carried out more simply.

5.0 STRATEGIC CONTEXT

5.1 Auckland Regional Growth Strategy

The Auckland Regional Growth Strategy 2050 (ARGS) is a non-statutory policy guideline that provides a framework for land and resource planning in the Auckland Region. The Auckland Regional Growth Strategy: 2050 was developed by the Auckland Growth Forum and has a 50 -year time horizon. It has an emphasis on an integrated approach to the long-term management of the Auckland region.

It seeks to ensure that there is a consistent approach to managing the social, economic, and environmental effects of future growth across the Region. One of the desired regional outcomes of particular relevance to the Proposed Plan Change is "the protection and the maintenance of the character of the region's natural environment", and also "sustainable use and protection of the region's natural and physical resources". These broad objectives are expanded and include a number of specific outcomes, which are relevant to the Plan Change. These are the coastal environment which seeks the maintenance of the natural, character of the coast; habitat which seeks the expansion and protection of high-quality indigenous habitat; and open space which seeks a greater range and diversity of protected open space.

It is considered that the Proposed Plan Change will have a positive outcome in terms of managing the public open space resource. In particular the proposed provisions for park maintenance will ensure a high standard of amenity. The rules relating to the Coastal Edge/Riparian Margins and Coastal Natural Areas reflect the importance of achieving a balance in terms of the protection of the natural environment quality of coastal land within esplanade reserves with the provision of public access. It is concluded that the economic benefits of the Proposed Plan Change will enable more funding for general maintenance of parks in the Open Space, and will facilitate the positive outcome envisaged for the region as it grows.

6.0 STATUTORY REQUIREMENTS AND PLANNING FRAMEWORK

6.1 Resource Management Act

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

Proposed Plan Change 12 was publicly notified following the Resource Management Amendment Act 2003.

The Act provides a statutory framework for the management of natural and physical resources. The purpose of the Resource Management Act is '*to promote the sustainable management of natural and physical resources*'.

Section 5 (2) defines the purpose of the Act, sustainable management as:

"managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Section 6 outlines Matters of National Importance that must be recognised and provided for:

"6. Matters of National Importance –

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, site, waahi tapu and other taonga:*
- (f) *The protection of historic heritage from inappropriate subdivision, use and development.”*

Section 7 sets out Other Matters that must be given particular regard including:

- (a) *“Kaitiakitanga;*
 - (b) *The efficient use and development of natural and physical resources;*
 - (c) *The maintenance and enhancement of amenity values;*
 - (d) *Intrinsic values of ecosystems;*
 - (e) *Maintenance and enhancement of the quality of the environment;*
- ...

Section 8 of the Act requires that managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.

Part IV of the Act relates to functions, powers and duties of Central and Local Government.

Section 31 sets out functions of territorial local authorities for giving effect to the Act within its boundaries. These functions include the integrated management of the natural and physical resources of the district and the control of the effects of the use or development of land

Section 32 imposes a statutory responsibility to evaluate the options available to achieve the Council's particular objectives or policies.

Part V of the Act relates to Standards, Policy Statements and Plans. Section 73 of the Act provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.

Section 74 states the matter Council must have regard to when changing its District Plan and includes its functions under the act and any Regional Policy Statements. Under section 75, a District Plan must not be inconsistent with a Regional Policy Statement.

Section 76 requires that when making a rule that Council must have regard to the actual or potential effect on the environment including adverse effects of that rule.

Section 35 of the Resource Management Act 1991 requires that a local authority monitor the suitability and effectiveness of its plan in managing the City's environment. Council therefore has a duty and care to ensure that its District Plan remains relevant in order to achieve integrated management of its natural and physical resources.

6.2 Amendment to the Act

The Resource Management Amendment Act 2005 (“the RMAA”) came into force 10 August 2005, and introduces a range of changes to the principal Act. There are sections of the Act that have been amended and new sections which will require changes to the process and the content of plan changes. However, Section 131 Transitional provisions relating to the provisions of the principal Act, states that:

- (1) *The amendments made by this Act do not apply to –*
- (a) *a policy statement, plan, change, or variation that, on or before the commencement of this Act, has been publicly notified but has not proceeded to the stage at which no further appeal is possible: or ...*

It should be noted that there is an amendment to the Act which includes a new clause 8AA Resolution of Disputes that provides an opportunity for meeting submitters for the purpose of clarifying or facilitating the resolution of any matter relating to the proposed plan change prior to the Hearing. The pre-hearing meeting may then be referred to mediation. A report on the meeting or mediation is required before the hearing and the local authority must have regard to the report on making decisions on the plan or policy statement.

However this section is not a requirement under the transitional provisions of the amended Act and furthermore it is considered that a pre-hearing cannot be contemplated as many matters raised in the submissions by the Te Atatu Residents and Ratepayers Association and Anne Grace and their further submissions are the subject of a current appeal against Plan Change 2 (ENVA0026/05).

The provisions of the Amendment Act (clause 30(1)) also includes new provisions in relation to the incorporation of documents, such as standards requirements or recommended practices of international or national organisations or prescribed in any country or jurisdiction, and any other material that deals with technical matters and is too large or impractical to include in or print as part of the plan.

Likewise, under the transitional provisions of the Amendment Act (s131(10)) material that has been incorporated by reference in a plan change has legal effect as part of the plan change. Prior to the amendment of the Act, legal advice was obtained on the submissions questioning the inclusion of documents outside the plan that were introduced by the plan change. The Analysis of Submissions section of this report addresses these matters and includes recommendations to modify some of the definitions.

The Resource Management Amendment Act has now clarified the law by confirming that a district plan or proposed plan can include reference to non-statutory documents, such as Operative Reserve Management Plans, Waitakere City Parks Strategy, Waitakere City Leisure Strategy and The New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004) referred to in Plan change 12. A copy of clauses 30 – 35 of the First Schedule to the Resource Management Amendment Act will be provided to elected members at the hearing of this matter.

Although the Resource Management Amendment Act was passed following notification of Plan Change 12, nonetheless the new clauses 30-35 are deemed to apply retrospectively to the Plan Change, under s131(10) Resource Management Amendment Act. The new Clause 30(3) confirms that:

- (3) *Material incorporated by reference in a plan or proposed plan has legal effect as part of the plan or proposed plan.”*

A consequential amendment will be required to relevant rules, to reflect the following :

1. Where it is intended that a non-statutory document is to have effect as part of the district plan, then this must be confirmed by council in any decision to confirm plan change 12;
2. The non-statutory document must be certified as a correct copy. To that end a certified copy will be available at the hearing, and copies are available for inspection by members of the public, as required under clauses 30 –35;
3. As it is intended that the most up-to-date version of a non statutory document is to be relied upon (to reflect on-going amendments to reflect best practice) then this needs to be expressly stated in the plan change.

A70

To satisfy the requirements of the Act, Appendix 'C' attached at pages A70 to this report includes a list of the non-statutory documents that have been incorporated by reference into the District Plan, and are intended to have legal effect as part of the District Plan. It should be noted that the non-statutory documents included in Plan Change 12 have all been through a consultative process under their respective legislation.

6.3 Auckland Regional Policy Statement

Section 75 of the Resource Management Act 1991 requires that a district plan should not be inconsistent with a regional policy statement. (now amended 'to give effect to')

The Auckland Regional Policy Statement (ARPS) provides a resource management framework for managing environmental effects within the Auckland region. Chapter 2 provides the 'Regional Overview and Strategic Direction' for the Auckland Region and in 2.5.1 lists nine Strategic Objectives.

The second strategic objective is "To maintain and enhance the overall quality of the environment of metropolitan Auckland, including its unique maritime setting, volcanic features, cultural heritage values, and public open space." (writer's emphasis). This objective is particularly relevant to the plan change which relates to public open space.

It is considered that the plan change will facilitate the maintenance and enhancement of the overall quality of public open space by providing a new framework for managing parks and reserves. Two new policies introduced by the plan change recognises the two functions that public open space serves, being the conservation of the natural environment and provision for the recreation needs of the public. The Auckland Regional Council and Department of Conservation are the other public agencies involved with the management of public open space. Both have made submissions that are supportive in principle of the plan change and their concerns relate only to ensuring the details of the plan change are workable.

Objective 5 of the strategic direction is "To protect the intrinsic values of the Region's natural resource base, and to make appropriate provision for the avoidance, remediation or mitigation of adverse effects on the Region' environment, including the identification of significant natural features and landscapes, and areas of significant indigenous vegetation and habitat, and protection of these from inappropriate subdivision use and development."

The plan change introduces changes to the natural areas rules for vegetation alteration and earthworks to provide for specific parks maintenance, parks furniture and signage as permitted activities provided the work meets standards that are defined in the rules. It can be argued that the plan change includes more limitations on the nature of permitted activities in parks.

Other objectives that relate to the Plan Change are in the chapters 6 Heritage and 7 Coastal Environment. Objective 6.3 is:

1. To preserve or protect a diverse and representative range of the Auckland Region's heritage resources.
2. To maintain, enhance or provide public access to the Region's heritage resources consistent with their ownership and maintenance of their heritage value.
3. To protect and restore ecosystems and other heritage resources, whose heritage value and/or viability is threatened.
4. To maintain the overall quality and diversity of the landscapes of the Auckland Region.

Much of the region's natural, geological and landscape heritage are found within the Waitakere Ranges Regional Park and the plan change would ensure that these resources continue to be protected and restored where degraded. It should be noted that the plan change is but one of the methods in a raft of methods and initiatives that will ensure a positive outcome for the regions natural resources. As the explanation to the objective notes the Council "can provide for revegetation programmes through": .financial contributions upon subdivision and conditions of resource consent; "in their own reserve management activities..."

A number of objectives in Chapter 7 are relevant to the plan change. The complex nature of the coast is recognised in the District Plan by the Coastal and Riparian Margins/Coastal Edge Natural Areas Rules. The proposed plan changes provide for parks maintenance within these areas as a permitted activity but the provision of parks infrastructure requires resource consent to ensure protection of the natural environment is balanced with the provision of public access and recreation opportunities. The plan change continues to give effect to the objectives and policies of the Auckland Regional Policy Statement

The Auckland Regional Council (ARC) has expressed support for the plan change although a number of relatively minor changes have been requested through their submission. These changes have been addressed generally to the satisfaction of the Auckland Regional Council through recommended changes to the Proposed Plan change as outlined in Section 9.0 of this report.

Therefore it is considered that the Proposed Plan Change is entirely consistent with strategic objectives of the Auckland Regional Policy Statement as the Plan Change will ensure the protection of natural and physical resources and the efficient use and management of the public open space in the City.

6.3 Current District Plan Provisions

The Open Space Environment, comprises areas of publicly owned space ranging from large park areas in the Waitakere Ranges to small local reserves in the urban environments. The Open Space Environment includes land in both the urban and non urban parts of the City.

The land identified as Open Space Environment in the District Plan includes the entire range of natural areas. The objectives and policies relating to the protection and enhancement of water quality, indigenous fauna and flora, ecosystems – stability, natural features including coastlines and streams form the basis for the comprehensive management of the "Green Network" of which the City's network of parks is a major component.

The approach taken in the District Plan has been to integrate Reserve Management Plans to direct activity in the Open Space Environment. Reserve Management Plans were considered to be more effective in terms of managing impacts on the reserves themselves, while District Plan rules are deemed to be most effective in managing the effects on surrounding areas. The Open Space Environment includes bulk and location and traffic generation rules for parks buildings, noise, glare and infrastructure rules that apply to any activity and non residential activities and a rule for signs.

When there is an Operative Reserve Management Plan for a park, activities such as parks buildings and signs are provided for as permitted activities in the Open Space Environment rules as long as they satisfy the bulk and location rules, the Natural Area rules and are specifically included in the reserve management plan. Other activities such as new parks infrastructure even when provided for in a reserve management plan required resource consent under the Natural Areas rules.

The Open Space Environment rules for all activities in parks with no Operative Reserve Management Plan require resource consent and the status of the activity is automatically Non-complying, which can mean full notification.

The rules for the Natural Areas in the District Plan control vegetation alteration and earthworks, impermeable surfaces and in some cases buildings and stock. In parks that have an Operative Reserve Management Plan, vegetation alteration for the maintenance and/or the provision of track and trail systems is the only parks activity provided for and it is a permitted activity. However, it should be noted that the earthworks rules do not include permitted activities for the maintenance and/or the provision of track and trail systems, which means that earthworks required for tracks and trails require resource consent even where there is a reserve management plan for a park, unless the work is currently being done without consent.

Policies in the District Plan relating to the Open Space Environment include the design and location of new public open space and the provision of public access when land is subdivided. The methods for achieving these policies are articulated through the subdivision rules rather than the rules of the Open Space Environment. There are some existing policies relating to the protection and restoration of native vegetation and fauna habitat within the Green Network which includes both public and private land.

Therefore it is considered that the range of activities and development that can be undertaken on parks under the existing rules for the Open Space Environment and the Natural Areas are unduly restrictive.

6.5 Section 32 Considerations

Section 32 of the Resource Management Act 1991 requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted

Council's obligations under section 32 (3) 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 providing reasons for that evaluation.

The Section 32 analysis done prior to notification of the Proposed Plan Change identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act.

The Section 32 analysis concludes that the proposed plan change would provide for more efficient management of the Open Space Environment which includes all parks and reserves in the City. The Proposed Plan Change provides an appropriate set of rules for the activities that occur in the Open Space Environment and relate to the various Natural Areas. The use of reserve management plans as a tool for managing development in the Open Space Environment has proven inefficient given that most activities normally associated with the development and use of parks without an Operative Reserve Management Plan require a resource consent, or, if included in a reserve management plan may not be detailed enough thereby also requiring an application for resource consent to ensure assessment of potential adverse effects on the surrounding environment. With Operative Reserve Management Plans for only 24 percent of the parks in the City the Parks Section is incurring significant annual costs and delays in terms of achieving efficient and effective asset management.

Several other options have been evaluated and have been found to be impractical or unacceptable. This included options such as completing all the Reserve Management Plans. This option would not be possible because there has been no financial provision in the Long Term Council Community Plan to employ the additional staff that would be required to complete all the Reserve Management Plans. The Long Term Council Community Plan is not due to be reviewed until 2006 and should funding be gained there would be a further two or three years, at least, to actually undertake the work as the process which involves extensive community consultation generally takes two years to complete.

Retaining the existing rules would result in a continuation of the need for resource consents for activities such as parks maintenance with increasing costs a likely outcome as fees increase, including those of consultants used to prepare the applications for resource consent.

Another option such as retaining the existing provisions for the Open Space Environment but eliminating fees for processing applications for resource consents for development would not resolve the funding of the Parks Section of the Council because costs would continue to be borne by the ratepayer. Already the Council has made provision for no processing fees for vegetation alteration not associated with a development in order to encourage the protection of vegetation in the city and to encourage compliance with the rules.

It is considered that the Proposed Plan Change achieves the purpose of the Act as the proposed framework of policies and rules within the existing context of the District Plan for public open space is aligned with the purpose of achieving the sustainable management of natural and physical resources in the City. The Natural Areas Rules in the District Plan will continue to apply to the activities and development in the Open Space Environment, albeit in a more integrated and defined way that ensures adverse effects on the environment are avoided, remedied or mitigated.

The City's parks and reserves constitute a large part of the Green Network, and enhancing and protecting it, is an integral part of the Council's strategic direction. Internal processes and documents for managing the Green Network have been evaluated to ensure that the Proposed Plan Change is appropriate within the context of the City's strategic direction. The equivalent regulatory methods for open space in adjoining local authorities have been compared for consistency, the various Auckland Regional Authority planning documents considered and it is concluded that the Proposed Plan Change is not inconsistent with any relevant statutory or non-statutory document as discussed above.

In addition, it is considered that the Proposed Plan Change provides for policies and rules for development and activities in the Open Space Environment that will safeguard the natural and built environment from adverse effects. Monitoring the new rules would be undertaken as part of the Council's responsibilities under the Act.

Currently spending on parks and reserves is 15% of every dollar from the rates, being the second highest expenditure after wastewater. In the context of existing expenditure on parks, the importance placed on the Green Network and the provision of open space for the well being of the city's residents, and the increasing usage of parks expected in the future, the provision of timely, cost effective and sustainable development is essential. To conclude, Proposed Plan Change 12 is required to ensure that the District Plan provisions allow for the timely, cost effective and sustainable development of parks and reserves in the Open Space Environment consistent with the Council's strategic direction.

7.0 ANALYSIS OF SUBMISSIONS

A17-A69

A total of 8 submissions and 9 further submissions were received in respect of Plan Change 12. A full copy of the submissions is attached in Appendix B at pages A17 to A69 of this report.

Given the relatively small number of submissions that were received the approach taken for the analysis of submissions that has been adopted for the purposes of the Hearing is to take each submission and discuss the points raised. This includes reference, within the discussion, to the support or opposition of other submitters to ensure a comprehensive resolution of issues.

7.1 Submission from Watercare Services Limited. (Submission 12/1/-)

The submitter seeks the deletion of the proposed changes to the Vegetation Alteration rules in the General, Restoration, Managed and Protected Natural Areas to allow them to continue to undertake minor works that have insignificant environmental effects.

Submission (12/1/-) is opposed by a further submission from the Te Atatu Residents and Ratepayers Assn. (12/12/-4).

Watercare Services Ltd further submission (12/9/-1) opposed the submission from Te Atatu Residents and Ratepayers Assn., (12/4/-) because permitted activities in their proposal for the Orangihina – Harbourview land do not provide for vegetation clearing and provision of infrastructure and should be the same as in the Open Space Environment.

Discussion

The submitter operates and maintains various regional water supply facilities in the City. Watercare Services Ltd is a designating authority and has fourteen designations in the District Plan. The majority of this designated land is located in the Open Space Environment, with large areas held in the Waitakere Ranges Regional Park (WRRP). Different Natural Areas apply to the land. Their operations also include a wastewater pump station and pipeline in the Harbourview - Orangihina Park that is in the Open Space Environment. The submitter is concerned that the proposed changes to the General, Restoration, Managed and Protected Natural Areas rules relating to vegetation alteration will require Watercare to seek resource consent for minor works that have insignificant environmental effects.

The Natural Areas Rules provide for a range of vegetation alteration as permitted activities. The rules apply regardless of the particular Human Environment.

The Proposed Plan Change introduced a new component to Rule 2 Vegetation Alteration in all the Natural Areas to provide for **Parks Maintenance in the Open Space Environment** as a permitted activity. It replaced the rule that provided for 'vegetation alteration for track and trail systems where provided for in park management plans approved under the Reserves Act 1977, Conservation Act 1987, Local Government Act 1974 or Auckland Centennial Memorial Park Act 1941 (the latter Act is now defunct having been superseded by the Local Government Amendment Act 2002).'

The proposed rule was formulated on the basis that parks maintenance was the responsibility of either Waitakere City Council or the Auckland Regional Council.

The Natural Areas Vegetation Alteration Rules also provide for the removal of weeds as permitted activities. Given that the definition of parks maintenance also includes weed removal it was decided to differentiate the weed removal being undertaken in parks and reserves in the Open Space Environment, from all other Human Environments. Thus, the clause "**and is not in the Open Space Environment**" was added to the existing provisions relating to vegetation alteration for the removal of vegetation listed in the Removable Vegetation Appendix and/or the Environmentally Damaging Plants Appendix and the proviso that any *clearance* does not exceed a *total cleared area* of 500m².

By adding this clause Watercare Services Ltd is now inadvertently excluded from undertaking weed removal around its pipelines and other facilities. This is because the definition of Parks Maintenance allows only the Auckland Regional Council parks staff or contractors with a Parks Contract to undertake the work. (The definition of a Parks Contract includes only Auckland Regional Council, Waitakere City Council or Department of Conservation and its contractors). It should be noted that there is no provision for weed removal in the Protected Natural Area, and therefore the subject clause is not included in this Natural Area. Therefore, the relief or decision sought by Watercare in their submission for the removal of the subject clause "and is not in the Open Space Environment" is not applicable to the Protected Natural Area.

As previously mentioned Watercare Services Ltd is a designating authority. The conditions relating to Watercare Services Ltd designation requires an Outline Plan for proposed works in accordance with the designation. The designations relating to Watercare Services Ltd are not subject to all relevant Natural Area Rules or relevant Human Environment Rules or specified City Wide Rules unlike the requirements of some other designating authorities.

The purpose of the Plan Change is to provide for parks maintenance in the Open Space Environment as a permitted activity in all the Natural Areas of the City. The Proposed Plan Change wording "and is not in the Open Space Environment" that has been added to the permitted activity relating to weed removal in the General, Managed and Restoration Natural Areas is not necessary and if removed, would improve the clarity of the rules without changing their meaning.

It should be noted that the operative Natural Area rules for vegetation alteration make some provision for vegetation alteration or pruning and weed removal as permitted activities regardless of the human environment the site is located in. Currently there are occasions when illegal vegetation alteration work is undertaken on parkland by adjoining landowners, often to preserve views. The use of the proposed clause "and is not in the Open Space Environment" in conjunction with these permitted activities makes it very clear that such work may not be undertaken in the Open Space Environment. However, the Proposed Plan Change includes an additional reference in Step 7 of the Procedural Guideline For The Rules at the front of each Natural Area requiring the written approval of the landowner for any proposed activity in the Open Space Environment. A consequential change is required for the General Natural Area Vegetation Alteration rule to include a Non-Complying Activities category to ensure that activities that may not have been provided for can be considered.

Thus, the wording "and is not in the Open Space Environment" following on from the clause relating to 'vegetation alteration for the removal of vegetation listed in the Removable Vegetation Appendix and/or the Environmentally Damaging Plants Appendix and generally provided that any *clearance* does not exceed a *total cleared area* of 500m² included by the Plan Change should be deleted to allow Watercare Services Ltd., the ability of to undertake weed removal as previously provided for.

It is recommended that:

The submission of Watercare Services Ltd (12/1/-)

Be accepted by deleting the additional clause 'and is not in the Open Space Environment' from the vegetation alteration rules to ensure that regardless of the human environment the status quo is retained

The further submission of the Te Atatu Residents and Ratepayers Assn. (12/12/-4).

Be rejected

7.2 Submission from Auckland Regional Council (ARC). (Submission 12/2/-)

The submitter makes the submission in support of the Proposed Plan Change but seeks a number of amendments and additions to the definitions, and assessment criteria for the Natural Area rules. These amendments seek to better accommodate its operations and administrative responsibilities. The Auckland Regional Councils submission relates to four specific sections of the plan change that are:

- General issues relating to the context of the plan change
- Introduction to the Rules, Rules Content, Written Consents and Notification
- City Wide Rules – definitions
- Natural Areas Rules and the associated Assessment Criteria

The submission seeks to ensure that the Auckland Regional Council's ability to undertake routine park maintenance is not unduly constrained, and activities, facilities and development undertaken in the Waitakere Ranges Regional Park is sufficiently recognised in the District Plan rules.

Submission (12/2/-) is supported by a further submission (12/10/2) received from the Department of Conservation. This submission supports 10 points of the Auckland Regional Council submission and opposes in part, one point (3.10.1) that relates to vegetation alteration for parks maintenance beyond 1 metre of the edge of footpaths, tracks, boardwalks and internal roads. The submission accepts that while some tree maintenance may be required consideration must be given to threatened plants that may be present in the vicinity of footpaths, tracks, boardwalks and internal roads.

Submissions from the Te Atatu Residents and Ratepayers Association (12/3/-), (12/4/-), (12/6/-) and Anne Grace (12/5/-) are opposed to the plan change in its entirety.

A further submission (12/13/-5) received from the Te Atatu Residents and Ratepayers Association., opposes the Auckland Regional Council Submission (12/2/-) in its entirety.

A further submission from the Te Atatu Residents and Ratepayers Association (12/15/-7) opposes the submissions from Department of Conservation (12/8/-) in their entirety.

GENERAL

The Auckland Regional Council in clause 1.1 of the submission is seeking alignment with the project investigating options for the long term protection of the Waitakere Ranges and Foothills (such as legislation).

Discussion

The submitter owns and/or manages the Waitakere Ranges Regional Park (WRRP) comprising over 16,000 hectares of land. The Waitakere Ranges Regional Park falls within the Open Space Environment and includes all Natural Areas of Waitakere City. The majority of the Waitakere Ranges Regional Park is designated for Regional Park purposes. Parts of Waitakere Ranges Regional Park that are not designated include Pae o te Rangi, Paruroa/Big Muddy Creek and Whatipu. The conditions relating to the Auckland Regional Council designation state that it shall be subject to:

1. all relevant Natural Area Rules
2. City-Wide Rules of the Plan relating to: noise standards, natural hazards, hazardous facilities and contaminated sites, and heritage
3. all relevant Human Environment Rules relating to: noise, air discharges and odour, dust, glare and vibration”

The Council has now endorsed the option of protective legislation for the Waitakere Ranges and Foothills. “PROTECTION OF THE WAITAKERE RANGES AREA – BACKGROUND PAPER DECEMBER 2003” was reviewed to identify issues that Plan Change 12 may have an effect on. Chapter 4 ‘Current Management And State Of The Ranges’ includes a discussion about whether the specific values of the Ranges (previously described) are being sufficiently protected. The three main activities that affect the quality of landscapes identified in the report are vegetation clearance, earthworks that visibly alter the topography and introduction of built structures including buildings, roads, jetties and utility infrastructure. The draft bill has been reviewed and it is considered that the level of protection and management of the natural environment contained within the Open Space Environment would, if implemented in accordance with the policies and rules of the proposed plan change, be maintained and improved.

Introduction to the Rules

The Auckland Regional Council in 2.1 of the submission seeks changes to the Introduction to the Rules, including the description of the Open Space Environment, Written Consents and Notification – Discretionary and Non-Complying Activities (Volume 1 of the District Plan),

Introduction to the Rules – The Introduction provides a brief description of each rule in the City – Wide, Natural Areas and Human Environment Sections of the Plan. Under the Human Environment rules the Open Space Environment is described as “covering land owned by the Council, the Auckland Regional Council or other public agencies.”

The submitter notes that not all the land in the Waitakere Ranges Regional Park is owned by the Auckland Regional Council although it is under their management. The submitter requests that the definition for Open Space Environment be amended as follows: "covering land owned by the Council, **owned or managed by** the Auckland Regional Council or other public agencies.

Discussion

The Auckland Regional Council has advised that it 'owns' the majority of land in the Waitakere Ranges Regional Park. However, there is a small percentage of land that it only manages. Such land includes various parcels of 'Reserves Act' land which is vested for control and management by the Auckland Regional Council, land currently leased to the Auckland Regional Council but upon expiry of the lease will transfer to the Auckland Regional Council and land managed on behalf of the QE II National Trust – (Lake Wainamu). The Auckland Regional Council submission refers to the description of 'Open Space Environment' in the Introduction to the Rules section. The description of Open Space Environment has not been altered by the Proposed Plan Change, but it should be accurate and reflect the situations raised in the submission, particularly in terms of the new framework being proposed for the management of open space in the City. The request for the change to the description of the Open Space Environment is a consequence of the proposed plan change and should thus be accepted. (The formal definition of Open Space Environment in the 'Definitions' section of the City Wide Rules would however remain unchanged).

A further consequential amendment would require this change to be incorporated into the 'Procedural Guideline for both the Open Space Environment and Natural Areas Rules where it states that the written approval of the landowner – Waitakere City Council, Auckland Regional Council, or Department of Conservation will be required in relation to any proposed activity in the Open Space Environment. The wording would need to be amended as follows:

"Note that the written approval of the landowner– Waitakere City Council, Auckland Regional Council or Department of Conservation will be required in relation to any proposed activity in the Open Space Environment, **and includes land that is managed by the Auckland Regional Council.**

It is recommended that:

The submission 2.1 of Auckland Regional Council (12/2/-) including consequential changes

Be accepted

WRITTEN CONSENTS & NOTIFICATION – DISCRETIONARY ACTIVITIES AND NON-COMPLYING ACTIVITIES

The Auckland Regional Council in 2.2 is concerned with the clause relating to applications for resource consents, which may be processed without notification. The Auckland Regional Council notes that Waitakere Ranges Regional Park consists of large parcels of land surrounded by numerous landowners, many of whom may not be affected by the proposed activity. The Auckland Regional Council is concerned that obtaining the written consents of all adjoining landowners particularly those who are some distance away would be impracticable.

A further submission from Department of Conservation (12/10/2) supports this clause of the Auckland Regional Council submission as it is relevant to the administration of the conservation estate.

Discussion

This section of the introduction to the rules is a **guideline only** to assist applicants and interested parties about the processes relating to resources consents. It is not intended to limit the Council's discretion or responsibilities under Section 93 of the Act. The wording of the clause, 'applications will generally not be notified if the written consent of the owners of adjoining sites are submitted' in number 2 and 3 of the guideline was not changed by the Plan Change. Therefore to accommodate the change requested by the Auckland Regional Council it is suggested that the following note could be added to both number 2 and 3 of the guideline to clarify that the written consent of all the adjoining landowners of very large sites may not be required, rather those likely to be affected by a proposal would be required.

'NB with respect to large reserves or parks, written consents from the owners of adjoining sites would not necessarily mean all land owners but those persons affected by the proposal. The discretion as to who is affected would be determined on a case by case basis by Council.'

It is recommended that:

The submission 2.2 of Auckland Regional Council (12/2/-) and further submission from Department of Conservation (12/10/2)

Be accepted

CITY WIDE RULES - DEFINITIONS

The Auckland Regional Council submission (12/2/-) in point 3.0 relates to the definitions which are prescriptive and seeks clarification for parks activities, structures and infrastructure that may have been omitted.

Boardwalks

The Auckland Regional Council seeks clarity on where the ground level is measured from and notes that the use of boardwalks is also to protect soil structure or other environmental resources, and that rafts and viewing platforms provide pedestrian access and should be recognised in the definition.

A further submission from Department of Conservation (12/10/2) supports point 3.2.2 of the Auckland Regional Council submission relating to the protection of soil structure or other environmental resources, and the inclusion of rafts and viewing platforms in the definition of boardwalk.

Discussion

The plan change introduced boardwalks as a new definition and they are defined as "a structure under 1m in height that provides pedestrian access over a wetland, along the coast or through bush in order to protect vegetation and /or roots".

Structures under 1m in height do not require a balustrade and there is a determination (2002/11) sought by the Building Industry Authority (now called the Department of Building and Housing) relating to the height of boardwalks. The determination relates to the height of boardwalks and determines they are measured from ground level, to the walking surface or top of the structure. Ground level is defined in the District Plan and this measurement is applicable to the ground level under water or wetlands.

Boardwalks are included in the definition of Parks Infrastructure as they are associated with walkways and tracks. The effects of establishing Parks Infrastructure is considered to relate mainly to the natural environment. The bulk and location effects of Parks Infrastructure are managed by rules in the Open Space Environment that require yards or setbacks from boundaries and assessment of building location – natural landscape elements (sensitive ridge or headland/cliff/scarp).

The Auckland Regional Council submission has requested that the rafts and viewing platforms are also provided for pedestrian access and should be recognised in this definition. However it is considered that a raft is a structure that floats on the surface of the water with the aid of pontoons. It is therefore not considered a board walk. Rafts are structures of a different nature which could, along with viewing platforms be included more appropriately in the definition of *Parks Facilities* which includes buildings or structures up to 100m² in area. Parks facilities are provided for in the Open Space Environment because buildings and/or structures have effects in terms of their bulk and location that need to be managed. Including viewing platforms in the definition of Parks Facilities provides controls on their bulk and location including their location on sensitive ridges, or headland/cliff/scarp.

These matters can be resolved by amending the definition of boardwalks and clarifying that their height is measured from ground level including under ephemeral or permanent water bodies or wetlands and deleting the words over a wetland, along the coast or through bush.

It is recommended that:

The submission 3.0 of Auckland Regional Council (12/2/-) and further submission by Department of Conservation (12/10-2)

Be accepted to the extent that the definition of boardwalk shall be amended as follows; means a structure that provides pedestrian access and is under 1m in height measured from ground level including under ephemeral or permanent water bodies or wetlands, to the walking surface or top of the structure over a wetland, along the coast or through bush in order to protect soil structure, vegetation and/or roots or other environmental resources

Bridges

The Auckland Regional Council in 3.3.1 of the submission (12/2/-) advises that it has boardwalks that are over 1m in height that would not be classified as bridges under the Bridges definition because they do not pass over waterways.

Discussion

The definition of Bridge(s) is 'a *structure* that spans and provides access over a *river*, stream or watercourse but excludes a culvert or covered pipes'. The definition was amended by the Proposed Plan Change to provide for boardwalks over one metre in height by including the underlined words as follows: 'and includes board walks over 1.0m above the ground.'

Boardwalks that are over a metre in height have a similar form, function and effect as bridges. They generally provide access over wetlands or around the coast or through bush to facilitate access or for the safety of users and/or to protect the environment. An amendment to the definition of bridge is needed to ensure that structures for pedestrian access that are over one metre in height above the ground and therefore fall outside the definition of a 'boardwalk' are included despite not always being located over water. By adding the following underlined words to the end of the proposed definition 'and includes structures for pedestrian access that are over 1.0 metre above ground', even where they do not span a water body, the concerns of the submitter would be addressed, potential confusion avoided and the definition improved.

It is recommended that:

The submission 3.3.1 of Auckland Regional Council (12/2/-)

Be accepted to the extent that the definition of bridge shall be amended as follows: means a structure that spans and provides access over a river, stream or watercourse and includes boardwalks or structures for pedestrian access that do not span a water body but excludes a culvert or covered pipes

Parks Buildings and Parks Facilities

The Auckland Regional Council in 3.4.1 of their submission (12/2/-) seek clarity that farm buildings, such as stockyards and shearing sheds located on parts of the Waitakere Ranges Regional Park fall within the definition of Parks Buildings.

The Auckland Regional Council in 3.6.1 of their submission seek clarification as to how 'shelters/shade' structures, which are included in the definition of Parks Facilities, are defined and whether other types of shelters such as information kiosks would be included. The grouping of shelters with shade structures does not recognise the other uses of the shelters on Regional Parks, for example for information and interpretation. These two submissions are considered together as both relate to buildings and structures.

A further submission from Department of Conservation (12/10/2) supports 3.4.1 and 3.6.1 of the Auckland Regional Council submission as they too have 'a concession that relates small scale farming activities' and various types of shelters.

The Waitakere Ranges Regional Park submission (12/7/-) seeks clarification of the words 'community purposes' in the Parks Buildings definition by seeking the insertion of an additional clause - in brackets to the definition (non-profit or charitable organisation with registered legal status).

Discussion

There are two definitions that deal specifically with buildings and structures in the Open Space Environment. The definition of Parks Buildings in the District Plan has been modified by the Plan Change to include any building or structure over 100m² and is differentiated from Parks Facilities which are buildings and structures under 100m². Flood lights are also included in the definition of parks buildings. The two definitions are as follows:

Parks Buildings means flood lights, or any *building or structure* 100m² or more in gross floor area, for a use associated with a park or for community purposes, located in the Open Space Environment ~~but shall not include:~~

~~childrens play equipment
buildings of up to 100m² in gross floor area used for the storage of parks equipment or maintenance materials; or
goal posts~~

but excluding buildings and structures defined as, parks facilities, parks furniture, parks infrastructure, parks signs and parks sports field structures., and

Parks Facilities means any building or structure less than 100m² in gross floor area, located in the Open Space Environment, and shall include the following:

- shelters/shade structures,
- toilets and changing facilities
- buildings used for the storage of parks equipment or maintenance materials, or equipment associated with an activity on a park
- childrens play equipment, excluding skate board facilities

but excluding buildings and structures defined as parks buildings, parks furniture, parks infrastructure, parks signs and parks field structures.

Parks Buildings and Parks Facilities are differentiated generally in terms of gross floor area on the basis that larger buildings are likely to have more effects on the environment in terms of bulk and location and visual impact than smaller buildings. It is also considered that the activities in parks buildings would generate greater effects on the environment from noise, lighting and parking. The submitter has requested that buildings associated with the farming operations on some parks such as shearing sheds and stockyards should be included in the definition of parks buildings. It is considered likely that shearing sheds, would fit the definition of parks buildings in terms of their size, and stockyards would fall into the definition of parks facilities being a structure under 100m². There could also be similar structures to stockyards on parks providing for equestrian activities.

It is considered that this interpretation is a logical in terms of the distinctions implicit in the two definitions. The definitions of parks buildings and parks facilities have been worded in an open ended manner by using the wording 'and shall include the following' and then listing some typical examples and are not exclusive to the examples provided. Any activities that need to be excluded in the definitions are specified mentioned. An example being skate board facilities which are specifically excluded from the category of 'childrens play equipment' in the definition of parks facilities.

Therefore, it is not considered necessary to specifically include shearing sheds and stockyards in the definitions as requested by the Auckland Regional Council because they would already fit within the definitions, which are worded in an open ended manner and with the rules which apply to the definitions.

The submitter has also requested whether other types of shelters such as information kiosks would be included in the definition of Parks Facilities. This definition includes a list of structures and buildings which are most likely to be located on parks and/or are typical examples. However, a wide variety of structures and buildings such as band rotundas and shelters for trampers were contemplated. As previously mentioned the list of items in the definition is preceded by the wording which states "and shall include the following:" to indicate that it could include other similar structures or buildings.

It is considered that the wording of the definition could be improved by including the words (in bold) '**for a use associated with a park**' as per the Parks Building definition. This would clarify that the Parks Facilities are buildings and structures associated with the use of a park providing for the wide range of activities that occur on parks. Secondly for the list of items which are included in the definition of Parks Facilities the wording (in bold) could be added as follows: 'and shall include **but not be limited to** the following:' The above changes should be included in the wording of all the proposed parks definitions as consequential changes to ensure clarity and standardisation.

It is considered that there is merit in the Auckland Regional Council request to include shelters, information and interpretation kiosks. Therefore, the Parks Facilities definition should be amended by separating shade structures from shelters and including the latter in a separate bullet point with information and interpretation kiosks.

The Auckland Regional Council submission in Clause 3.9.4 also requested that outdoor education structures and facilities and viewing platforms be specifically included in the definition of Parks Infrastructure. However, these structures are considered to fall into the Parks Facility definition because Parks Infrastructure relates to development such as paths, trails and the like with the only structures and buildings included being footbridges, boardwalks, boat ramps and jetties. Parks Infrastructure was formulated in terms of the potential effects on the natural resources of the environment which are controlled by the Natural Area rules rather than amenity effects which are controlled under the bulk and location rules in the Open Space Environment. While viewing platforms may be similar to boardwalks in terms of their structure likely locations mean that they could be on ridges or elevated land and they could be high structures. Therefore it is considered it would be more appropriate to include viewing platforms in the definition of Parks Facilities as they would be subject to the bulk and location rules of the Open Space Environment.

The proposed changes to the wording of the definition should remove any doubt about the type of building or structure that could be established as Parks Facilities. **It should also be noted that any structure or building that exceeds the limits defined in Parks Infrastructure such as a boardwalk would default to the definition of Parks Facilities or Parks Building under the Open Space Rules.**

The Waitakere City Council submission (12/7/-) sought to clarify the words 'community purposes' by the addition of the following bracketed words (non-profit or charitable organisation with registered /legal status). In hindsight, this clause could be both limiting and unnecessary but it highlighted a concern at the time for a clear signal that the use of parks and reserves should be restricted to community organisations/activities directly related to being located on a park.

Parks are required to be classified under the Reserves Act 1977 as local purpose, recreation, scenic and historic, national and esplanade reserves. The classifications determine the primary purpose of each reserve classification. The Reserves Act 1977 contains delegations and processes for the granting of leases, licences and easements for the use of parks and reserves of different classification. It is considered that this is the most appropriate mechanism for determining the status of organisations and individuals using parks rather than dealing with it in the District Plan. The only time that the Reserves Act 1977 would not apply would be when land is held in fee simple by the Council, but there are other mechanisms in the Local Government Act 2002 and amendments to relating to land used for parks.

It is therefore generally considered that there is no need to include the additional wording in the definition as requested.

It is recommended that:

Point 3.6.1 of the submission from Auckland Regional Council (12/2/-) and further submission by Department of Conservation (12/10-2) supporting Point 3.6.1

Be accepted to the extent that the definition of parks facilities shall be amended as follows: includes the following additions 'for a use associated with a park, including, but not limited to, information and interpretation kiosks, outdoor education structures and facilities and viewing platforms

That points 3.4.1 of the submission from Auckland Regional Council (12/2/-), Point 4.2.1 of the Waitakere City Council submission (12/7/-) and further submission by Department of Council (12/10-2), and the submissions from the Te Atatu Residents and Ratepayers Association (12/3/-), (12/4/-), (12/6/-) and Anne Grace (12/5/-)
Be rejected

Parks Contracts

The Auckland Regional Council submission in 3.5.1 raises the definition of Parks Contracts as an issue. The definition provides for contractors to undertake work for Waitakere City Council, Auckland Regional Council and Department of Conservation in their respective estates but would not include organisations that are lessees, or have a concession. All organisations have lessees and the issue requires clarification. The Auckland Regional Council would like the definition broadened to accommodate this scenario.

The Te Atatu Residents and Ratepayers Association submission (12/4/-) seeks the 'deletion of all references in the Waitakere District Plan to landowner's documents that have not been subjected to rigorous testing via Resource Management Act processes, such as "reserve management plans", parks contracts etc including the Harbourview - Orangihina Open Space Management Plan.

The Department of Conservation further submission (12/10/2) supports point 3.5.1 of the Auckland Regional Council submission.

The Te Atatu Residents and Ratepayers Association further submission 12/13/-5) opposed the entire Auckland Regional Council submission (12/2/-) for the reasons outlined in the original submissions and citing the need for a separate policy and rules for the parkland in the Waitakere Ecological District/ Waitakere Ranges Regional Park and for independent commissioners to separate regulatory and non regulatory functions of the Auckland Regional Council submission.

The Te Atatu Residents and Ratepayers Association further submission (12/14/-6) opposed the entire Waitakere City Council submission (12/7/-) and cited a 'conflict of interest' as landowner/regulator under the Resource Management Act and needing independent commissioners and planners for the hearing.

Discussion

The definition is as follows:

Parks Contracts means a formal contract, between the Council (Waitakere City Council or Auckland Regional Council) or the Department of Conservation and a contractor, for work undertaken on land in the *Open Space Environment* that incorporates quality assurance processes, best practice methods and relevant and current Codes of Practice for work in parks.

The reason a Parks Contract definition was introduced in Plan Change 12 was a result of discussions with the Parks Section of Council which administers contracts for the majority of the work undertaken on parks in the City.

Prior to Plan Change 12 the framework for determining if any work to be undertaken in parks was a permitted activity depended on whether there was an Operative Reserve Management Plan for the park or reserve. Proposed work on a park or reserve without an Operative Reserve Management Plan required a resource consent, which assessed the environmental effects and imposed conditions to manage those effects.

The proposed plan change provides for parks maintenance as a permitted activity in all Natural Areas, and requires the proposed work to be undertaken “in accordance with a parks contract”. This recognises that parks contracts are used by the Parks Section of the Council to manage work undertaken on parks and reserves by contractors, regardless of the need or otherwise for a resource consent. Parks Contracts are generic documents adapted to each specific project but all with specific requirements relating to environmental best practice methods to be used to undertake work in parks. Parks contracts include site supervision usually by the consultant who has been responsible for the design of the building or development such as landscaping works or parks infrastructure. Examples of best practice methods that are included in parks contracts include the establishment of erosion and sediment controls, if required, to minimise adverse effects on the environment, disposal requirements for surplus spoil and protection of vegetation adjacent to a proposed work. Supervision of parks projects is undertaken as part of the parks contract by the consultant firm that has designed or developed the proposal.

The conditions of resource consent are imposed to mitigate the effects of undertaking the work. A substantial number of resource consents for activities (such as repairs to bridges, tracks and footpaths) were analysed and it was considered that the conditions imposed were very standard, to the extent of being almost the identical as best practice conditions that are included in Waitakere City Council parks contracts for this type of work. Therefore, in terms of parks maintenance (which relates to existing parks facilities and infrastructure) the best practice conditions included in parks contracts, together with supervision by professional consultants will ensure good environmental practices and outcomes.

The definitions for parks infrastructure and parks signs also included a requirement for the work to be undertaken in accordance with a parks contract, although it should be noted that parks infrastructure is a permitted activity only in the General Natural Area. During the preparation of the plan change the Council consulted with the Auckland Regional Council and was advised that work in the Waitakere Ranges Regional Park is often undertaken by Auckland Regional Council parks staff, and the definitions of Parks Infrastructure and Parks Maintenance needed to reflect this.

The Auckland Regional Council submission requested amendments to the relevant definitions of Parks Maintenance, Parks Infrastructure and Parks Signs to reflect that the Auckland Regional Council also has leaseholders who undertake work in regional parks. The further submission from Department of Conservation supported the Auckland Regional Council submission as they too have leaseholders who undertake work in the parks they administer. The proposed changes to the maintenance and infrastructure definitions suggested by Auckland Regional Council are as follows: ‘provided that work being undertaken was in accordance with a Parks Contract, or by “Auckland Regional Council Parks Staff” using environmental best practice methods such as is specified in the Operative Guidelines for the Design of Outdoor Visitor Structures in Accordance with the New Zealand Building Code, New Zealand standards for tracks and structures (HB8630) and operative Reserve Management Plan.’ However, the submission from the Te Atatu Residents and Ratepayers Association seeks the deletion of all references to landowners documents that have not been subjected to rigorous testing via Resource Management Act processes, such as “reserve management plans”, parks contracts etc including the Harbourview - Orangihina Open Space Management Plan.

Legal advice obtained by the Council suggests that Section 74(1)(d) specifically contemplates that a Plan can incorporate methods other than rules to implement its policies, but there is a requirement to classify activities and these must be clearly defined. The legal advice has suggested that the most appropriate method of providing for best practice methods is to include the requirements, standards and terms in the Permitted Activities Rules relating to Parks Maintenance and to require Parks Maintenance that is not carried out in accordance with the relevant standards to be a controlled or limited discretionary activity. This would be identical to the current situation where the pruning of certain vegetation is a permitted activity if done in accordance with 'accepted modern arboricultural practice'.

Given the above legal advice, reference to the Council's documents in the proposed definitions of Parks Maintenance, Parks Infrastructure and Parks Signs should therefore be deleted. The different processes the bodies responsible for administering public open space use to manage work undertaken on the land depending on whether they are dealing with a contractor, a lessee or their own staff is also probably irrelevant in the definition. The problem of leaseholders such as clubs on reserves undertaking maintenance of parks buildings with a parks contract would also be solved. It should be noted too that landowners consent is required for any work on parks and reserves that is not undertaken by the Parks Section of Council, which enables conditions to be imposed. In conclusion it is considered that rules for Parks Maintenance provided as permitted activities in all natural areas should include the following words in the rule: Any vegetation alteration (or earthworks) for Parks Maintenance provided the above work is authorised by Waitakere City Council, Auckland Regional Council or Department of Conservation and/or undertaken by their staff, lessees or contractors.

In view of the decision to delete reference to parks contracts from the above definitions the definition for parks contract is probably unnecessary and should also be deleted from the District Plan.

There are two proposed policies included in the proposed plan change and they both include reference to 'other methods' to achieve the outcomes of the policies. The addition of Parks Contracts can be included in the other methods for both policy 10.28 and 11.32. to reinforce the tools to be used for the management of open space in the City.

It is recommended that:

That point 3.5.1 of the submission from Auckland Regional Council (12/2/-), and the further submission of DoC (12/10-2) relating to 3.5.1 of the Auckland Regional Council submission

Be rejected

because the definition of parks contract and reference to it in the definitions of Parks Maintenance and Parks Infrastructure shall all be deleted, as the bodies responsible for administering public open space use different processes to manage work undertaken on the land. These processes depend on whether they are dealing with a contractor, a lessee or their own staff.

And the submissions from the Te Atatu Residents and Ratepayers Association (12/3/-), (12/4/-), (12/6/-) and Anne Grace (12/5/-), and further submissions from The Te Atatu Residents and Ratepayers Association (12/13/-5) and (12/15/-7)

Be accepted to the extent that reference to landowners documents - parks contract shall be removed from the definitions of parks maintenance and parks infrastructure

Parks Field Structures

The Auckland Regional Council in clause 3.7.1 seeks an expansion of the definition for Parks Field Structures to include recreational activities that currently take place on parkland such as the Waitakere Golf Course within Waitakere Ranges Regional Park.

Discussion

The Auckland Regional Council has advised that there are recreational activities, which although not provided by the Auckland Regional Council, currently take place on land in the Waitakere Ranges Regional Park. An example is the Waitakere Golf Course in Falls Road in the Cascades-Kauri Park.

Parks field structures are defined as 'structures relating to an active sport or recreational activity provided by Waitakere City Council that are located in the *Open Space Environment*, and shall include the following:

goal posts, cricket nets, fences, petanque courts, playing courts, sideline shelters and other similar structures which are ancillary to and used in conjunction with, sports grounds, playing fields, hard courts and greens, skate board facilities and pony club course structures (jumps) and arenas but

excluding *buildings* and *structures* defined as *parks buildings*, *parks facilities*, *parks furniture*, *parks infrastructure* and *parks signs*'.

Thus the proposed definition for parks field structures allows only those sports facilities that are provided by Waitakere City Council for its parks. The definition was formulated following discussions with the Parks Section of Council who generally take responsibility for the provision of parks field structures for sports fields on Councils parks and reserves. Amendments to the definition are necessary to include all situations pertaining to the provision of field structures on parks and reserves. There are times when clubs take responsibility for field structures with the consent of the landowner. Obtaining landowners consent enables the Council to impose conditions of consent. Thus the definition should be amended to include the words 'or authorised' after the word 'provided' to cover all situations. By changing Waitakere City Council to a more general word "Councils" the Auckland Regional Council submission would be satisfied. *Check that landowners consents are required for Auckland Regional Council managed land*

It is recommended that:

The submission 3.7.1 of Auckland Regional Council (12/2/-)

Be accepted that the Parks Field Structures definition shall be amended as follows: to include the words 'provided or authorised by Waitakere City Council or Auckland Regional Council for a use associated with a park, and shall include but not be limited to the following.

Parks Furniture

The Auckland Regional Council in 3.8.1 seeks changes to the definition for Parks Furniture. Memorial seats and Pou are sometimes donated by individuals, Iwi and organisations to both authorities which should be recognised in the definition. Also the list of park furniture needs to be expanded to include the following: vehicle counters, security cameras and security lighting.

Discussion

The definition for parks furniture is:

Parks Furniture

Parks Furniture means outdoor furniture provided by the Waitakere City Council or Auckland Regional Council that is located in the *Open Space Environment* and shall include the following:

- seats, tables, rubbish bins, barbecues, drinking fountains, and
- sculptures/art works
- bicycle racks
- amenity lighting

The discussion relating to the provision or authorisation of Parks Field Structures on parks is applicable to the definition of Parks Furniture. To achieve consistency and clarity the definition should be amended to include the words 'provided or authorised' by Waitakere City Council or Auckland Regional Council for a use associated with a park on land in the Open Space Environment. Including the words 'for a use associated with a park' in the definition would also ensure a consistent approach to the provision of structures and the like in parks. The addition of vehicle counters, security cameras and security lighting to the list in the definition would be appropriate. The words 'and shall include' shall be amplified by the following proviso and 'not be limited to' so as to provide flexibility.

It is recommended that:

The submission 3.8.1 of Auckland Regional Council (12/2/-)

Be accepted that the Parks Furniture definition shall be amended as follows: to include the words provided or authorised by Waitakere City Council or Auckland Regional Council for a use associated with a park, in the Open Space Environment and shall include but not be limited to the following, and to include Pou, security cameras and security lighting and vehicle counters

Parks Infrastructure

The Auckland Regional Council in 3.9 has requested a number of minor changes to the definition of Parks Infrastructure that relate to provision for mountain biking, clarification that typical farm fencing is included, increasing the number of carparks from a maximum of 5 vehicles to 10 vehicles, for internal park access roads, outdoor education structures and facilities be included in the definition and for amendments to the documents relating to the undertaking of infrastructural work.

The submission (12/7/-) received from the Parks Leisure Section of Waitakere City Council also requested a minor amendment to the definition of Parks Infrastructure to include mountain bike trails.

The submission (12/8/-) received from Department of Conservation supports the submission in terms of increasing the provision for carparks from a maximum of 5 vehicles to 10 vehicles as carparks on land managed by the two organisations are generally bigger than this.

The submission (12/4/-) received from Te Atatu Residents and Ratepayers Association Inc in paragraph 3.3 seeks deletion of all references in the Waitakere City District Plan to landowner's documents that have not received rigorous testing via "Resource Management Act" processes, such as "reserve management plans", parks contracts, etc including the Harbourview- Orangihina Open Space Management Plan, and marae concepts/development plans to underpin elements of the District Plan.

Submission (12/4/-) received from Te Atatu Residents and Ratepayers Association Inc is supported entirely by a further submission from Anne Grace (12/16/-8)

Discussion

The Auckland Regional Council submission notes that they are currently investigating the feasibility of mountain biking activity in parts of the Waitakere Ranges Regional Park as per Management Action 55.2-2 of the Regional Parks Management Plan (Management Plan):

“Mountain biking which is currently prohibited in the Waitakere Ranges will be reviewed in consultation with affected stakeholders and the community. Any proposed change in policy will require a formal amendment to the Plan”.

The definition for Parks Infrastructure provides for a range of development in parks including cycleways, footpaths, bridle trails and the like. It did not include any provision for mountain bike tracks. Mountain biking is a popular and growing sport. Parks Infrastructure is the most appropriate definition in which to list mountain bike tracks in terms of the range of development already provided for. Parks infrastructure has been carefully assessed to include development which requires minimal assessment in terms of the Open Space rules relating to bulk and location. It has also been carefully assessed for its potential effect on the natural environment. Vegetation alteration for Parks Infrastructure is a Permitted Activity in the General Natural Area, a Controlled Activity in the Restoration, Managed and Coastal Natural Areas and a Limited Discretionary Activity in the Protected, and Riparian Margins/Coastal Edges Natural Areas. Mountain bike tracks could be located on rugged terrain and earthworks for Parks Infrastructure in the Restoration, Managed and Coastal Natural Areas which are more sensitive natural environments are a Limited Discretionary Activity so the effects on topography would be adequately assessed through the resource consent process and effects mitigated.

The Reserve Management Plan for Te Rangi Hiroa Park provides for the development of a mountain bike trail through an area of pine trees. The Waitakere Ranges Regional Park Management Plan would need to be formally amended to provide for mountain bike trails and it thus considered there are sufficient controls to ensure that it can be managed.

Clause 3.9.2 of the submission seeks assurance that the fencing described in the parks infrastructure definition would also include farm fencing. As post and rail fencing best describes the type of fencing usually associated with parks it was included in the definition. However there is no reason why the definition cannot be broadened by adding the words ‘or similar fencing’ to ensure that farm fencing is included.

Clause 3.9.3 of the submission relates to the provision of carparking and a request to increase the maximum number of vehicles from 5 to 10 vehicles. The reasons given are that most carparks provided at various locations throughout the Waitakere Ranges Regional Park well exceed this stated maximum.

The Parks Infrastructure definition includes carparks for a maximum of 5 vehicles. It was considered that the carparking is not an essential element for the use of smaller parks or reserves, particularly in the urban area of the City.

As already discussed Parks Infrastructure is assessed mainly in terms of the Natural Areas rules. The only opportunity to construct or establish five carparks on a park without resource consent is in the General Natural Area where the rules provide for Parks Infrastructure as a Permitted Activity. The Vegetation Alteration and Earthworks Rules of all the Natural Areas include provision for the escalation into a different activity category those works that exceed the provisions of the definition of Parks Infrastructure. For example the definition Parks Infrastructure provides for the establishment of five carparks, with more than five carparks jumping to the next category of activity. The purpose of establishing thresholds for development included in the definition of Parks Infrastructure in the Natural Areas Rules is to ensure that the potential effects on the environment from the establishment of this infrastructure are managed. The vegetation alteration and earthworks for Parks Infrastructure that meets the definition, is provided for as Controlled and Limited Discretionary Activities in the Restoration, Managed and Coastal Natural Areas and are Limited Discretionary Activities in the Protected and Riparian Margins/Coastal Edges Natural Areas. Exceptions from the definition of Parks Infrastructure escalate to a stricter use category. The vegetation alteration and earthworks rules for Parks Infrastructure are designed to minimise adverse effects in the Green Network. Provision for Parks Infrastructure as Permitted Activities in the General Natural Area rules is to encourage development in existing cleared locations thereby avoiding vegetation alteration.

Rule 7 Parking, Access And Traffic Generation of the Open Space Environment requires a resource consent for the provision of carparking for Parks Buildings, Parks Sports Fields and Parks Field Structures (where there is no existing on site parking). Generally applications are assessed as Limited Discretionary Activities as the number of carparks is not specified. The effects of parking, access and traffic generation also require assessment to ensure the visual impact on neighbourhood character or the natural landscape and safety issues are appropriately addressed.

It is considered that increasing the number of carparks provided for in the Parks Infrastructure definition, to 10 as requested by the submitter would necessitate a change to include Parks Infrastructure in Rule 7 of the Open Space Environment as a Limited Discretionary Activity to allow a proper assessment of the carpark layout, access and egress and assessment of visual and traffic impacts.

The submitter notes that “the majority of carparks provided for at the various locations throughout the Waitakere Ranges Regional Park well exceed this stated maximum”. If this is the case then even a small increase in the number of carparks may still be inadequate. It is noted that there are strict guidelines for the provision of carparks in the Regional Parks Management Plan: Volume 1 Overview and Strategic Direction (32.4 Roads and parking areas – p94).

It is considered increasing the number of carparks to eight would help meet the submitters request and as an application for resource consent is required in all natural areas except the General Natural Area environmental effects of proposals would be able to be assessed. A consequential change would require an application for resource consent for larger carparks in parks and reserves to ensure that the traffic generation is assessed and appropriate design and safe access and egress into the roading system is provided.

In conclusion the Parks Infrastructure definition should be amended to increase the number of carparks to 8, and Parks Infrastructure for 9 or more carparks should be included as a Limited Discretionary Activity in Rule 7 Parking, Access And Traffic Generation in the Open Space Environment to ensure that the effects of traffic generation are assessed.

Clause 3.9.4 of the submission seeks internal park access roads, outdoor education structures and facilities and viewing platforms should be specifically included in the definition of parks infrastructure. Parks Buildings and Parks Facilities have been discussed earlier in this report. Buildings and structures less than 100m² in gross floor area are defined as Parks Facilities, and would include outdoor education structures and facilities and viewing platforms (depending on their gross floor area). The Open Space Environment Rules apply to Parks Facilities to ensure that the potential effects in terms of their bulk and location on the environment are assessed and managed. The definition of Parks Infrastructure includes some structures such as bridges and boardwalks, although the main focus is the provision of paths, tracks and access drives that do not have bulk and location effects but may have effects on vegetation alteration and earthworks. Therefore, while all natural areas rules apply to Parks Infrastructure the only Open Space Environment Rules that apply are Yards (setbacks from site boundaries) and Building Location – Natural Landscape Elements.

The definition of Parks Infrastructure includes access drives associated with parks activities. This would not encompass internal park access roads given the difference in scale between access drives and park access roads. It is considered that there should be provision for the latter in the exceptions for Parks Infrastructure as having no provision would escalate them into the non-complying activity category and there needs to be adequate vehicular provision for visitors to parks facilities in larger parks. Again it should be noted that there are strict guidelines for the provision of roads in the Regional Parks Management Plan: Volume 1 Overview and Strategic Direction (32.4 Roads and parking areas – p93) and the Council must approve the design of any new road before construction commences (clause 32.4.2.2). Therefore parks access roads shall be included within the exceptions categories.

Clause 3.9.5 of the submission seeks changes to the definition to include the incorporation of parks guidelines and standards by reference to establish the standards with which parks infrastructure is undertaken.

The documents named in the Parks Infrastructure definition were included to ensure that work undertaken as a permitted activity or with a resource consent at a lower threshold than required under the existing provisions meets certain standards. Waitakere City Council has a plethora of strategic documents relevant to the management of parks and reserves that include parks and leisure strategies, Waitakere City Weed Strategy – Adopted September 2000, Five Year Weed Management Priorities for Waitakere City Council July 2001, standards both specific to Council and national standards, and operative reserve management plans for several parks and reserves. The Auckland Regional Council has a Regional Parks Management Plan April 2003. Some of these documents have been through a public consultation process but collectively they are a valuable resource with objectives and programmes for management of Council's asset.

The Council has sought legal advice to ascertain the validity of including reference to these documents in District Plan. Advice received is for these documents to be included as standards and requirements in the rule. Therefore, vegetation alteration for Parks Infrastructure would be a permitted activity in the General Natural Area provided that the work is undertaken in accordance with standards and requirements that include using environmental best practice methods such as accepted modern arboricultural practices, measures to protect adjoining vegetation, and is in accordance with the New Zealand Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004). The Council has been advised that the wording should be exclusionary rather than inclusive, such as *"If the activity - parks infrastructure – is not being carried out in accordance with environmental best practices, New Zealand standards for tracks and structures (HB8630) it shall be a limited discretionary activity."*

The Resource Management and Electricity Legislation Amendment Bill has been enacted and the amendments became effective on 10 August 2005. A new Part (3) to Schedule 1 of the Principal Act provides for the incorporation of documents by reference in plans and proposed plans. It encompasses a broad range of standards, requirements or recommended practices for international or national organisations or standards, requirements or recommended practices in any country or jurisdiction. The documents must be certified as a correct copy and be retained by the local authority and the proposed limitations would require updated versions of documents to be used only when approved by variation or plan change. The process for Plan Change 12 is too far advanced to utilise the provisions of Part 3 of Schedule 1. Therefore the standards previously included in the definition of Parks Infrastructure will be included as performance standards in the General Natural Area Rules where Parks Infrastructure is a permitted activity. Legal advice has confirmed that the reference to some of these documents in the assessment criteria is appropriate.

It is recommended that:

The submission 3.9 of Auckland Regional Council (12/2/-) and further submission by Department of Conservation (12/10-2) and The Te Atatu Residents and Ratepayers Association further submissions (12/13/-5) and (12/14/-6)

Be accepted to the extent that the definition of parks infrastructure shall be amended as follows: include mountain bike trails, provision for carparking for a maximum of 8 vehicles; and removal of the reference to parks contracts and other documents from the definition of parks infrastructure. A consequential change will require the addition of Parks Infrastructure for carparks with 9 or more carparks in the Open Space Environment Rule 7 Parking, Access And Traffic Generation as a Limited Discretionary Activity.

Be rejected to the extent that provision for parks access roads is included in the exceptions for Parks Infrastructure in the Natural Areas Rules and outdoor education structures and facilities and viewing platforms which are included in the Parks Facilities definition

Parks Maintenance

The Auckland Regional Council in 3.10. of their submission seeks several changes to the parks maintenance definition.

3.10.1 seeks changes to broaden the scope of vegetation alteration permitted in the definition of parks maintenance as it is considered that the 1.0 metre distance from the edge of a track or road is inadequate.

Submission (12/2/-) is opposed in part by a further submission (12/10/2) received from Department of Conservation, seeking that consideration be given to threatened plants which may be in the vicinity of footpaths, tracks, boardwalks and internal roads specified in the Plan Change.

3.10.2 seeks a word change from re-metalling and re-shelling bush tracks to a more generic word, re-surfacing, and provision for the re-alignment of tracks within specified parameters as limiting it to within a metre of the existing track is not practical.

3.10.3 seeks clarification as to whether licensees or leasees may repair and maintain the exterior of parks buildings.

3.10.4 seeks the inclusion of "re-vegetation" in conjunction with re-planting" in the eleventh bullet point of the definition.

3.10.5 seeks provision for the replacement of structures or buildings when required for health and safety reasons.

3.10.6 seeks amendments to the documents for undertaking parks maintenance work. Submission (12/2/-) is opposed by a further submission (12/13/-5) from The Te Atatu Residents and Ratepayers Association Inc seeking a separate policy and rules for parkland in the Waitakere Ecological District/ Waitakere Ranges Regional Park.

Submission (12/5/-) from Anne Grace is supported by a further submission (12/10/2) from Department of Conservation in relation to the protection of scarce plant species which is a priority for the Department. The documents referred to in the definition of parks maintenance need to be sufficiently robust to ensure that the co-ordination of replanting schemes and the protection of threatened plants is guaranteed.

Submission (12/7/-) from Waitakere City Council seeks a minor change to the 7th bullet point to that relates to the replacement, repairs and maintenance of existing bridges, boardwalks and culverts to ensure that the allowance for any enhancement/improvements in the width, length or height is no more than 40% for bridges and boardwalks less than 15m in length and culverts less than 10m in length. The Proposed Plan Change makes provision for longer bridges, boardwalks and culverts as Limited Discretionary or Discretionary Activities.

Discussion

Parks Maintenance was developed as an activity category that relates to the variety of work undertaken by Councils or Department of Conservation, either by their staff or by contractors to maintain parkland and the existing infrastructure and facilities on the land. In defining the activities to be included in Parks Maintenance care was taken to determine the limits of work to ensure that the effects on the environment would be no more than minor and would be within the general parameters of what is already a permitted activity in terms of the vegetation and earthworks rules in particular. Thus Parks Maintenance is provided for as a permitted activity in the Natural Area rules.

The Auckland Regional Council submission would like the first bullet point for Parks Maintenance, which relates to vegetation alteration, broadened in two respects. The bullet point states:

- *vegetation alteration of native and exotic vegetation* less than 6.0 metres in height and less than 600mm in girth (measured 1.4metres above the ground), within 1.0m of the edge of an existing footpath, track, footbridge or boardwalk to provide for unimpeded pedestrian access on the path

The proposed changes to the scope of vegetation alteration is firstly, to include internal park roads as they are not currently included in the definition and are necessary within the Waitakere Ranges Regional Park and within the Department of Conservation estate (they are also in some Council parks), and secondly to increase the distance from the edge of a path or track where vegetation alteration can be undertaken.

Initially a distance wider than 1 metre was considered but was rejected after discussions within Council because it was considered that the rules should align with existing permitted activities in the Vegetation Alteration rule of all the Natural Areas. In essence if a large tree falls over a track, the trunk and or branches can be cut to allow passage through without undertaking work beyond the 1.0 metre distance. Given that there are internal park roads in parks it would be appropriate to include them within the clause as allowing for safe passage along these roads is necessary as it is for pedestrians along tracks. Likewise, making provision for their re-surfacing should be included in the definition of Parks Maintenance under the bullet point "resealing and sealing metal car parks, access drives and internal park roads.

The submitter's concerns relating to the protection of threatened plants is partially addressed in the appendices of the District Plan. Appendix E: Outstanding Vegetation Sites lists the areas with the vegetation type and Appendix G: coastal protection areas describes the geographical features and geomorphology and lists the characteristic vegetation. The Regional Parks Management Plan: Volume 1 Overview and Strategic Direction notes on p 58 that "The Department of Conservation is responsible for ensuring the survival of New Zealand's flora and fauna, and the community and ecosystems of which they are a part. To do this effectively, the Department has developed a ranking system of threatened species requiring conservation action. This list of species requiring conservation action is under review and may change over the life of this Plan." Eleven species are included in the list. Some of these species are likely to be located in the Waitakere Ranges Regional Park and others are in coastal areas. There is currently no specific form of protection for threatened or endangered species within any permitted activities in the Natural Areas. Creating an inventory of endangered/threatened plant species and appropriate rules to manage this resource is outside the scope of the Plan Change. The introduction of a City Wide rule for endangered/threatened species or species in low numbers or declining, as requested by a submitter would have implications for private landowners with those natural resources on their properties. Thus while the Council may consider undertaking an investigation of endangered/threatened plant species in the City in the future, there is no certainty of their inclusion in the District Plan as a plan change to meet the statutory requirements of the Act would be required.

It is considered that undertaking parks maintenance before this matter is investigated would have not have an adverse effect on the environment given that the existing District Plan vegetation alteration rules in all the Natural Areas allow "any vegetation alteration for track and trail systems where provided for in parks management plans approved under the Reserves Act 1977, Conservation Act 1987, Local Government Act 1974 or Auckland Centennial Memorial Park Act 1941." Proposed Plan Change 12 would improve environmental outcomes given the new rules for vegetation alteration for track and trail systems are less permissive with vegetation alteration for parks maintenance within strict parameters. Although the inventory in Appendix E 'Outstanding Vegetation Sites' of the District Plan generally relates to sites in the Open Space Environment, before a park contract is awarded the nature and extent of the work has to be established and quantified by the Parks Section and if there are specific plant communities near the work these would be identified and protected. An opportunity to consider vegetation species that are threatened or endangered could be included in the criteria for vegetation alteration in all of the Natural Areas Rules. Including reference to endangered/threatened species or species in low numbers or declining in the assessment criteria for the vegetation alteration rules would ensure that applications requiring resource consent address this issue as part of the application.

The assessment criterion in the natural area rules could be expanded to include the words in bold as follows:

'The extent to which the proposed *vegetation alteration* is for development proposed in a relevant Operative Reserve Management Plan, Parks Concept Plan, current Waitakere City Parks Strategy or current operative Regional Parks management plan **and avoids significant vegetation and any species known to be threatened or endangered.**'

Clause 3.10.2 relates to the re-alignment of tracks. It is considered that the re-alignment of tracks is not something that can be dealt with through the process of parks maintenance. The reasons for track re-alignments are to minimise environmental degradation, such as erosion from tracks with steep grades and/or to rationalise facilities in the Waitakere Ranges Regional Park. The old tracks or sections of track are usually closed off and re-vegetated, or as the Waitakere Ranges Regional Park Management Plan states they may, where appropriate, be used as 'routes' (the lowest standard of track, that is unmarked and is used by experienced trampers). The Waitakere Ranges Regional Park Management Plan states on p86 that "botanical and archaeological surveys will be carried out before any tracks will be extended" and also that "track usage, including the effects on surrounding vegetation, will be monitored as an aid in planning and setting standards for a maintenance programme." Therefore, although track re-alignments probably do not increase the overall vegetation clearance within a park and are to reduce adverse environmental effects there could be short term or temporary adverse effects which need to be managed.

Although provision has been made to allow enhancements/improvements to existing boardwalks, bridges and culverts within the definition of parks maintenance this is consistent with the definition of 'upgrading' of infrastructure in the District Plan and also because research has indicated that where foot bridges are lengthened and heightened it is usually within the existing alignment of the connecting footpaths/tracks and the provision is for a maximum length of 15m only. (See comments below for Waitakere City Council submission on the minor change to the wording of this bullet point to ensure that it reads as follows:

"replacement, repairs and maintenance of existing bridges, boardwalks, and culverts and includes any enhancement/improvements provided that there shall be no more than a 40% increase in the width, length or height of footbridges or boardwalks ~~over~~ **less than** 15m in length or culverts ~~over~~ **less than** 10m in length".)

Providing for the re-alignments of tracks in the definition of Parks Maintenance is too difficult as quantifying and accommodating a number of small changes over time would have a cumulative effect, and while probably positive in the long term it is considered that establishing new track alignments should be dealt with comprehensively. Furthermore the General, Restoration, Managed and Coastal Natural Areas Rules provide for exceptions to parks maintenance as Limited Discretionary Activities as follows:

- any *vegetation alteration* for *Parks Maintenance* when the *native* and *exotic vegetation* is more than 6.0 metres in height and greater than 600mm in girth (measured 1.4 metres above the ground), or where the width from the edge of a footpath, track, footbridge or boardwalk is greater than 1.0m, or where the enhancement/improvements to a footbridge, boardwalk or culvert exceed 40%, in the *Open Space Environment*.

In the Protected and Riparian Margins/Coastal Edges Natural Areas the above exceptions to vegetation alteration are Discretionary Activities. It is thus considered that while an application for resource consent for Parks Maintenance outside the scope of the definition is required, the status of the activity is not unduly onerous for the Auckland Regional Council and ensures sound environmental management.

The existing District Plan vegetation alteration rules for the General Natural Area allow 'any vegetation alteration for the maintenance or provision of track and trail systems where provided for in park management plans..' and the vegetation alteration rules for the natural areas in the green network allow 'any vegetation alteration for track and trail systems where provided for in park management plans.' There is a management plan for Waitakere Ranges Regional Park and it is considered likely (apart from the General Natural Area where vegetation alteration for both maintenance and provision of tracks is permitted) that the scope of vegetation alteration would be less permissive under the proposed rules in the Plan Change.

The designation for the Auckland Regional Council parks requires compliance with all relevant natural areas rules. Establishing a new track would fall into the category of Parks Infrastructure and the Vegetation Alteration and Earthworks Rules of the Natural Areas (apart from the General Natural Area) would require an application for resource consent. The applications would generally be for controlled or limited discretionary activities. It is considered that the proposed plan change, with the minor amendments as discussed above will ensure that management of the green network will be improved overall.

Clause 3.10.3 of the submission refers to the final bullet point of the Parks Maintenance definition, which relates to repairing and maintaining the exterior of parks buildings, parks facilities, parks field structures, parks furniture, and parks signs and clarification is sought as to whether licensees or lessees may repair and maintain the exterior of parks buildings. Discussions with property personnel at Council have indicated that it is often the responsibility of the leaseholder. The last part of the Parks Maintenance definition currently excludes leaseholders undertaking the work as it states “provided the work is undertaken in accordance with a parks contract...” This part of the definition will be changed to delete reference to landowners documents and parks contracts and can be modified with the addition of words ‘provided that the above work is authorised by Waitakere City Council, Auckland Regional Council or Department of Conservation and/or undertaken by their staff, leaseholders or contractors’. With the landowners consent being required for any work on a park by a club or other organisation conditions of consent can be imposed to ensure that appropriate controls and conditions apply.

Clause 3.10.4 of the submission seeks the inclusion of “re-vegetation” in conjunction with re-planting” in the eleventh bullet point of the definition.

Further Submission (12/10/-2) from Department of Conservation supports Submission (12/5/-) from Anne Grace on this matter to the extent that protection of scarce plant species is a priority for the Department, and the documents referred to under the definition of parks maintenance need to be sufficiently robust to ensure that the co-ordination of replanting schemes and the protection of threatened species is guaranteed.

The last bullet point in the Parks Maintenance definition is ‘replanting’ and it could be expanded with the addition of the words ‘and re-vegetation’. However, to meet the concerns of the submitter the Parks Section advised that ‘replanting’ should be replaced with a sentence that encompasses current best practice and knowledge by stating “ecosystem restoration by replanting or re-vegetation”. This would ensure that the purpose and emphasis of the work is restoring a damaged ecosystem by supplementing the existing desirable native vegetation. It is therefore recommended that the bullet point be amended.

Clause 3.10.5 of the submission (and further submission in support from Department of Conservation) seeks provision for the replacement of structures or buildings when required for health and safety reasons in the definition of parks maintenance. The replacement of buildings and structures that were legally established would fall within existing use rights. However it is unlikely that the replacement of an old building would be identical to the original building given that there tends to be an increase in size, even if small, in order to accommodate more users, provide better facilities, or to include changes in building technology as well as other changes such as a better location. Examples abound with respect to public toilets that have been replaced – in the urban area they are often smaller unisex toilets and at beaches they tend to be bigger reflecting the increasing park users and facilities provided. Therefore it is considered that the existing use rights provisions in Section 10 of the Act (it is noted however, that the existing use rights for activities or structures legitimised solely by designation, are no longer retained if the designation is removed) would be applicable if the replacement structure or building is ‘of the same or similar character, intensity and scale to the original in terms of bulk and location and it had been lawfully established.

Clause 3.10.6 of the submission is identical in intent to Clause 3.9.5 of the submission (relating to Parks Infrastructure) and seeks changes to the definition of Parks Maintenance to incorporate by referencing a number of parks guidelines and standards that establish the standards with which parks maintenance is undertaken. As discussed previously parks guidelines, standards and landowners documents will be deleted from the definition and best practice standards for Parks Maintenance incorporated in the permitted activity rule.

The Submission (12/5/-) from Anne Grace relating to the protection of scarce plant species is supported by the Further Submission (12/10/-2) from Department of Conservation to the extent that their protection is a priority for the Department, and that the documents referred to under the definition of parks maintenance need to be sufficiently robust to ensure that threatened species are protected and replanting schemes co-ordinated. The previous discussion in this section relating to the Auckland Regional Council submission to change the definition of Parks Maintenance to include the realignment of tracks and to increase the 1.0 metre distance from a track for vegetation alteration concluded that these were not appropriate changes. Furthermore, the inclusion of changes to the bullet point '**Ecosystem restoration by replanting and revegetation**' in the Parks Maintenance definition and including reference to scarce plant species in the assessment criteria for Vegetation Alteration Rules of the Natural Areas would address these concerns.

Further submission (12/13/-5) from The Te Atatu Residents and Ratepayers Association opposes Submission (12/2/-) Auckland Regional Council in its entirety and seeks a separate policy and rules for parkland in the Waitakere Ecological District / Waitakere Ranges Regional Park. However establishing a separate policy and rules for parkland in the Waitakere Ecological District Waitakere Ranges Regional Park, is beyond the scope of this plan change which is using the basic effects based framework of the District Plan, albeit changing the role of reserve management plans. However it is worth noting that should the legislation for the Ranges comes into effect a change to the policies and rules for this area of the City may be an outcome in the future if there is a review of the District Plan provisions.

It is recommended that:

The submission 3.10 of Auckland Regional Council (12/2/-) and further submission by Department of Conservation (12/10-2), submission of Waitakere City Council (12/7/-) and The Te Atatu Residents and Ratepayers Association further submissions (12/13/-5) and (12/14/-6)

Be accepted to the extent that the definition of Parks Maintenance shall be amended as follows:

- ***resurfacing instead of re-metalling and re-shelling,***
- ***Ecosystem restoration by replanting and re-vegetation, and***
- ***removal of the reference to parks contracts and other documents from the definition of parks maintenance.***

Be rejected to the extent that the definition of Parks Maintenance will not be changed to:

- ***increase vegetation alteration from 1.0m distance from the edge of a track or road,***
- ***provide for track re-alignments,***
- ***refer to parks contracts as these will be deleted, enabling licensees and leaseholders to undertake repairs and maintenance to the exterior of parks buildings,***

- ***incorporate the replacement of structures when required for health and safety reasons, and***
there will be no separate policy and rules for parkland in the Waitakere Ecological District / Waitakere Ranges Regional Park.

NATURAL AREA RULES

The Auckland Regional Council in 4.0, the final part of their submission, seeks various minor changes and clarification relating to wording irregularities, incorrect reference to documents and clarifying the assessment criteria in the Natural Area rules. Waitakere City Council submission (12/7/-) also requested a change to one of the assessment criteria in the Natural Areas rules.

Discussion

In Rule 2 – Vegetation Alteration of all Natural Areas rules there is provision for permitted, controlled, limited discretionary and discretionary activities for various parks activities such as parks maintenance, parks infrastructure. The words ‘vegetation alteration has not been consistently applied before describing the proposed activity, often just stating ‘parks maintenance in the Open Space Environment’. Therefore including the underlined words ‘vegetation alteration for parks maintenance in the Open Space Environment’ provides clarity to each proposed activity of the Natural Areas rules, and would be consistent with Rule 3 – Earthworks of the Natural Areas rules which almost always state ‘earthworks for’ parks maintenance and the like.

The Note Box for all Natural Areas rules refers incorrectly to the “Proposed Auckland Regional Plan: Sediment Control”. The name of this document which has been updated is “Auckland Regional Plan: Sediment Control” and this should be corrected throughout the Plan.

There is an inconsistency throughout the Natural Areas rules relating to vegetation alteration in the reference relating to where the measurement for the girth of vegetation is taken from. The rule is incorrect where the underlined words states: ‘*native vegetation* and *exotic vegetation* less than 6.0 metres in height and less than 600mm in girth (as measured at any point higher than 1.4metres above the ground). The correct wording is ‘*native vegetation* and *exotic vegetation* less than 6.0 metres in height and less than 600mm in girth (measured 1.4metres above the ground). These inconsistencies need to be corrected.

Assessment criterion 2(e) applying to Rule 2 – Vegetation Alteration of the General Natural Area rules states:

2(e)

The extent to which the proposed *vegetation alteration* is necessary:

- to accommodate *development* otherwise permitted by the Plan
- to ensure the safety or integrity of existing *development* on the *site*
- for *pruning* to provide light
- for *pruning* to preserve *public views*.
- to facilitate the use of land in the *Open Space Environment*

The Auckland Regional Council would like a sixth bullet point added to the criterion to provide for the safety of park users. The suggested bullet point is:

- **To ensure the safety of park users (...)**

The definition of "Clearance" in the definitions section of the District Plan includes a clause "removal or alteration of *vegetation* necessary to avoid injury to persons or damage to property". This clause provides for emergency situations. Current practice in the Council requires a retrospective application for resource consent if it has been necessary to remove a tree in an emergency. There are also wide provisions in Section 338 of the Resource Management Act relating to emergency works.

There is no provision in the definition of Parks Maintenance for vegetation alteration that is either over 6m in height and less than 600mm in girth (measured 1.4metres above the ground) or further than a one metre from a track.

However, the General, Restoration, Managed and Coastal Natural Areas Rules provide for exceptions to parks maintenance as Limited Discretionary Activities as follows:

- any *vegetation alteration* for *Parks Maintenance* when the *native* and *exotic vegetation* is more than 6.0 metres in height and greater than 600mm in girth (measured 1.4 metres above the ground), or where the width from the edge of a footpath, track, footbridge or boardwalk is greater than 1.0m, or where the enhancement/improvements to a footbridge, boardwalk or culvert exceed 40%, in the *Open Space Environment*.

In the Protected and Riparian Margins/Coastal Edges Natural Areas the above exceptions to vegetation alteration are Discretionary Activities. It is thus considered that although the status of the activity requires an application for resource consent this is not unduly onerous for the Auckland Regional Council and ensures sound environmental management.

It is acknowledged that it is sometimes difficult to predict when trees in the bush will fall over in a storm or as a result of disease, and in terms of reducing the damage to surrounding vegetation felling trees that are unsafe is often better management compared to allowing trees to fall naturally. However, it is considered that including the proposed clause in the assessment criteria could be used as an excuse to unnecessarily remove vegetation. Therefore, an application can be made for unsafe trees with appropriate documentation to ensure that if necessary the work can be done quickly if time allows or if an actual emergency occurs the emergency provisions will apply. It is not therefore a necessary addition to the assessment criterion.

The other change requested in the Auckland Regional Council submission relates to another criterion included in all Natural Areas assessment criteria. It states:

"The extent to which the proposed *vegetation alteration* is for development proposed in a relevant Operative Reserve Management Plan, Parks Concept Plan, current Waitakere City Parks Strategy or current operative Regional Parks management plan."

The Auckland Regional Council submission notes that the criterion could be simplified by deleting the words 'current operative Reserve Management Plan' as relevant Operative Reserve Management Plan would include any management plan for either regional parks or Council's parks and reserves. Waitakere City Council submission seeks the addition of the words and 'current Waitakere City Leisure Strategy' for an inclusive approach to the provision of facilities that may be located in the Open Space Environment. It is considered appropriate for this clause to be added to the assessment criteria. These changes would be need to be adopted throughout the Natural Areas rules assessment criteria included in the Plan Change.

It is therefore considered that for these reasons outlined above the proposed amendments would improve the clarity of the definitions and processes for undertaking development in the Open Space Environment.

It is recommended that:

The submission 4.0 of Auckland Regional Council (12/2/-) and submission by Waitakere City Council (12/7/-)

Be accepted as follows:

- ***including the words ‘vegetation alteration’ at the beginning of each Natural Areas Vegetation Alteration Rule,***
- ***updating the Note Box wording to reflect the correct document name (Auckland Regional Plan: Sediment Control),***
- ***correcting the words in brackets for vegetation alteration rules (measured 1.4metres above the ground),***
- ***changes to the assessment criterion ‘The extent to which the proposed vegetation alteration is for development proposed in a relevant current Operative Reserve Management Plan, Parks Concept Plan, current Waitakere City Parks Strategy or current Waitakere City Leisure Strategy. ~~current operative Regional Parks management plan.~~’***

Be rejected to the extent that an additional bullet point to the assessment criterion 2(e) General Natural Area, - ‘To ensure the safety of park users’ is not included

7.3 Submissions from Te Atatu Residents and Ratepayers Association (12/3/-) and (12/4/-)

The submitter makes the submission (12/3/-) in opposition to the entire Plan Change and the operative District Plan provisions. The submission notes that this is Submission ‘A’ and seeks the following: “Identify all parks where valued resources occur, then ensure that these are protected. Include a new Policy under Objective 12 to achieve this with appropriate methods. This may involve special policies, rules and concept plans for individual/groups of parks.”

Submission (12/4/-) is identified by the submitter as Submission ‘B’, and opposes the entire Plan Change, the operative District Plan provisions, Proposed Plan Change 2 and the current appeal. The submission seeks some general decisions for Open Space including reworking the provisions in consultation with interested parties to ensure all natural and cultural heritage resources in parks are absolutely protected, deletion of all reference to landowners documents including the Harbour View – Orangihina Open Space Management Plan and marae concepts development plan and removal of permitted and limited discretionary activity status for proposals that will have a more than minor adverse effect on resources. All other changes are specifically related to new rules for Harbour View – Orangihina Park.

Submissions (12/3/-) and (12/4/-) are supported entirely by further submissions from Anne Grace (12/16/-8)

Submission (12/4/-) is opposed by a further submission from WaterCare Services Ltd (12/9/-1) because the proposals for Harbour View – Orangihina by the Te Atatu Residents and Ratepayers Association do not make provision for vegetation clearance and infrastructure which should be the same as in the Open Space Environment.

Discussion

Submission (12/3/-) from the Te Atatu Residents and Ratepayers Association opposes the plan change in its entirety and the operative provisions. The submitter considers that the plan change is contrary to Part II of the Resource Management Act, Sections 31(1)(b)(iii), 75(2)(a) and (c), 76(3). "The proposal fails to protect resources as required by Resource Management Act at specific park locations, eg pathways and other development and use" (12/4/-), and "in relation to Harbour View – Orangihina.

The relief sought in Submission 'A' is to identify all parks where valued resources occur, then ensure that these are protected. To include a new policy under Objective 12 that relates to Effects on Heritage. It is noted that this may involve special policies, rules and concept plans for individual and groups of parks.

Submission (12/4/-) from the Te Atatu Residents and Ratepayers Association opposes the plan change in its entirety, the operative provisions and the current appeal. The submission repeats the matters in the Act it considers Plan Change 12 is contrary to in relation to Harbour View – Orangihina Park. The submission then states "The site involves a microcosm of resources that require preservation/protection. The proposed plan change fails to do this."

The relief sought in Submission 'B' is extensive including some general matters but it relates to substantially to Harbour View - Orangihina Park.

Points 2.1, 2.2 and 2.6 of Submission 'B' raise issues about the establishment of Harbour View – Orangihina Park, and seek either a new policy and rule or Special Area Identification and Rule to apply to Harbour View – Orangihina Park. Points 2.4 and 2.5 of Submission 'B' relate to the marae. The Plan Change does not seek to change the zoning of any land located in the Open Space Environment. It relates to providing a new framework for managing activities in the Open Space Environment. The matters raised in all of the above points by the submitter and further submitter, that include seeking specific changes to the zoning for Harbour View – Orangihina Park are outside the scope of Plan Change 12 as the Environment Court will determine that as part of the outcome of the current appeal against Plan Change 2 (ENV A0026/05) relating to this land.

This discussion is therefore related to the items of general relief sought. Point 2.3 relates to the Open Space Environment provisions and the concern that they do not provide certainty in terms of activities that may occur and adverse effects of those activities. The District Plan is an 'effects' based document. The Human Environments Rules manage effects on the built environment and the Natural Areas Rules manage effects on the natural resources of the City. The Proposed Plan Change 12 incorporates the principles of the existing District Plan framework. Proposed Plan Change 12 includes new rules for the Open Space Environment, amendments to the Natural Areas Rules and two new policies relating specifically to the function of public open space for recreation and protection of the natural environment. The Natural Areas Rules in the District Plan **will continue to apply to activities and development** in the Open Space Environment, albeit in a more integrated and defined way that ensures adverse effects on the environment are avoided, remedied or mitigated. These matters are also raised in Points 1.1, 1.2 and 1.3 of the submission. In Point 1.8 of the submission the submitter raises the issue that Plan Change seeks to "fast track" the implementation of activities desired by the land administrators/service providers particularly Waitakere City Council.

The Plan Change arose as a result of the need to change the framework for the management of open space because the use of reserve management plans as a tool for managing development in the Open Space Environment has proven inefficient given that most activities normally associated with the development and use of parks without an Operative Reserve Management Plan require a resource consent, or, if included in a reserve management plan may not be detailed enough thereby also requiring resource consent. The recreational activities normally associated with recreation needed to be provided for within a more effective and efficient planning framework.

Point 3.2 of the submission suggests reworking the provisions in consultation with interested parties to ensure all natural and cultural heritage resources in parks are absolutely protected, deletion of all reference to landowners documents including the Harbour View – Orangihina Open Space Management Plan and marae concepts development plan, and removal of permitted and limited discretionary activity status for proposals that will have a more than minor adverse effect on resources.

Consultation prior to the public notification of Plan Change 12 was undertaken with the major land owners of land in the Open Space Environment. All user groups and clubs currently located on parks and reserves in the City were individually notified of the Plan Change. The plan change process itself provides an opportunity for interested parties to make submissions.

Point 3.3 of the submission seeks the deletion of all references to landowner's documents in the District Plan. As previously discussed legal advice was obtained by the Council to address the issue of landowner's documents and these references will be deleted from the various parks definitions. However, the legal advice in relation to the status of 'assessment criteria' in a District Plan notes that assessment criteria take effect as:

- a guide for applicants, the Council and submitters, when assessing a discretionary activity or non-complying activity consent;
- matters for control or discretion, where Council is required to limit consideration to matters identified in the Plan for restricted or limited discretionary and controlled activity consents;
- standards and terms when used to define or classify activities within the category of a permitted activity or a requirement for consent.

Reference to landowner's documents in assessment criteria as a guide for applicants, submitters and the consent authority is generally accepted as it does not exclude consideration of other factors. The Act itself in s.104 (1)(c) provides for a consent authority to consider any relevant matter when deciding on an application for resource consent. Therefore it is considered acceptable. It is also considered permissible for restricted or limited discretionary and controlled activity consents as it signals matters to which it will have particular regard. As summarised "When use in the above contexts, assessment criteria do not purport to be exclusive and do not have the force of Rules in the Plan. Accordingly, the use of other documents as assessment criteria is not inconsistent with the principle that the District Plan should have certainty, and may only be changed through the proper process." Thus inclusion of references to various landowner's documents (usually developed in consultation with the public) in the assessment criteria will be retained as they provide valuable information that may be relevant to the application. Reference to these documents is considered an essential element of the Plan Change given the work and consultation that is involved in their development.

However because definitions and rules should provide certainty the use of landowner's documents in the District Plan is not appropriate in these circumstances. As previously discussed Parks Maintenance is a permitted activity in terms of the vegetation alteration and earthworks rules in the Natural Areas. An alternative method to ensure parks maintenance is undertaken in an appropriate manner is to specify standards in the rule as is already done with the existing rule for earthworks, which if undertaken with erosion and sediment controls in place are a permitted activity.

Therefore in terms of the submitter's concern about the use of landowner's documents it is considered that there would be a benefit in being able to refer to the Harbour View – Orangihina Open Space Management Plan as part of the assessment of an application for resource consent, for the Harbour View – Orangihina Park. It should be noted that the Plan Change does not include any reference to the marae concepts development plan.

Points 3.5 – 3.17 of the submission 'B' relate to Harbour View – Orangihina Park. Points 3.10 and 3.11 of the submission were subsequently withdrawn by the submitter having been addressed by consent order from the Environment Court.

Point 3.15 of the submission relates to the land encompassed by Harbour View – Orangihina but is included in this discussion. It seeks new policies relating to Objectives 11 (Amenity Values – landscapes, local areas, and neighbourhood character), 12 (Heritage) and rules for this land. However, the plan change includes a new policy under Objective 10 (Affects on Amenity Values – health and safety) and a new policy under Objective 11. The two proposed policies do not provide specifically for Harbour View – Orangihina as that is not the focus of the Plan Change.

The Plan Change did not introduce any new policies under Objective 12 because there are already two policies relating to natural heritage in the District Plan. Policy 12.1 states "Activities should be carried out in a way that avoids or minimises adverse effects on the City's valued natural heritage, including the extent and range of species. Particular regard shall be had for protecting native vegetation and fauna habitat, and rare or threatened fauna species", and Policy 12.6 relates to the protection of heritage vegetation included in the Heritage Vegetation Register.

The emphasis in the explanation to Policy 12.1 is the importance and value of the remaining native vegetation and fauna habitat in the City given the modification of natural features in both the Waitakere Ranges and coastal areas and loss in the urban and lowland areas that has occurred. The policy emphasizes the importance of heritage values despite the compromised ecological values of some of these areas of remnant vegetation.

The vegetation clearance rules are the main methods for managing natural heritage, and the heritage rules which relate to the natural heritage items included in the Heritage Vegetation and Archaeological Sites of the Heritage Register. It is considered that any vegetation alteration for parks maintenance, which is a permitted activity in all Natural Areas, would be more restrictive than the rule it replaces because it actually establishes parameters for the vegetation alteration, by establishing distances from a path or track, limiting it to native and exotic vegetation under 6m and only to allow for unimpeded pedestrian access on the path. The vegetation alteration is permitted irrespective of whether there is a reserve management plan for the park. The establishment of new infrastructure requires resource consent in terms of both the vegetation alteration and earthworks rules of the natural areas in the Green Network in recognition of the potential for adverse effects. The operative reserve management plan for the Waitakere Ranges Regional Park contains guidelines for work in parks and uses trained parks staff and there are protocols within Council for work in the City's parks.

As already discussed the District Plan does not have an inventory of threatened, endangered or protected plant species or specific rules to ensure their protection. However during the preparation of reserve management plans ecological reports are commissioned by the Parks Section and this is considered the most appropriate method to identify and protect threatened species. To date most reserve management plans do not include lists of threatened species. Currently other management tools for the protection of threatened species are being developed by the Council including a joint protocol with the Auckland Regional Council to manage, road side species that need protection.

Therefore while it may be desirable to have an appendix of endangered and threatened species in the District Plan it is beyond the scope of this plan change and the District Plan is but one method for such protection. The Regional Parks Management Plan Volume 1: Overview and Strategic Direction states "The Department of Conservation is responsible for ensuring the survival of New Zealand's flora and fauna, and the community ecosystems of which they are a part. To do this effectively, the Department has developed a ranking system of threatened species requiring conservation action. This list of species requiring conservation action is under continuous review and may change over the life of the Plan". In view of these comments the inclusion of a list of threatened species presents the same problem as the use of standards, both being 'living' documents, which if included by specific date and publication in the District Plan may become outdated and require a plan change to be updated. Therefore, the argument presented by the submitter raises similar problems to those raised in the submission about the use of landholder's documents.

Finally in Point 3.4 of the submission, the submitters have requested the removal of permitted and limited discretionary activity status for proposals that will have a more than minor adverse effect on resources. It is considered that the Parks Maintenance has been carefully defined and as it relates to the maintenance and in some cases minor upgrades of existing facilities and infrastructure the opportunity for any more than minor effects are minimal particularly when considering the current rules. The District Plan controls for managing activities in the Open Space Environment based upon reserve management plans for parks and reserves was found to be both inefficient given the low number of parks and reserves with management plans and not sufficiently responsive to the assessment and mitigation of adverse effects on the environment. The proposed plan change introduces new policies and rules that provide improvements to the existing comprehensive framework for the sustainable management of open space. The activities provided for in the Open Space Environment are not dissimilar to those used by other territorial authorities in the region. They are supported in principle by both Auckland Regional Council and Department of Conservation who administer public reserve land. The submitter's request for an alternative system based on special policies, rules and concept plans for individual/groups of parks is similar to having various zones or open space environments for parks and reserves. This option would not have fitted into the existing framework of the District Plan and would amount to a duplication of District Plan provisions. In conclusion the submitters request for special rules for Harbour View – Orangihina Park cannot be provided within the plan change.

WaterCare Services Limited opposes the alternative proposals outlined in the Te Atatu Residents and Ratepayers Association's submission for a new Open Space Rule 12 for a Concept Plan for Harbour View – Orangihina Park, identifying dominant activities for the park and listing activities. WaterCare Services Ltd opposes the additional Open Space Rule 12 formulated by the submitter for Harbour View – Orangihina Park because it owns and operates a wastewater pump station and pipeline in the park area and it wants to be able to maintain these facilities as a permitted activity. The submitter's proposals for this park do not provide for the maintenance of infrastructure. WaterCare Services Ltd states that these requirements need to be same as in the Open Space Environment. The ability for WaterCare Services Ltd to be able to undertake maintenance as currently provided by the rules of the Natural Areas in the Open Space Environment has already been addressed and agreed to.

It is recommended that:

The submissions from Te Atatu Residents and Ratepayers Association (12/3/-) and (12/4/)

Further submission by Anne Grace (12/16/-8) and (12/18/-10)

Further submission from WaterCare Services Ltd (12/9/-1)

Be accepted to the extent that

- ***that reference to landowners documents will be deleted from parks definitions.***

Be rejected

- ***to the extent that the plan change will not be abandoned, or its provisions reworked in consultation with interested parties or replaced with the alternative policies, rules and concept plans provided by the submitter for the Harbour View – Orangihina Park and for individual and groups of parks.***
- ***rules for vegetation clearance are dependent on the relevant Natural Area and no special provisions for Harbour View – Orangihina would be included in the Plan Change.***

7.4 Submission (12/6/-) from Te Atatu Residents and Ratepayers Association

The submitter makes the submission that the plan change is biased as it has been prepared primarily to assist the Waitakere City Council as administrator of the subject land, and has not taken into account the Auckland Regional Council, Department of Conservation or the QEII National Trust. The Local Government Act in Sections 14(1)(a)(i), 39(c) Part 6 requires the Waitakere City Council to keep separate its decision making on operating and non-operating functions, acknowledging the provision of section 34 of the Resource Management Act 1991.

To this extent the submitter seeks independent commissioners to hear submissions on the proposed plan change then make final decisions pursuant to Section 34 of the Resource Management Act. Furthermore if the submission is not accepted the submitter requests that this matter be heard at the beginning of the Hearing. The submitter also seeks the removal of all references to Waitakere City documents from the plan change.

Submissions (12/6/-) is supported entirely by a further submission from Anne Grace (12/18/-10)

Discussion

The Council has sought a legal opinion to address the manner in which the Hearing should be conducted. The opinion concludes that "it is clear from the Resource Management Act that the intention is that decisions on the District Plan are the responsibility of elected representatives. That applies whether or not it might appear that the Council has a financial or other interest in the outcome." Although the Council can appoint commissioners to conduct the Hearing into the submissions on a plan change the commissioner will not have the power to decide the matter. The commissioner(s) must report to the Council or a Committee of Council which then makes the final decision.

It is important that Council recognise that its role as planning authority under the Resource Management Act is different from its other roles under the Local Government Act and Reserves Act. In making decisions about the District Plan it should not take into account matters that are relevant only to its other roles and functions (i.e. as owner or administrator of parks and reserves). It is considered that the Hearing should be conducted by the Council rather than using a commissioner, and this legal advice should facilitate the submitters understanding of the appropriateness of the Council hearing submissions on its District Plan. Furthermore it is considered that the Councillors will be able to hear the submitters concerns directly.

It is recommended that:

The submissions from Te Atatu Residents and Ratepayers Association (12/6/-) and

Further submission from Anne Grace (12/18/-10) and submission (12/6/-)

Be accepted to the extent

- ***that references to documents outside the District Plan be deleted from the definitions of Parks Infrastructure, Parks Maintenance and Parks Signs and that appropriate standards relating to best practice methods be included the permitted activities rules as performance criteria.***

Be rejected

- ***The use of a Commissioner to hear the submissions as the Council must make the final decision. Not using a commissioner provides an opportunity for the Council to hear the submitters concerns directly.***

7.5 Submission (12/5/-) from Anne Grace

The submitter seeks that Plan Change 12 be abandoned. The plan change is opposed generally and specifically. The provisions that apply to parkland in Waitakere City in the Waitakere District Plan are opposed (policies, methods, appendices, maps, etc)

The Plan Change is opposed in its entirety because it is considered by the submitter to be contrary to Part II Resource Management Act Sections 31(1)(b), 75(2)(a) & (c), 76(3). Parks are the primary repositories of natural and cultural heritage resources (and amenity). The submitter considers that existing and proposed provisions fail to protect/preserve these resources, and provides an example that pathways/tracks and their maintenance in specific locations pose threats to flora, fauna, archaeological sites, waahi tapu, landscape features, etc. The submitter also considers that the proposal avoids proper consideration of actual and potential effects as anticipated by the Resource Management Act.

Submission (12/5/-) is supported entirely by further submissions from Te Atatu Residents and Ratepayers Association (12/11/-3) and Anne Grace (12/17/-9)

Submission (12/5/-) is supported in part (points 6 and 7) by a further submission from Department of Conservation (12/10/-2)

Discussion

The first point of the submission seeks the abandoning the Plan Change followed by a detailed summary of the changes required. The complete summary of changes required is listed below and it is assumed that these provisions would replace Plan Change 12.

1. Abandon Proposed Plan Change 12
2. Identify all significant resources in the parks in the District Plan. Assess the real actual and potential adverse effects on such resources and amend the District Plan accordingly to ensure their absolute protection/preservation, including requiring active resource protection activities, e.g. habitat management for threatened/scarce/declining species, preservation of historical heritage items and archaeological sites/waahi tapu (avoid adverse effects as a minimum).
3. Provide a policy (policies) pursuant to Objective 12 that ensures that natural and cultural heritage resources in parks will be protected/preserved in perpetuity, i.e., emphasis on avoidance of adverse effects.
4. Provide park-specific policies, pursuant to objective 12, and rules with associated concept plans for individual/groups of parks that are major repositories for natural and cultural heritage features, e.g., Waitakere Ranges Regional Parkland, City-wide parks with special resources such as the west coast parks, Harbour View – Orangihina Park, etc. The rules should require active protection/preservation of special resources.
5. Re-identify the unused “paper” roads bounded by the Waitakere Ranges Regional Parkland (and adjoining other parks if applicable) as Open Space Environment.
6. Provide a City-wide rule that protects absolutely the naturally occurring scarce plant species of Waitakere City, together with a list of these species, e.g., the list provided on pages 37-40 Auckland Botanical Society Journal 54 (1) (plus subsequent additions) plus species in low numbers or declining in the City, e.g., kūmarahou, etc. Such rules should require active protective measures to be implemented.
7. Provide a City-wide rule that ensures that planting of natives does not interfere with the indigenous biological diversity of naturally occurring species (actual and potential adverse effects of planting are both qualitative and quantitative).
8. Include the entire Pleistocene Terrace landform (upper terrace surface, “scarp” and lower terrace surface) at Harbour View Orangihina in Appendix H Outstanding Natural Features and ensure its protection/preservation, including identifying/listing the entire upper terrace and scarp as a sensitive ridgeline.
9. Such other relief as may be necessary as a result of developments in the consultation process.

As discussed in response to the Te Atatu Residents and Ratepayers Association submission in section 7.3 of this report, the submitter seeks a completely different framework for managing open space. The approach, particularly points 1 and 3 above suggested by the submitter would require a change in the philosophy of the District Plan’s management of resources. It is considered that the Green Network through the Natural Areas is the most appropriate framework for the sustainable management of natural resources. In addition it is considered that reserve management plans are another tool for the management of natural resources, and the Council is gradually preparing them for its parks.

Several of the points – 4, 5 and 7 are beyond the scope of the Plan Change. With respect to point 8 advice has been sought from Bruce Hayward, the Convenor Geopreservation Inventory about the Pleistocene Terrace landform and his written comments (5/4/2005) are as follows: “*The Te Atatu plant beds are at the end of the peninsula in the intertidal zone and quite separate from the Harbour View Pleistocene Terraces, which were added to the Geopreservation Inventory in 2004, to replace the listing of the Rosedale Peninsula Pleistocene terraces which are now largely hidden by industrial subdivision. Both are the same feature and it was felt that the best remaining example left around the upper Waitemata was on Te Atatu Peninsula where they are protected within public land reserve.*”

There are two terraces separated by a former cliff line - now a steep slope, and it would be desirable to keep as much of the natural landform intact as a record of a significant period in the recent history of this part of west Auckland. Some time when the District Scheme is being reviewed it could be considered for adding to it - I see no hurry. The Inventory is not a static database, we continue to improve, add or modify records as more information comes in and as some sites are lost.” Should the Council agree in the future to the inclusion of the terraces in the District Plan by way of a Plan Change, a thorough investigation and survey to exactly define the extent of the terraces would need to be undertaken.

Point 6 of the submission has been discussed previously in section 7.3 of this report. The introduction of a rule relating to the protection of rare and endangered species is beyond the scope of this plan change. However it is considered that reference to the need to protect rare and endangered species could be included in the assessment criteria relating to all the Green Network Natural Areas rules for vegetation alteration to address the submitter’s concern, either by adding the clause ‘**and avoids any species known to be threatened or endangered**’ to the end of the following criterion ‘The extent to which the proposed vegetation alteration is for development proposed in a relevant current Operative Reserve Management Plan, Parks Concept Plan, current Waitakere City Parks Strategy’. Alternatively, it may be more appropriate to include it as a new criterion as follows: “the extent to which proposed *vegetation alteration* in the *Open Space Environment* **avoids any species known to be threatened or endangered**’. (reference to the Open Space Environment in the new criterion would be necessary to ensure the scope of the change does not affect private landowners).

Point 7 relating to replanting is the last bullet point in the definition of parks maintenance. The bullet point can be modified to identify the primary purpose or overall objective of replanting or revegetation by incorporating the words ‘ecosystem restoration’. The last bullet point should be modified as follows:

- **Ecosystem restoration by replanting and revegetation**

In terms of Point 2 it is considered that the introduction of a new policy 11.32 includes the protection of outstanding natural features and vegetation in the Green Network from development, and it reinforces existing policies in the District Plan by bringing them into focus within the Open Space Environment.

It is recommended that:

The submissions from Anne Grace 12/5/-), and

Further submissions by

Te Atatu Residents and Ratepayers Association (12/11/-3), Anne Grace (12/17/-9) and Department of Conservation (12/10/-2)

Be accepted to the extent that:

- ***wording relating to the need for vegetation alteration to ‘avoid any species known to be threatened or endangered’ is included in either a new assessment criterion or added to an appropriate existing criterion in the Green Network Natural Areas Rules.***

Be rejected

- ***abandoning the plan change and replacing the plan change with a new framework that includes the introduction of alternative policies, rules and concept plans for the Harbour View – Orangihina Park and for individual and groups of parks, although these are not specified.***
- ***the management of open space as requested is contrary to the whole framework of the District Plan. The plan change introduces a range of activities that relate to the use and development of parks and reserves, and the rules of the Open Space Environment will continue to manage these activities in terms of the effects on the built environment and the Natural Areas rules manage effects on the natural environment. The reference to current operative reserve management plans, Waitakere City Parks Strategy and Waitakere Leisure Strategy as part of the assessment criteria when considering the establishment of activities and development in the Open Space Environment will assist in achieving the sustainable management of open space.***

7.6 Submission (12/7/-) from Waitakere City Council

2.1 of the submission seeks the clarification of the text in the General Section of Rules 4, 6, 7, and 9 to specify which park activities are covered or not covered by the rules.

3.1 of the submission seeks the standardisation of the provisions in the Riparian Margins/Coastal Edges and Restoration Natural Areas relating to buildings.

4.1 of the submission seeks amendments to definitions: the addition of words to the definition of Parks Buildings to clarify the term ‘community purposes’, and correction of a typographical error in the Parks Maintenance definition relating to the length of bridges, boardwalks and culverts, and inclusion of mountain bike trails in the definition of Parks Infrastructure.

5.1 of the submission seeks an amendment to an assessment criterion used in the Open Space Environment and Natural Areas rules to include reference to the Parks Leisure Strategy document.

Waitakere City Council Submission (12/7/-) is opposed in its entirety by a further submission from Te Atatu Residents and Ratepayers Association (12/14/-6) for the reasons in their 3 submissions (12/3/-), (12/4/-) and (12/6/-) including the issue of ‘conflict of interest’ as landowner/regulator under the Resource Management Act and the need for independent commissioners and planners are needed for the Hearing.

Discussion

The submission relates to minor changes necessary to remedy a number of minor inconsistencies and problems that have arisen in the application of the rules to date. Firstly the text headed 'General' of the Open Space Environment Rules 4, 6, 7 and 9 need to be worded to be inclusive of the parks activities that are the subject to the rules. For example The 'General' part of the Rule 2 (Building Height) reads as follows: "The following rules shall apply to *Any Activity* or *development* but not including *parks maintenance* or *parks field structures*." It has been brought to the writer's attention that this part of the rule should reflect what the rules relate to rather than what they do not relate to. For instance the wording of the General part of rules 4, 6, 7 and 9 (Yards, Building Location – Natural Landscape Elements, Parking Access and Traffic Generation and Infrastructure), are too general and would include parks maintenance when it was not intended to be included because it has no bulk and location effects. With each of the rules in the Open Space Environment the General part needs to reflect the activities that the rules address. The application of the General part of the rules in the Open Space Environment needs to have a consistent approach.

3.1 of the submission relates to the Riparian Margins/Coastal Edges and Restoration Natural Areas rules relating to buildings and seeks a consistent approach to both natural areas. Rule 7 Buildings in the Riparian Margins/Coastal Edges Natural Area includes provisions for parks infrastructure and parks maintenance as permitted activities because these activities include structures in their respective definitions. The exceptions for both activities are included as Limited Discretionary Activities. Rules relating to the provision of Parks Infrastructure in both natural areas are Limited Discretionary Activities and require resource consent for vegetation alteration and earthworks. Including Parks Infrastructure and Parks Maintenance in the rules relating to buildings in the Restoration Natural Area would ensure these activities are adequately provided for and facilitated. There are no rules relating to buildings in any of the other natural areas.

4.1 of the submission relates to amendments to the City Wide Rules relating to three definitions: parks buildings, parks infrastructure and parks maintenance. The amendments are necessary to provide clarity and certainty for plan users.

Parks Buildings: The Waitakere City Council submission seeks to define the words 'community purposes' by the addition of the following bracketed words (non-profit or charitable organisation with registered/legal status). As already mentioned in the earlier discussion relating to the Auckland Regional Council submission, parks are required to be classified under the Reserves Act 1977 as local purpose, recreation, scenic and historic, national and esplanade reserves. There are processes in the Reserves Act 1977 relating to their classification that relate to the leasing of land and there are provisions for profit making organisations that support the use and enjoyment of a park. It is therefore generally considered that there is no need for the explanation as requested.

Parks Maintenance requires a minor change to the explanation in the second bullet point for vegetation alteration within a metre of paths etc. The measurement of trees relates height and their girth and the wording in the brackets should be corrected to read (measured 1.4metres above the ground)

Parks Infrastructure: the submission seeks the addition of mountain bike trails to the first bullet point. However as previously considered in the discussion on the Auckland Regional Council submission it would be preferable for mountain bike trails to be included as a permitted activity in the General Natural Area but be included in the exceptions to the rules for infrastructure in the green network natural areas. This is because of the potential impact mountain bike trails could have on steep topography with native vegetation.

5.1 of the submission seeks the inclusion of the Waitakere City Leisure Strategy in the assessment criteria that relate to the Open Space Environment and all Natural Areas rules. Currently the assessment criteria include reference to primary documents such as any reserve management plan but it is considered worth also including the Parks Strategy because many parks and reserves do not have a reserve management plan. It is considered that referring to the Leisure Strategy may also be appropriate in certain circumstances to ensure consideration of all matters relating to the use and development of parks.

The further submission opposes the entire submission for the reasons in their three submissions. However the matters raised relating to the issue of 'conflict of interest' as landowner/regulator under the Resource Management Act and the need for independent commissioners and planners for the Hearing have been previously dealt with in Sections 7.3 and 7.4.

It is recommended that:

The submission from Waitakere City Council (12/7/-)

Be accepted to the following extent

- ***Provision of a changes to the General part of Open Space Environment Rules 4, 6, 7 and 9, and consequential changes to achieve a consistent approach***
- ***Amending Restoration Natural Area Rule 6 (Buildings) to include Parks Maintenance and Parks Infrastructure, to be consistent with Riparian Margins/Coastal Edges Natural Area Rule 7 Buildings***
- ***Amending the definition of Parks Maintenance to clarify where the measurement of the girth of trees is from (measured 1.4metres above the ground),***
- ***Including mountain bike trails in the rules relating to the exceptions for Parks Infrastructure***
- ***Including reference to the Waitakere City Leisure Strategy in the assessment criteria that relate to the Open Space Environment and Natural Areas Rules.***
- ***The further submission from Te Atatu Residents and Ratepayers Association (12/14/-6)***

Be rejected

- ***the issue of the conflict of interest as landowner/regulator under the Resource Management Act and the need for independent commissioners***
- ***the addition of the following bracketed words (non-profit or charitable organisation with registered/legal status) to define the words 'community purposes' in the definition of Parks Buildings (Waitakere City Council)***

7.7 Submission (12/8/-) from Department of Conservation

The submitter makes the submission in support of the Proposed Plan Change but seeks changes to the definitions of parks maintenance and parks infrastructure to take into account that on land administered by the Department of Conservation the parks contracts and documents referred to in the definitions may not be applicable especially if the work is being undertaken by their own staff. This could potentially mean straight forward maintenance and infrastructure provision which would otherwise be permitted by the Plan Change could not be undertaken by the Department.

Submission 12/8/-) is opposed in its entirety by a further submission from Te Atatu Residents and Ratepayers Association (12/15/-7) that landowners documents are unacceptable as they may make provision for activities contrary to Resource Management Act, including National Policy Statements, and the need for independent commissioners and planning reports to distinguish between Department of Conservation's landowner and Resource Management Act functions.

Discussion

The submission is clearly very supportive of Plan Change 12 and as it states "Department of Conservation's interest in the proposal is primarily related to their mandate under the Conservation Act 1987 (Sections 6 and 53(3)(b)) to advocate the conservation of natural resources in general. The Department has a strong interest in the Plan Change 12 as it administers pockets of Crown owned land identified as Open Space Environment.

The Department is supportive of the amendments in the Plan Change and agrees that changes are required to better facilitate development and general maintenance within parks and reserves while ensuring that a high level of environmental protection is maintained. This is dealt with in the Plan Change by incorporating different rules and standards for various natural areas, each with unique vulnerabilities. (writer's emphasis)

The Departments concern relates to the requirement in the definitions for Parks Maintenance and Parks Infrastructure for the work to be 'undertaken in accordance with a parks contract or by Auckland Regional Council Parks Staff using best practice methods such as specified in the following relevant and current documents: "Regional Parks Environmental Best Practice Guidelines", "Regional Parks Infrastructure, Tracks and Design Manual" and current "operative Regional Parks management plan." The use of the above mentioned documents may not be applicable to the Department especially if the work is undertaken in-house by Department staff. As a result of these documents not being applicable to the Department of Conservation or reference to their staff being included in either of the definitions, work undertaken on land it administers would require resource consent. The submitter sought the following additional wording to the definitions "or Department of Conservation equivalent documents."

However the matter relating to documents outside the District Plan has been discussed previously and it is recommended, the proviso relating to parks contracts and other standards should be deleted from these definitions and the definition for a parks contract deleted from the Plan Change. The wording of the rules for Permitted Activities that provide for Parks Maintenance shall include appropriate standards as outlined in Council's legal opinion.

Finally, the submitter's concern relating to the need to avoid any species known to be threatened or endangered could be partially addressed by an addition of a clause to one of the proposed assessment criteria that relates to the Open Space Environment for the Vegetation Alteration and Earthworks Rules in the Restoration, Managed, Coastal, Protected and Riparian Margins/Coastal Edges Natural Areas. This would provide an opportunity for assessment for activities requiring a resource consent that could impinge on known threatened or endangered species but is generally an issue that is outside the scope of this particular plan change for the reasons discussed previously.

It is recommended that:

The submission from Department of Conservation (12/8/-)

Be accepted to the extent that reference to landowners documents are deleted from definitions and reference to threatened and endangered species will be included in an assessment criterion in the Natural Areas rules.

The further submission from Te Atatu Residents and Ratepayers Association (12/15/-7)

Be rejected for reasons previously discussed

7.8 Clause 16 Corrections

During the period since the Plan Change was publicly advertised the majority of applications for resource consent in the Open Space Environment have been reviewed, to compare the existing rules and those proposed by the Plan Change. A number of minor errors have been detected which need remedying.

There is provision under Clause 16 of the First Schedule of the Act for correcting minor errors that either would not disadvantage any person or have no material effect on the meaning of the rule. Clause 16(2) states: 'A local authority may make an amendment, without further formality, to its proposed policy statement or plan to alter information, where such an alteration is of minor effect, or may correct any minor errors.'

The test in determining whether a correction is authorised by cl 16 is: does the amendment affect (prejudicially or beneficially) the rights of some members of the public, or is it neutral? If neutral, it is permitted by cl 16. Correction or errors should be approached in the same way as the "slip rule", rule 12 of the District Court Rules 1992. The rule may only be used to correct a slip in the "expression of a judgement not the "content".

An inconsistency has been identified in the wording of Yards (Rule 4) in the Open Space Environment with respect to the Discretionary Activity provisions for additions and alterations to parks buildings compared to with the bulk and location rules for height (Rule 2), height in relation to boundary (Rule 3) and building coverage (Rule 5). other bulk and location rules. This matter needs to be addressed by a small change of wording for consistency.

Provision is made in the Open Space Rules for additions and alterations to parks buildings provided that the maximum gross floor area of any additions are no more than 10m² and there is no increase in the number of people the building is designed to accommodate as a Limited Discretionary Activity. The status of the activity in the rules for height, height in relation to boundary and building coverage when the addition does not meet the 10m² gross floor area or the particular performance standard, escalates to a Discretionary Activity application.

Additions and alterations to Parks Buildings that either do not meet the bulk and location rules relating to height, height in relation to boundary or building coverage or are greater than 10m² escalate to the category of Discretionary Activity that requires greater assessment. Therefore Rule 4.3 Discretionary Activities would read "Additions and alterations to existing parks buildings not meeting the standards in Rule 4.2."

4.2 Limited Discretionary Activities (incorrectly noted as 4.3)

- (b) Additions and alterations to existing Parks Buildings provided that the maximum gross floor area of any additions are no more than 10m² and there is no increase in the number of people the building is designed to accommodate – which meet the following performance standard:

6m from a road boundary, and
3m setback from any other site boundary.

The wording of the Yards Rule 4.3 –Discretionary Activities should read as follows:

- (b) Additions and alterations to existing Parks Buildings not meeting the standards in Rule 4.2 (b) instead of
- (b) Additions and alterations to existing Parks Buildings where there is an increase in the occupancy of the building, or the additions exceed 10m² which meet the following performance standard:

are setback of 3m from any site boundary which adjoins land within the following environments: Living, Bush Living Waitakere Ranges Rural Villages, Coastal Villages Countryside or Foothills Environment.

It should be noted that Parks Buildings are required to meet the above rule otherwise they become Non-Complying Activities but this is because as new buildings it is desirable to establish a reasonable setback from an adjoining residential environment.

It is considered that these changes would fall within the ambit of Clause 16 as no person would be disadvantaged given that it is a Discretionary Activity and adjoining affected landowners would be required.

Finally all Non-complying Activities in the Open Space Rules need to be aligned to the activities provided for in the rule. Again this would ensure ease of administration of the rules.

It is recommended that:

The changes as outlined be accepted

8.0 RECOMMENDED CHANGES TO THE PLAN CHANGE

A1-A16

Changes to the text of Proposed Plan Change 12 as recommended in the analysis of submissions are included in the Table of Changes in Appendix 'A' attached at pages A1 to A16 to this report.

9.0 CONCLUSION

This report sets out the background, issues and Section 32 considerations for Proposed Plan Change 12. In addition, the report considers issues raised in submissions and further submissions on the Proposed Plan Change, and recommends changes to the Proposed Plan Change where the submissions have merit under the Resource Management Act 1991 and where a minor error has been identified.

In response to submissions it is proposed to amend Proposed Plan Change 12 to incorporate the changes as outlined.

The amendments are identified as follows:

- amendments to definitions to delete reference to landowners documents and standards clarify management issues with respect to the activities included and incorporate additional examples of activities and,
- changes to the Natural Area Rules to include standards and achieve consistency and clarity
- changes to the Open Space Rules to ensure consistency in the activities included in the rules
- amendments to the assessment criteria to include additional matters

RECOMMENDATIONS

1. That pursuant to Clauses 10 and 16 of the First Schedule of the Resource Management Act 1991, Proposed Plan Change 12: Open Space Environment Provisions in the District Plan, is adopted, with the amendments as described in Sections 7.0 and 8.0 of this report and listed in Appendix 'A' (Table of Changes).
2. That pursuant to Clause 10(1) of the First Schedule to the Resource Management Act 1991, the relief sought by the submitters is rejected, or accepted as set out below for the reasons outlined in the discussions relating to each submission in the body of this report:
 - (i) It is recommended that the submission of Te Atatu Residents and Ratepayers Association (12/6/-) be rejected because the Council must make the final decision on the Plan Change and can hear the submitters concerns directly rather than using a Commissioner to hear the submissions as an interim step.
 - (ii) It is recommended that the submission of Watercare Services Ltd (12/1/-) be accepted.
 - (iii) It is recommended that the submission of the Auckland Regional Council (12/2/-) be accepted to the extent of the relief provided by recommended changes to the Proposed Plan Change, as outlined in Section 7.2.
 - (iv) It is recommended that the submissions of Te Atatu Residents and Ratepayers Association (12/3-), (12/4/-) be accepted to the extent that reference to landowners documents will be deleted from parks definitions, but abandoning the Plan Change is rejected.
 - (v) It is recommended that the submission by Anne Grace (12/5/-) be accepted to the extent that reference to 'threatened or endangered species' are included in a proposed assessment criterion in the Vegetation Alteration and Earthworks Rules of the Natural Areas but abandoning the Plan Change is rejected.
 - (vi) It is recommended that the submission by Department of Conservation (12/8/-) be accepted to the extent of the relief provided by recommended changes to the Proposed Plan Change, as outlined in Section 7.7.
 - (vii) It is recommended that the further submissions of Anne Grace (12/16/-8), (12/19-9) and (12/18/-10) and the Te Atatu Residents and Ratepayers Association(12/13/-5) 12/14/-6) and (12/15-7) be rejected to the extent that the Plan Change will not be abandoned, and new provisions for Harbour View – Orangihina Park are not relevant for the framework for managing open space.
3. That pursuant to Clause 30 of the First Schedule to the Resource Management Amendment Act 2005, the documents named and dated in Appendix 'D' to this report shall be confirmed and certified as incorporated by reference into the District Plan, and are intended to have legal effect as part of the District Plan.

Report Prepared By: Pamela Wells, Planner: Policy Implementation

Report Released By: Philip Brown, Group Manager, Planning and Community Services

