

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE
TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON TUESDAY, 6 JUNE 2006
COMMENCING AT 9.30 AM**

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PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

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

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



3 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 9 May 2006.

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 9 May 2006, as circulated, be taken as read and now be confirmed.



PART B - PRESENTATION

4 PRESENTATION ON ZERO WASTE

Mr John Fistonich, Chief Executive Officer of Wastesaver NZ Limited, will give a presentation on the proposed process to dispose New Zealand waste to achieve 'Zero Waste'.



PART C - ENVIRONMENTAL MANAGEMENT

5 DRAFT POLICY ON EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS 2006-2011

PURPOSE OF THE REPORT

The purpose of this report is to consider submissions arising out of the Special Consultative Procedure on the draft Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011 (the draft Policy).

BACKGROUND

Section 131 of the Building Act 2004 (the Act) requires territorial authorities to adopt a policy on earthquake-prone, dangerous and insanitary buildings within their district by 31 May 2006.

The policy is required to state:

- The approach that the territorial authority will take in performing its functions in relation to those buildings;
- The priorities to be observed in performing those functions;
- How the policy will apply to heritage buildings.

At the Planning and Regulatory Committee meeting held on 11 October 2005, the draft Policy was adopted and it was resolved:

- “1. That the Draft Policy on Earthquake Prone, Dangerous and Insanitary Buildings report be received.
2. That the draft Earthquake Prone, Dangerous and Insanitary Buildings Policy 2006-2011, Summary of Information and Statement of Proposal attached to the Agenda at pages A1 to A32 be approved for consultation and that Council officers be authorised to implement the Special Consultative Procedure as set out in Section 83 of the Local Government Act 2002.
3. That the Planning and Regulatory Committee hear any submissions during November 2006 with a final report in relation to the draft Earthquake Prone, Dangerous and Insanitary Building Policy 2006/2011 to be brought back to Council for a final decision.”

1945/2005

STRATEGIC CONTEXT

The Act reflects Parliament's policy objective for New Zealand buildings. The provisions relating to earthquake-prone buildings seek to reduce the level of earthquake risk to the public over time and targets the most vulnerable buildings. Strengthening buildings to improve their ability to withstand earthquake shaking will involve costs to territorial authorities, building owners and the community generally. However, at this stage these costs cannot be quantified, but officers will aim to identify these costs within the first year of the policy coming into force.

Waitakere City Council is committed to ensuring that Waitakere City is a safe place to live and work. Earthquake-prone, dangerous and insanitary building issues are relevant to Council's strategic priorities for a Safe City and First Call for Children.

With respect to heritage buildings the Council recognises that the preservation of these buildings is a matter of national importance as recognised by section 6(f) of the Resource Management Act 1991. The draft Policy has taken this into account to strike a balance between human and property safety and the value of heritage.

CONSULTATION

Notice of the draft Policy was published in the New Zealand Herald and Western Leader on 14 October 2005 and the Aucklander on 19 October 2005. In accordance with section 83 of the Local Government Act 2002 and section 132 of the Building Act 2004, the notice advised how to obtain a copy of the consultation documents and confirmed that submissions could be made up to and including 14 November 2005. The consultation documents were also available at the Civic Centre counter and on Council's website for the four week period of consultation.

The consultation documents were posted to organisations that may have a special interest in the policy. The organisations were the Historic Places Trust, the Ministry of Education and the New Lynn Business Association.

An article on the draft Policy was also published in the front page of the Western Leader following the adoption of the draft Policy for consultation.

A1-A9 Over the four week period Council received one telephone inquiry, and three submissions attached at pages A1 to A9.

A10-A48 The salient points from submissions received have been set out in this report. The exact changes made to the draft Policy are set out as attached at pages A10 to A28 in a tracked-changed version, with the original draft Policy approved by the Committee set out at pages A29 to A48 for comparison purposes.

SUBMISSIONS ON THE DRAFT POLICY ON EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS

The issues raised in the three submissions related to the status of heritage buildings and, in particular, their treatment as earthquake-prone and the manner in which they would need to be upgraded. The issues are outlined below:

Heritage buildings and the provisions of the policy as it relates to earthquake-prone buildings

All three submitters are of the opinion that the draft Policy as it relates to earthquake-prone buildings does not adequately protect the status of heritage buildings. These concerns are summarised as follows:

- (a) The part of the policy pertaining to heritage buildings does not adequately assess the specific issues that heritage buildings give rise to.
- (b) The standard which currently requires that all earthquake-prone buildings meet the test of being 67% or two-thirds compliant with standards set for new buildings is too onerous on heritage buildings. It may lead to the loss of heritage value if no discretion was exercised in the way compliance was measured.
- (c) The owners of affected heritage buildings, including Council, will need to expend a considerable amount of money to bring affected heritage buildings in line with the policy.
- (d) The timeframe of 2 years provided to comply with the standard is impracticable therefore the timeframe should be extended.

Changes to the draft earthquake-prone buildings policy

In respect of heritage buildings, the existing draft Policy recognises that they are to be given special treatment although it does not require that such buildings be treated in a more flexible manner as to the level to which they are earthquake proofed. This part of the draft Policy has been amended to recognise that heritage buildings raise their own specific problems and to require them to be treated like other buildings may result in loss of heritage value. The change to the draft Policy has to require that unless the heritage building poses a Level 3 or 4 risk, then it will only be required to meet a test of being earthquake proofed to one third or 34% of today's standard. All other earthquake prone buildings that are less than Level 3 will also be required to meet this less onerous standard.

In recognition that the owners of heritage building may need to spend a considerable amount of time and money to bring heritage buildings up to the standard required by the draft Policy, a longer time frame of 25 years is to be given to allow for heritage buildings to be brought up to standard where they are less than Level 3 and 15 years where they are Level 3 or 4. In all respects, the Council will also work with owners of heritage buildings and consider waivers and dispensations to assist them to meet the Building Code as near as is reasonably practicable. Where necessary, Council will assess the structural requirements of heritage buildings on a case by case basis to avoid loss of heritage or demolition.

The draft Policy has also had a new clause added requiring seismic strengthening work to take into account the principles of the International Council on Monuments and Sites New Zealand Charter, advice from the Council's Heritage Adviser and the Historic Places Trust.

The submissions also sought that Council educate the public on meeting the policy's requirements and to set up a fund to assist owners of heritage buildings. It is recommended that a report go to the Long Term Council Community Plan to assess the feasibility of setting up a fund to assist heritage building owners. Council will undertake an education campaign to educate the owners of heritage buildings about compliance with the policy.

The changes to the draft Policy bring it into line with the policy of other local authorities in New Zealand that are in an area of low seismic activity.

Standard of earthquake proofing

Parliament has not imposed a "one size fits all" approach to the management of problems associated with earthquake prone buildings. The measures in the legislation recognise that local economic, social and environmental factors have an impact on the implementation of these provisions of the Act. The measures in the legislation also recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect both building owners and users.

Before a territorial authority adopts its policy in relation to earthquake-prone buildings, it should consider the way in which it wishes to implement its policy. There are three approaches that territorial authorities could adopt.

(a) An active approach

Under an active approach, Council would carry out an initial evaluation of buildings in its district to identify those likely to pose a high risk. In light of this, Council would establish priorities for further, more detailed evaluations and set timetables for action. Building owners would then be advised that their buildings are likely to be earthquake-prone and, if appropriate Council would seek from them a more detailed assessment of the building. If the detailed assessment confirmed that the building was earthquake-prone, Council would issue a notice to reduce or remove the danger to the level set out in its earthquake-prone building policy.

Adoption of this approach would provide Council with the best possible risk reduction programme as it is able to set and control the level of any work required to mitigate risk.

(b) A passive approach

If Council were to adopt a more reactive approach, the initial evaluation process and detailed assessment and any improvement of structural performance would only be triggered by an application under the Act for building alteration, change of use or extension of life or sub division.

This second approach has the significant disadvantage that it relies upon a somewhat haphazard order of remediation of earthquake-prone buildings in Waitakere City, based essentially on an owner's intentions for a building. This could leave some significant high risk buildings untouched for a long period of time.

(c) A mixture of active and passive

Council may wish to adopt an implementation regime that includes elements of both an active and passive approach that reflects the level of earthquake risk and priorities specific to Waitakere City. The draft Policy reflects this approach.

A49-A50

Under the draft Policy Council would take an active approach in dealing with buildings identified in NZS 1170.0 2002 table 3.2 attached at pages A49 to A50 as having importance levels three and four. Level three structures are structures that as a whole may contain people in crowds or contents of high value to the community or pose risks to people in crowds. Level 4 structures are structures with special post disaster functions (e.g. hospitals).

All buildings identified as heritage buildings would be subject to an active approach where they are a Level 3 or 4 as set out above, and otherwise a passive approach is to be taken where they are either excluded under s 122(2) of the Act or are less than Level 3. This is an important consideration given the importance of heritage buildings to the historical and cultural life of the nation and the local community.

A49-A50

A passive approach would then be taken with buildings identified in NZ 1170.0 2002 table 3.2 attached at pages A49 to A50 as having importance levels one and two. Level one structures being structures presenting a low degree of hazard to life and other property and Level 2 structures being structures not in other importance levels (e.g. car park buildings).

The policy does not apply to buildings that are used wholly or mainly for residential purposes unless the building comprises of two or more stories and contains three or more household units (s.122(2) of the Act).

DANGEROUS AND INSANITARY BUILDING POLICY

No submissions were received in relation to this policy. However part 3 of each part of the policy relating to insanitary and dangerous buildings has been amended to give special consideration to heritage issues that reflect the value heritage has in our society.

In essence similar to part 3 of the policy relating to earthquake prone buildings, the Council will work with owners of heritage buildings and consider waivers and dispensations to assist them to meet the Building Code as near as is reasonably practicable. Where necessary, Council will assess heritage buildings on a case by case basis to avoid loss of heritage or demolition.

The draft Policy has also had a new clause added requiring any upgrading work to take into account the principles of the International Council on Monuments and Sites New Zealand Charter, advice from the Council's Heritage Adviser, where the building is listed in the Heritage Appendix to the District Plan and the Historic Places Trust where the building is listed on this register.

These changes to the policy bring the Council policy into line with that of other local authorities.

RESOURCES

The desk top examination of buildings in Waitakere City has identified approximately 640 buildings that warrant a visual assessment to be made by a suitably qualified person to determine whether or not they are likely to be earthquake-prone buildings. Council does not possess the resources required to carry out this work and consequently it will need to be sourced from outside of Council.

Council has already approved \$125,000 in the 2005/2006 Long Term Council Community Plan for this exercise and application has been made to carry this funding forward into the 2006/2007 Long Term Council Community Plan. This ought to adequately address the necessary investigation in respect of earthquake-prone buildings. No such proactive assessment is feasible for dangerous and insanitary buildings as it would require sufficient additional resources to enable inspection of every building in the City. The draft Policy seeks to formalise the existing approach used to deal with dangerous and insanitary buildings. The current resource and level of funding is considered to be adequate to deal with dangerous and insanitary buildings given the relatively low numbers of confirmed dangerous and insanitary buildings encountered annually (approximately 50 dangerous buildings and 30 insanitary buildings per year).

CONCLUSION

Council is required by statute to adopt a policy on earthquake-prone, dangerous and insanitary buildings by 31 May 2006.

While Council may adopt a policy on earthquake-prone buildings that is either active or passive, it is considered that a mixture of both active and passive will provide a responsible approach to dealing with earthquake-prone buildings in Waitakere City.

In relation to dangerous and insanitary building policy the similarities between the Building Act 1991 and the Building Act 2004 enable Council to adopt a policy that formalises the current approach taken in dealing with dangerous and insanitary buildings in Waitakere City.

The measures in the legislation recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect both building owners and users. Council has updated the draft Policy to reflect the sentiment of the submissions it has received.

RECOMMENDATIONS

1. That the Draft Policy on Earthquake Prone, Dangerous and Insanitary Buildings 2006-2011 report be received.
2. That the Planning and Regulatory Committee recommend to the Council the adoption of the Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011.

3. That the Planning and Regulatory Committee recommend that a report on the Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011 be presented to the Long Term Council Community Plan and Annual Plan Special Committee to assess the feasibility of setting up a fund to assist heritage building owners.

Report prepared by: Max Wilde, Manager: Field Services and Setareh Masoud-Ansari, Contract Solicitor.



6 DRAFT PUBLIC PLACES BYLAW 2006 - TRADING

PURPOSE OF THE REPORT

The purpose of this report is to bring the redrafted Public Places Bylaw 2006 - Trading back to the Planning and Regulatory Committee for further discussion.

BACKGROUND

In accordance with Council's ongoing Bylaw Review Programme pursuant to s.158 of the Local Government Act 2002, a report was considered at the Planning and Regulatory Committee meeting on 14 February 2006 outlining the beginnings of a draft Public Places Bylaw. It was resolved (141/2006) that *"the parts of the draft Public Places Bylaw attached to the report, together with the draft Outdoor Dining Policy, are brought back to the Committee together with a draft Street Trading Policy for further consideration in due course."*

STRATEGIC CONTEXT

One of the objectives of the Strong Communities Platform of the Long Term Council Community Plan is to 'make the City a safe and interesting place to live.' This has the aim of protecting the health, wellbeing and safety of the community. A bylaw which regulates the conduct of persons and activities in public places is consistent with this key objective.

REVIEW OF TRADING TYPE ACTIVITIES

A number of existing bylaws (all adopted in 1990) regulate behaviour in public places to some degree, namely Public Places, Mobile or Travelling Shops and Hawkers, Parks and Reserves, and Beaches and Waters. All of those bylaws must be reviewed in accordance with Council's statutory duty by June 2008 or they will cease to have effect two years later on 30 June 2010. As previously discussed, it makes sense to combine those bylaws into one Public Places Bylaw, thus eliminating repetition and inconsistency, and making one updated document easier to understand and access.

The proposal envisages one overarching bylaw with some Parts containing general clauses relating to all public places under Council control (introduction, definitions, prohibited behaviour, offences) together with other Parts which will deal with specific activities or types of public place.

The report considered by the Committee on 14 February 2006 concerned the existing Mobile or Travelling Shops and Hawkers Bylaw 1990, and other issues of a trading type nature that have emerged in the last 15 years. As regards the Mobile or Travelling Shops and Hawkers Bylaw the report concluded that there was a specific statutory power to make a bylaw for the purposes of regulating 'trading' in public places (s.146 (a) (vi) Local Government Act 2002). There is also a specific statutory power retained within s.684 (41) Local Government Act 1974 to make bylaws 'permitting hawkers, pedlars, keepers of stalls (including vehicles used as stalls) and keepers of mobile shops to occupy stands in roads, public places and State Highways as Council thinks fit and to fix charges in respect of those permits.'

The report concluded that having considered the options, a bylaw continues to be the most appropriate way of addressing the perceived problem; that the proposed bylaw is the most appropriate form and that there are no implications under the New Zealand Bill of Rights Act 1990.

Other activities that occur in public places were also discussed. The display of goods outside shops, outdoor dining, private motor vehicle sales, soliciting for the purposes of prostitution, busking, charitable collections and windscreen washers are all trading type activities. The question is whether it is appropriate to regulate some, or all of these activities by means of a bylaw, and if so, the form that bylaw should take. The February report suggested that whilst these activities can bring benefits they can also have adverse effects if Council has no clear mechanism of control.

The Committee considered the perceived benefits and cost implications, community outcomes, resource implications, the position taken by other local authorities in the area, and the lack of complaints received about these activities to date. The Committee was generally not in favour of imposing more regulation and bureaucracy if there was no obvious problem to be addressed.

Also considered was a draft Outdoor Dining Policy. The Committee concluded that the policy was too detailed and prescriptive for Waitakere, given the current demand for and supply of outdoor dining facilities. Officers were requested to bring back to the Committee a redrafted policy for further consideration.

THE PROPOSAL

A51-A58

The redrafted bylaw is attached at pages A51 to A58. There are two specific parts:

1. Activities requiring Consent

- display of goods
- windscreen washers
- fund raisers
- buskers

All of these activities are currently regulated by existing bylaws.

Display of goods

This activity is regulated by clause 211 of the Public Places Bylaw 1990 (General Bylaw No.4 Chapter 2), 'Exposing Articles for Sale, or Suspending from Veranda' which reads:

"No person shall expose for sale any article whatsoever on any footway or outside of any shop, shop window, or doorway abutting on any public place, so as to encroach on or over the public place, without the prior permission of the local authority, and then only in accordance with such conditions as the local authority may impose."

Initial feedback from business owners in the New Lynn area obtained by the Principal Adviser: Urban Development, in December 2005 suggests that the use of footpaths to display goods (at least in the town centres) should not be encouraged. Comments include "I dislike the proliferation of cheap products encroaching in ever increasing volume onto pedestrian space", "I dislike the mess on the pavements". The practice of displaying goods on the street is described as "obtrusive" and "unsightly".

Consideration was given to recommending a complete prohibition of this practice. However, it is thought that there may be occasions, or certain areas of the City, where displays would not be considered unsightly, out of character or a health and safety hazard, therefore discretion ought to be retained.

Windscreen washers/ Appeals and Collections

This activity is currently regulated (as regards 'roadways' only) in Bylaw No.22 1990 Use of Public Roads. Consideration should now be given to extending the 'Council consent requirement' to all public places. This would reduce uncertainty regarding what is a roadway, and give Council some control over such activities if they began to create a nuisance in streets and other public places. There have been no reported complaints relating to washers or collectors in public places as far as it could be ascertained. The existing bylaw reads, clause 5:

"No person unless expressly approved in writing by the Chief Executive or approved pursuant to any other Bylaw, shall on any roadway within Waitakere City wash or clean the windows of any vehicle or vehicles, solicit any subscription, collection or donation or use the roadway for the purposes of selling or offering any goods or services of any kind."

Busking

The existing public places bylaw at clause 214.1 entitled 'Sounding of Music Instruments, Use of Loud Speakers and Disturbance of Neighbourhood' prohibits making a noise or disturbance in a public place without consent. Its main focus is the prevention of nuisance, (which will be covered separately in the bylaws) but at 214.1(a) (i) busking is in effect prohibited without prior consent:

"No person shall in any street or public place sing or play any musical instrument without the consent of the local authority, and then only subject to such conditions... as the local authority may impose".

It is proposed to replace all of the above clauses with one simple section entitled 'Activities requiring Consent' which will read;

No person shall in any public place:

- (a) Display any goods, wares or merchandise for sale, outside any shop or other business premises so as to encroach upon or hang over any public place, or
- (b) Wash or clean the windows of any vehicle or vehicles in anticipation of reward or
- (c) Solicit any donation, subscription or other monetary contribution or
- (d) Conduct any appeal, fund raising activity, raffle or lottery or
- (e) Perform as a busker

without the prior written consent of the Council and then only in compliance with the conditions of that consent.'

In accordance with the Committee's earlier direction, there is no significant increase of regulatory requirements imposed by this section. The only 'extension' is to require Council consent for window washing and fund raising activities in public places, as well as on roadways. The legal power to extend this consent requirement is to protect the public from nuisance.

2. Activities Requiring a Licence

- Trading - Mobile or Travelling shops, hawkers, stalls, stand holders and flea markets.
- Outdoor cafes.

Trading

The 'Trading' activity section is based on the current Bylaw No 4 (1990) Ch 4 Mobile or Travelling Shops and Hawkers. As discussed at the February meeting, it is proposed to remove the current distinction between those traders requiring a licence (travelling shops and hawkers) and those requiring a permit (stands and stallholders). All those proposing to 'trade' will be required to complete the same form and obtain a licence. In addition to removing the permit regime, the other major changes to the bylaw are as follows:

- (a) Applicants (to sell goods or be the keeper of a mobile shop) are to provide photographic identification, so that officers can be satisfied that the trader is the person named on the licence.
- (b) Under the heading 'Licence Conditions', in the draft bylaw Council may prescribe conditions relating to any subject, one specifically mentioned is location. It is therefore unnecessary to attach a schedule of streets to the bylaw itself listing streets where trading is prohibited. This is a matter which can be dealt with, if appropriate, in a Trading Policy. A Public Places Trading Policy is currently being formulated by Field Services in discussion with other departments (particularly Parks). The draft policy will be brought back for further consideration in due course.
- (c) Again under 'Licence Conditions' in the draft bylaw, sub-clause (3) imposes conditions relating to mobile and travelling shops, and (b) requires no keeper to trade within 100 metres of any shop that sells similar items. In Auckland City's current bylaw, the restriction is 300 metres from any shop that sells similar items. The 100 metre restriction has been included for consideration and discussion. The view was expressed in the last meeting that 100 metres may not be a sufficient restriction.

The reference to 'flea markets' was suggested by Field Services. Currently the existing bylaw requires each stallholder taking part in a flea market to obtain a permit. It would be fairer and more appropriate, if the organiser of the event applied for and obtained one licence to cover all stallholders.

Outdoor Dining

A59-A66

The policy has been redrafted by Council's Principal Adviser: Urban Development. The document, with changes tracked, is attached at pages A59 to A66. The introduction, definition and pedestrian access sections remain largely unchanged, but the prescriptive detail has been substantially reduced. There are no longer references to fixed canopies and glass structures. The sections regarding description of street furniture, design and colour have also been simplified. The draft policy is now more relevant to Waitakere.

The aim is not to be overly prescriptive. To do so may discourage the emergence of outdoor dining completely if compliance with Council requirements is perceived to be too difficult. Some degree of control needs to be retained over the look and ambience of the town centres however if Council wishes to influence and guide development. It is a Council objective to make the City a safe and interesting place to live. Outdoor dining facilities enhance urban centres, provided there is appropriate pedestrian and emergency service access, and the overall effect is positive. Initial feedback from local business owners suggests that outdoor dining is seen 'to give the town centre atmosphere and bring in foot traffic' and Council is requested to 'encourage a café culture'.

It is submitted that the specific bylaw making power to regulate 'trading in public places' (s.146(a)(vi) Local Government Act 2002) applies to outdoor dining also. The general bylaw making powers contained in s.145, particularly (a) protecting the public from nuisance and (b) protecting, promoting and maintaining public health and safety, are also applicable. A bylaw is the most appropriate and effective way of dealing with this issue, they are well understood by the public and generally observed.

Imposing a licence requirement on outdoor dining operators and enforcing an adopted policy, will have resource implications for Field Services. Those implications cannot be precisely quantified at this time. The Team Manager: Compliance will address the meeting on that point.

It is important to appreciate that all regulatory provisions (either pre existing or proposed,) enable Council to take action to curb unacceptable behaviour, or to respond to public complaints if they arise. Every regulatory provision does not need to be vigorously enforced on a daily basis to be effective. They do however provide Council with a mechanism which can be used if required.

SUMMARY

Following on from the meeting in February 2006, in accordance with resolution 141/2006 the 'trading' part of the draft Public Places Bylaw, together with the draft Outdoor Dining Policy, have been revisited and are brought back for further consideration.

There are obvious difficulties drafting one part of a proposed bylaw in isolation. Whilst the proposed documents are not therefore in final form, they are submitted to enable the Committee to discuss overall principles so that progress can be made towards a final draft bylaw and policy.

The Mobile or Travelling Shops and Hawkers Bylaw 1990 has been substantially rewritten, updated, and incorporated into the draft Public Places 2006 Bylaw. Clauses in the current Public Places Bylaw 1990 and Use of Public Roads Bylaw 1990 covering trade type or related activities have also been brought together for ease of access.

For discussion, these are the following proposed changes to the current regulatory regime:

- (a) Introducing a consent requirement for window washers and fund raisers to operate in public places, as well as on roadways.
- (b) The ability to issue one licence to the organiser of a flea market, to cover all stallholders.
- (c) Additional conditions attached to mobile shops. In particular a restriction on trading within 100 metres of any shop selling similar items.
- (d) Imposing a requirement that operators wishing to utilise the footpath or some other public place for outdoor dining, will require a licence. This is to ensure public health and safety is protected, pedestrian and emergency access is retained, and to promote the desired development of town centres.

The Local Government Act 2002 s.155 requires that before making a bylaw the local authority must determine:

- (1) whether a bylaw is the most appropriate way of addressing the perceived problem, if so
- (2)
 - (a) whether the proposed bylaw is the most appropriate form of bylaw and
 - (b) gives rise to any implications under the NZ Bill of Rights Act 1990.

The previous report considered on 14 February 2006 contained an option analysis relating to trading type activities in public places concluding that Council should continue to regulate by means of a bylaw. The issue that required further consideration was whether the content and form of the draft bylaw and accompanying policy were appropriate.

It is submitted that the proposals do not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposals do not impact on any freedoms affirmed in that Act. The proposed Bylaw does not breach, or unnecessarily interfere with rights protected by that Act.

If the Committee is comfortable with the general content and principles contained within the draft bylaw and policy, it is requested that these documents be 'parked' until all other parts of the draft Public Places Bylaw 2006 have been considered and the complete Public Places draft bylaw, is brought back for approval. Thereafter the Committee may recommend to Council that the whole document (edited, reformatted and amended as appropriate) be approved for the purposes of public consultation. The Special Consultative Procedure pursuant to s.83 and 156 Local Government Act 2002 will then commence.

RECOMMENDATIONS

1. That the Draft Public Places Bylaw 2006 - Trading report be received.
2. That having considered all possible options, a bylaw is the most appropriate mechanism to assist in the regulation of trading in public places.
3. That the principles contained within the draft bylaw relating to trading in public places produced at this meeting be approved, and will be included in the complete draft Public Places Bylaw 2006 brought back to the Planning and Regulatory Committee for approval in due course.
4. That the contents of the draft bylaw has no implications which are inconsistent with the New Zealand Bill of Rights Act 1990.
5. That Council officers finalise the terms and conditions of a Street Trading Policy, and refer back to the Planning and Regulatory Committee for discussion.
6. That the principles contained within the draft Outdoor Dining Policy also be approved.

Report prepared by: Denis Sheard, Manager: Legal Services and Yvonne Donaldson, Team Leader: Legal Services.



PART D - REGULATORY / ENFORCEMENT

7 LEGAL UPDATE (AS AT 29 MAY 2006)

INTRODUCTION

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

COURT OF APPEAL

(New) Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (April 2006)

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and have already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt have now appealed that aspect of the decision which is likely to be heard by the Court of Appeal later in the year.

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

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004 in Council's favour. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued).

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

The problem with the reasoning of the majority of the Court of Appeal is that it equates Council's role when approving subdivision consents, (particularly as to the roading component) as engaging in the expropriation of private land for public use, and overlooks (or at least relegates) councils' district planning role. This has significant consequences especially as it carries the implication that councils may be required to compensate developers for the "public benefit" aspects of subdivisions. An application for leave to appeal to the Supreme Court was heard in the week on 3 April 2006. Leave was granted on all grounds sought. A hearing has been scheduled for 11 and 12 July 2006.

HIGH COURT

(Changed) C W Williams and others v Waitakere City Council (February 2006)

Council has now been served with seven sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. An initial telephone conference was held on 23 May 2006. Council will be filing applications to strike out the various claims on the basis that the events which trigger an obligation under the Public Works Act occurred prior to the offer back obligation came into force.

(Unchanged) Waitakere City Council v P W Mawhinney (February 2006)

The background to this matter is that Mr Mawhinney was served with a bankruptcy notice on 21 October 2005 in relation to \$5,063.16. This is a costs award due to Council for winning a security for costs application in May 2005 in relation to the High Court proceedings referred to below. Mr Mawhinney opposed the application. This matter was heard on 21 March 2006. After oral argument the proceeding was stood down and Mr Mawhinney paid \$5,468.00 for the debt and costs of the bankruptcy notice. Associate Judge Faire then struck out Mr Mawhinney's application and awarded Council costs of \$2,610. An order has been made for Mr Mawhinney to pay within 14 days. Mr Mawhinney has not paid. A bankruptcy notice will be issued against Mr Mawhinney to recover this debt.

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

Mr Mawhinney filed an amended 62 page statement of claim on 31 March 2006, being the last day for doing so. A five day hearing has been allocated by the Court for the week of 6 November 2006. The amended claim has now been reviewed and an application to strike out appeal has been filed with the Court.

The Associate Judge has made timetable orders leading up to the strike out hearing, although a date has not yet been fixed by the Court. Mr Mawhinney also has two further weeks to provide submissions in reply to our costs application in respect of the defended argument last year relating to the form of security for costs to be paid into Court.

ENVIRONMENT COURT

(Changed) Weddings Etc Limited v Waitakere City Council (January 2006)

These proceedings concern the noise levels generated by the operation of "Cassels" function centre in Scenic Drive. Weddings Etc Limited obtained a stay of the abatement notice (proceedings which were begun by the Chapmans) so that it can continue to operate at current levels (taking into account some proposed and already implemented noise mitigation measures). The Court granted the stay conditions which were proposed by Weddings Etc. Weddings Etc has agreed to obtain the necessary consents and undertake noise attenuation works during July 2006 (on a without prejudice basis)

A hearing of the appeal on the abatement notice will be set down as a priority fixture some time after 3 August 2006 (when building works are expected to have been completed in respect of noise mitigation measures).

(Unchanged) Waitakere Resource Consents Limited v Waitakere City Council (December 2005)

This is an appeal against a refusal to issue a certificate of compliance under s139 Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The Application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

Mr Mawhinney (the director of the appellant company) has breached timetable orders in relation to exchange of the evidence. The Court has determined to place this matter on hold pending the outcome of the Dilworth Structure plan proceedings (RMA 886/98) which are to be heard in mid May 2006. Following the resolution of the structure plan, Council is to file a memorandum with the Court suggesting a way forward.

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

An appeal by the Auckland Regional Council ("ARC") against a decision of this Council to grant consent to a proposed private high school and associated facilities. The Auckland Regional Council opposed the consent application alleging that granting consent to a new school outside of the Metropolitan Urban Limits ("MUL") would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limits ("MUL") and would create negative precedent effects. The matter has now been put "on hold" following a request by the Auckland Regional Council. The Auckland Regional Council is to provide a progress report to the Court by 19 May 2006.

(Unchanged) Denver Holdings Limited v Waitakere City Council (October 2005)

An appeal by the applicant (Denver) against certain conditions imposed on a resource consent for a medium density housing development at 23 Denver Avenue, Sunnyvale. A related appeal by Mr J Baran against the Council's decision to grant the consent has since been withdrawn. The appeal has been placed "on hold" at the appellant's request.

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

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

The application and supporting evidence has been filed and served. At the last judicial conference in November Mr Britten gave an undertaking that there would be no further use of the access road and no earthworks would be undertaken in the vicinity of the slip and surrounding (potentially unstable) land. Mr Britten's engineer has undertaken an assessment of the affected land which has been filed in Court in affidavit form. On 24 March, the Council filed further affidavits in reply (geotechnical, hydrological and planning evidence).

On 7 April 2006 Counsel for both parties met to discuss options for remedial works. Engineers for both parties are to discuss options for remedial works. The Council's engineer has advised of possible remedial works, however, the exact course to be taken will depend on the results of further investigative works at the property. Mr Britten's lawyers have been advised of the options. However, the Council is yet to obtain consent to enter the property to undertake the further investigations required.

The Court has set a further reporting date of 2 June 2006, we await a response from Mr Britten's lawyers.

Separately, the Council has contacted Mr Britten, to attempt to find an alternate resolution to expedite the matter.

(Changed) I & Z Farac v Waitakere City Council

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It seeks to rezone all (or part) of the property as 'Living 2 Environment'. Discussions are to take place on the relief being sought. We await a response from Council's engineers as to whether any further information is required. A further report date of 2 June 2006 has been set.

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

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

(Changed) Glorit Subdivision Limited and P W Mawhinney v Waitakere City Council (June 2005)

A further appeal by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Court in December 2005 and Mr Mawhinney's application to rehear has also been dismissed by the Environment Court (Judge Shepherd). Council has filed an application for costs.

However, Mr Mawhinney has lodged an appeal in the High Court alleging various errors of law. The filing of the appeal is late and has been opposed. Mr Mawhinney has been directed to pay security for costs of \$1,500 before the appeal can proceed. The issue of leave sought by Mr Mawhinney in relation to the late appeal on the strike out application filed by the Council has been set down for 12 July 2006.

Leave is also to be sought to have a costs judgment entered against Mr Mawhinney in the Environment Court despite the High Court appeal. Mr Mawhinney was required to file all submissions in opposition to Council's costs applications by 21 April 2006. Mr Mawhinney filed his submissions on 26 April and did not meet the Court imposed deadline. The Council lodged rebuttal submissions with the Court on 16 May 2006. We are awaiting notice from the Court about a date for the stay/costs hearing.

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

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

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

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

DISTRICT COURT

Waitakere City Council v Mr G Osborne and Mrs L Osborne – 48 Jaemont Crescent, Te Atatu

This is a prosecution by Council of Mr and Mrs Osborne for failing to fence their swimming pool as required by the Fencing of Swimming Pools Act. On 3 February after a defended hearing Mr and Mrs Osborne were found guilty of breaching their fencing obligations in a number of respects. By the time the case had been resolved the Osborne's pool had been breaching the Act for 280 days. With the provision for daily fines for each day of non-compliance the maximum fine available for each was approximately \$14,000. The Court adjourned sentencing to allow Mr and Mrs Osborne to mitigate the offending by upgrading their fencing. This work was done 10 days later.

Sentencing took place on Thursday 11th May 2006 at Waitakere District Court. It was emphasised that notwithstanding the indications given by the Court that Mr Osborne should receive a reduction in fine if he rectified the non compliance for the swimming pool fencing that he and his wife should still face a significant fine and meet a large portion of Council's costs of prosecution because of the nature and extent of non-compliance, the length of time which it occurred over, the way that Mr Osborne conducted his case.

Mr Osborne sort an adjournment of sentencing to address some case-law that had been presented to the Court and the Court allowed him further time. The Court adjourned the matter giving Mr and Mrs Osborne 14 days to serve further written submissions on penalty and Council a further 7 days to provide any further rebuttal submissions. The case will be called again on the 9 June 2006 so the Court can deliver its written decision.

(Changed) J R and M J Corbett - 181 Hobsonville Road, Whenuapai (April 2006)

Charges laid under the Building Act for structural alterations made to the dwelling at the property without a building consent. The matter was adjourned on 19 May to permit disclosure and complete service. In the interim the unauthorised works have been removed and re-built in accordance with a building consent by the new owners of the site. A decision has been made to withdraw the prosecution when the matter is called on 23 June 2006 at the Waitakere District Court. The defendants have been informed of the Council decision.

(Changed) Rogers Earthmoving Limited, LM and KP Rogers, GP Fitzpatrick - 312 Lincoln Road (April 2006)

Charges laid under the Building Act for erection of a structural retaining wall that is not building code compliant and built without building consent, as well as a change of use from residential home to a business without building consent. This matter was adjourned on 19 May to permit disclosure. It is set down for a call on 23 June 2006 at the Waitakere District Court.

(Changed) Property Solutions Group Limited, Pratt G, Power R - 77E Colwill Road, Massey (April 2006)

Property Solutions Group acted in an advisory capacity to the owners of the property. They advised the owners to complete the development undertaken underneath the house even though no building consent had been granted. The company, its director and primary advisor have been charged under the Building Act. This matter was adjourned on 19 May to permit disclosure. It is set down for a call on 23 June 2006 at the Waitakere District Court.

(Changed) J A and G R Drew - 42 Christian Road, Swanson (April 2006)

Charges laid under the Building Act for the conversion of the basement area of the house into a minor household unit. Building work was undertaken to create bedroom, bathroom, lounge area, including alteration and building of structural walls. The work is not building code compliant and no building consent was granted for the work. This matter was adjourned on 19 May 2006 to permit disclosure. It is set down for a call on 23 June 2006 at the Waitakere District Court.

(Changed) W B and L A Henderson - 1/21 Arawa Street, New Lynn (April 2006)

Charges laid under the Building Act for significant alteration work undertaken at the property. This work extended the living area of the property. Structural walls were removed and replaced. None of the work meets the Building Code. No building consent was granted. The work has resulted in the possibility of excessive moisture penetration into the house. This matter was adjourned on 19 May 2006 to permit disclosure. It is set down for a call on 23 June 2006 at the Waitakere District Court.

(Changed) T S Narain and T J G H Ubachs - 102A Huia Road, Titirangi (March 2006)

Charges were laid under the Resource Management Act for the clearance of at least 37 native trees in a Managed Natural Area in contravention of Rule 2 of the Managed Natural Area rules of the District Plan. The clearance was undertaken without resource consent and resulted in the defendants expanding the ocean view from the property. The defendants had earlier been issued with an infringement notice for clearing three native trees from the property in contravention of the District Plan. The matter was called on 11 May 2006 at the Auckland District Court. The defendants did not appear despite instructions from their solicitor. Warrants of arrest were issued by the Court. The defendants were given an opportunity to vacate the warrants by making a voluntary appearance in Court. The matter was adjourned to 9 June 2006 to allow Counsel for the defence and prosecution to meet to discuss the charges and to allow the defendants to make a voluntary appearance. In the interim, the defendants did not make a voluntary appearance to discharge the warrant of arrest. The defendants have sold the property and have returned to the Netherlands permanently. The Council will be filing a memorandum to inform the Court of their departure.

(Changed) J D Heays - 13 Turanga Road, Henderson (February 2006)

This matter relates to charges laid under the Building Act 2004 and the Resource Management Act 1991. The Building Act charges relate to the unauthorised building work which includes conversion and alteration of a building on the property, the erection of a double garage and new unit. The Resource Management Act charges relate to the contravention of the Waitakere City Council District Plan relating to increasing the net site area of the property without land use consent. The matter has been transferred to the Auckland District Court to be heard by an environment warranted judge. The matter was called on 11 May but the defendant was not ready to enter a plea. Counsel for the defendant sought an adjournment to initiate discussions with the Council in respect of the charges. The matter is set down for a call on 9 June 2006 to report back to the Court on those discussions.

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

This matter relates to breaches of the Resource Management Act ("RMA") and Building Act. Both matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter will proceed to a jury trial. The Resource Management Act matter was set down to be called on 26 April for pre-hearing issues to be considered. At the call-over on 26 April 2006, Mr Gordon entered not guilty pleas to all the charges. The matter has been set down for depositions on 15 June 2006. In respect of the Building Act matters, a defended hearing is set down for 30 October 2006 to 1 November 2006. The matter will be heard with other similar offences to which Mr Gordon has pleaded not guilty.

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

Charges laid under the Building Act for unauthorised building work undertaken to remove an existing deck from the second storey of the house and replace it with a new 2.4 metre high one. The new deck does not meet the standards of the building code and is considered to be unsafe. The defendants have sought building consent to remove and re-erect the deck. The matter has called on 19 May 2006 and the Council withdrew the charges by leave of the Court on the basis that the defendants sought and obtained requisite consents and rebuilt the non-compliant deck in accordance with the building consent.

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

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was called on 19 May 2006 where all but the owner of the site, Mr Engel, entered a guilty plea. As the engineering company McGuigan Syme Chilcott Limited entered a guilty plea, charges against the directors of the company were withdrawn. Sentencing is set down for 9 August 2006 for McGuigan Syme Chilcott Limited, G Pitts, and D Owens Limited. Mr Engel entered a not guilty plea through his solicitor. The Court set the matter down for 23 June 2006 and required that on 23 June 2006 the defence set out a prima facie defence, the number of witnesses it wishes to call and the number of days the parties think the hearing will take to complete.

(Changed) A Casey and Eurovision Building Removals Limited - 4 Bowers Road (June 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct pile foundations to support a relocated house which was relocated onto the foundations. No building consent was obtained for the construction of the foundation or the relocation. Mr Casey was the head contractor in charge of obtaining consent. Mr Casey initially entered a plea of not guilty. A defended hearing was set down for 4 April 2006. Mr Casey changed his plea to 'guilty' on the day of the hearing. The Court delivered its reserved its decision on 12 May 2005. Mr Casey was discharged without a conviction, but was required to pay the Council \$4,000 towards costs of prosecution, solicitor's costs of \$450 and Court costs of \$130.

Eurovision Building Removal's Limited built the foundations and relocated the house. It entered a plea of not guilty through its directors. A defended hearing was set down for 4 April 2006. The matter was part heard on 4 April and continued on 11 April. The Court delivered its reserved decision on 12 May 2005. It found the defendant guilty. The Court held that the Council had proved beyond reasonable doubt that the defendant has undertaken the building of foundations and the relocation of the house without a consent being in existence. Sentencing is to take place on 2 June 2006.

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

Charges were laid under the Resource Management Act for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. The defendant was the mother of the offender and took responsibility for permitting the clearance. A restorative justice conference was held on 3 April 2006 where the defendant took responsibility for the actions of her son and agreed to a planting and a maintenance programme for five years of 100 trees. The parties reported to the Court on 7 April 2006 for sentencing. The defendant was discharged without conviction as a result of the agreement reached at the restorative justice conference and her willingness to co-operate with the Council. The planting programme is to be prepared and submitted to the Council for consideration. Planting is to take place by September of at least 100 trees. The Council will report back to the Court on 13 October 2006.

(Changed) A Hafeez - 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance and earthworks. The defendant pleaded guilty to three charges of undertaking unauthorised building work, earthworks and vegetation clearance. All alternate charges against Hafeez were withdrawn. The matter was partially heard on 13 March 2006. The Court has deferred sentencing to give the Council an opportunity inspect the site one more time so as to seek an appropriate sentence, and to best inform the defendant as to what his options are in relation to the outstanding applications for building and resource consent. The matter was called for sentence on 17 May 2006 where Mr Hafeez was convicted and sentenced to 250 hours community work. Council has subsequently discovered further breaches of the District Plan and contraventions of the resource consent. Council is currently considering how to address these further contraventions. Mr Hafeez has been informed of the Council's further findings.

(Unchanged) S Mohammad - 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance and earthworks. The defendant has not appeared before the Court as he is now residing in Pakistan. The Court has issued a warrant for his arrest to be executed upon his entry into New Zealand.

(Changed) D Thomson - 10 Pohutukawa Road, Whenuapai (March 2005)

Charges laid under the Building Act and Resource Management Act for unauthorised building work undertaken to create an additional minor household unit within an existing warehouse building, and district plan rule breaches. On 15 May 2006, Mr Thomson appeared in Court and entered guilty pleas to the charges. He was convicted and fined \$8,500 and ordered to pay Court costs and prosecution costs.

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

Charges were laid under the Building Act and Resource Management Act in respect of a second minor household unit constructed without the requisite building and resource consents. Mr Kasprzak entered not guilty pleas and the matter was set down for a defended hearing on 12 December 2005. Following receipt of the Council's evidence, Mr Kasprzak changed his plea. The Judge directed that he liaise with Council regarding the standard of the building work done and remedy any substandard work, if possible, at Council's direction. A sentencing date is to be allocated shortly.

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

Charges were laid under the Resource Management Act regarding the contravention of District Plan Rules (as the property is being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent) and for contravention of an abatement notice. Mr Stanic pleaded guilty. A restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was reached that Council would assist the defendant to remove the vehicles from the property and that no further vehicle repair work would be undertaken at the property. The property has since been sold; there are no on-going issues.

Sentencing was scheduled for 7 June 2005 but Mr Stanic failed to appear and an arrest warrant was issued.

The Court has now re-issued the arrest warrant (the original having been misplaced by the Police). We await the allocation of a new sentencing date from the Court.

RECOMMENDATION

That the Legal Update (As At 29 May 2006) be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.

