



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

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

DATE: Tuesday, 11 September 2007 **TIME:** 9.30 am

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to consider the business as set out herein and to take any necessary action connected therewith.

5 September

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

MEMBERSHIP:

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

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

(Quorum 5 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 11 SEPTEMBER 2007,
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
4 CONFIRMATION OF MINUTES	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
5 LEGAL UPDATE (AS AT 30 AUGUST 2007)	2
6 49 SUNNYVALE ROAD, SWANSON - MRS SM BORRETT	13
7 DOG CONTROL ACT 1996 - MENACING DOGS AND PLACEMENT POLICY	17
8 DOG CONTROL ACT 1996, SECTION 10A - ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2007	19
<u>PART C - DISTRICT PLAN / STRUCTURE PLANS</u>	20
9 ISSUES SURROUNDING TALL VEGETATION ALONG BOUNDARIES	20
10 UPDATE ON RODNEY DISTRICT PLAN - APPEALS TO THE ENVIRONMENT COURT	22
11 ISSUES SURROUNDING THE EARTHWORKS PROVISIONS OF THE DISTRICT PLAN	25
<u>PART D - ENVIRONMENTAL MANAGEMENT</u>	31
12 GENETICALLY MODIFIED ORGANISMS - UPDATE	31
13 REMOVAL OF DEFENCE PURPOSES DESIGNATION OVER PART OF THE LAND AT HOBSONVILLE AIRBASE	33
<u>PART E - PUBLIC EXCLUDED MATTER</u>	35
14 GROWTH AND TRANSPORTATION INTEGRATION PROGRAMME - PROPOSED REGIONAL POLICY STATEMENT APPEALS	35

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 11 SEPTEMBER 2007, COMMENCING AT 9.30 AM

PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

- (i) the Committee by resolution so decides; and
- (ii) the Chairman 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 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



4 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 7 August 2007

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 7 August 2007, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 AUGUST 2007)

GLOSSARY

Land Valuation Tribunal	(LVT)
Ritchies Transport Holdings Limited	(Ritchies)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Environmental Health Officer	(EHO)
Auckland Regional Public Health Service	(ARPHS)

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 minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes. References to Council's District Plan were not included in previous reports but will be included separately under the Environment Court heading in all future reports.

COURT OF APPEAL

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. He reported that the argument put forward to the Court of Appeal by Carter Holt seemed more compelling than that presented to the High Court and that the arguments received a sympathetic hearing from the court. The decision has been reserved. If the argument is successful Council will need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. Costs on both decisions are reserved pending the Court of Appeal decision.

HIGH COURT

***(Unchanged)* Waitakere City Council v C P Brunel and the Cove Limited (December 2006)**

Council sought to acquire land under the Public Works Act 1981 for a car park at the Westpark Marina boat ramp. The owners objected and the High Court eventually declared that the Council could take the land. The property owners' application for leave to appeal was heard in the High Court on 19 March 2007. Leave was declined.

Negotiations to purchase the properties have been completed and the Council now owns the land, but with some minor compensation issues unresolved, including the costs issue. Hopefully the outstanding issues can be resolved with minimal disagreement.

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. This is being followed up with Counsel.

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

Council has 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. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 Public Works Act 1991. An application for leave to appeal to the Court of Appeal has been filed with the High Court against that decision. A notice of opposition has been lodged and we are awaiting a hearing date.

(Changed) West Auckland Enterprises Limited (May 2007)

Council has made a liquidation application to put West Auckland Enterprises Limited (formally Sunderland College Property Limited) into liquidation.

This company owes Council \$17,000 for unpaid resource consent hearing fees and has failed to comply with a statutory demand. West Auckland Enterprises Limited has not responded to correspondence regarding this debt. The matter was called in Court on 5 July 2007. West Auckland Enterprises Limited was put into liquidation and the directors of West Auckland Enterprises have subsequently presented a personal cheque to repay Council for \$17,000.

(Unchanged) Lovelock v Waitakere City Council (July 2007)

This matter is in respect of an appeal of a rating valuation by Lovelock to the Land Valuation Tribunal ("LVT").

Notwithstanding Lovelock's appeal being dismissed by the LVT, Council's concerns are in relation to a number of incorrect statements made about Council's responsibilities in relation to ratings valuations. These statements may become a precedent for future ratings valuations. Accordingly, council has applied for a Judicial Review of the LVT's decision in relation to these statements. Judicial Review proceedings will clarify Council's responsibilities

Substantive hearings involving Mr Mawhinney

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

The judgment of Fogarty J in relation to Council's strike out application was released on 14 September 2006. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim was struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions based on common law duties against local authorities generally.

A costs application in respect of the proceedings from 1999 to date has been/was lodged with the Court. Final cost submissions seeking an uplift from allowable 'scale' costs have been filed with the Court this month. A final judgment from Fogarty J is awaited.

(Unchanged) Mawhinney and Glorit Subdivision Limited v Waitakere City Council (February 2006)

This matter related to a further appeal in the High Court 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 Environment Court in December 2005 and Mr Mawhinney's application to be reheard has also been dismissed by Judge Shepherd in the Environment Court.

Both decisions have been appealed to the High Court. The matter has been set down for hearing in the High Court on 7 December 2007. Mr Mawhinney has lodged security for costs of \$1,500. Subsequently Glorit Subdivision Limited, of which Mr Mawhinney was a sole director and shareholder, has been wound up, for non-payment of costs award in favour of the Council. The Court has now granted leave to allow the Official Assignee to withdraw from the proceedings. Mr Mawhinney has obtained a short adjournment to early December to allow time for decisions in related Environment Court decisions to be available.

Debt Recovery proceedings involving Mr Mawhinney

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

The Council issued a bankruptcy notice against Mr Mawhinney to recover payment of unpaid costs and disbursements awarded to Council in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney paid the debt and costs of \$3,475 in accordance with the bankruptcy notice. The Council sought indemnity costs against Mr Mawhinney due to additional costs incurred by Council for being forced to make an application for substituted service. This application was heard on 31 January 2007 before Associate Judge Doogue.

On 12 February 2007, Associate Judge Doogue delivered a judgment that awarded the Council full indemnity costs of \$2,958 against Mr Mawhinney, plus Council's disbursements of \$353.00. A bankruptcy notice was issued and served by substituted service. Mr. Mawhinney had until 23 August 2007 to comply with the bankruptcy notice or make an application to set aside the bankruptcy notice, or else commit an act of bankruptcy. Payment in full was made immediately prior to that date.

As Council was forced to make an application for substituted service we have filed an application for indemnity costs seeking costs of \$2,491.00.

(Unchanged) Waitakere City Council v Glorit Subdivision Limited (March 2006)

Council has been seeking to recover the costs awarded to it in these proceedings.

Mr Mawhinney's barrister had advised that Mr Mawhinney has no liquid assets to pay this debt. Despite this, Mr Mawhinney paid the judgment debt of \$14,290.50 plus costs for the bankruptcy notice on 28 March 2007. Mr Mawhinney's barrister advised Mr Mawhinney would not be paying the other outstanding costs of \$1216.88 still owing to Council. We are awaiting further costs to be fixed by the Court for this matter and will pursue Mr Mawhinney for these debts.

(Changed) Waitakere City Council v P W Mawhinney (May 2007)

Mr Mawhinney (and Glorit Subdivision Limited (In Liquidation)) jointly and severally owes Council \$2565.00 for costs obtained in the Environment Court.

A bankruptcy notice was issued and was served on Mr Mawhinney by substituted service the same time as the indemnity costs bankruptcy notice (above).

Mr Mawhinney likewise had until 23 August 2007 to comply with the bankruptcy notice or apply to set the notice aside or else commit an act of bankruptcy. Payment in full was made immediately prior to that date.

The substituted service application and indemnity costs application was consolidated with the above matter.

ENVIRONMENT COURT

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

Councillors will recall that this matter has been to the Supreme Court, to resolve the attempts made by Estate Homes to argue that it should be fully compensated for the costs it incurred building Marinich Drive. The Supreme Court ruled that the only issue for determination was whether Estate should be compensated at a local or collector road standard and remitted the matter back to the Environment Court which heard argument on Monday 28 May and delivered its decision on 15 June 2007. No further evidence was called. The only evidence before the Court was that the appropriate standard was a collector road. Notwithstanding, the Court has held that a local road would suffice. Council has not been able to resolve the issue, and Matthew Casey QC has filed a further appeal seeking the Court's clarification of this matter, as Council believes that the correct standard is a local road.

***(Unchanged)* Auckland Regional Council v Waitakere City Council (May 2005) Waitakere Ranges Protection Society Incorporated v Waitakere City Council (May 2005) ("the Duncan appeal")**

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated 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 the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006, the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision.

***(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 Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Incorporated have lodged applications with the Court in support of the Council as Section 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing resumed on 23 May 2007 to hear the evidence of a witness for one of the Section 274 parties who were not available during the March hearing. The hearing has now been completed. The Court has reserved its decision.

(Unchanged) Waitakere City Council v 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 Britten's property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. Council sought final orders to require that the Britten's undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

Separately and in parallel, the Council has initiated a mediation process with Mr Britten in an attempt to find an alternate resolution to expedite the matter. As a consequence of that process the parties are working towards concluding an agreement for the completion of remedial work in accordance with the Council resolution at its meeting held on Thursday 20 July 2006.

Mr Britten has been granted resource consent to undertake the remedial works. The remedial work will not begin until the summer of 2007/2008. This has been communicated to the Environment Court and a new reporting date of 30 November 2007 has been set down. The Enforcement Order proceedings remain on hold.

(Changed) Ritchies Transport Holdings Limited, v Waitakere City Council, and Rex Campbell, Section 274 Party (September 2006)

This is an appeal against an abatement notice issued to the directors of Ritchies Transport Holdings Limited ("Ritchies"). The appeal relates to the requirement of the abatement notice to reduce the buses parked on the boundary, reduce daily traffic movements, undertake mitigation measures in respect of noise and ensure the hours of operation are between 6.00 am and 9.00 pm. The requirements are those set out in the Ritchies resource consent (RMA 991374). The appeal is on the grounds that the business enjoys existing-use rights, that the resource consent does not limit the number of vehicles, the vehicle movements, noise levels and hours of operation. An application for stay was concurrently filed with the notice of appeal. Mr Rex Campbell, a neighbour on the eastern boundary of Ritchies, has joined the proceedings as an interested party.

The parties have agreed for the stay to continue whilst the Council processes the resource consent to address the matters raised in the abatement notice. Ritchies has sought for the application to be notified, the Council is currently in the process of preparing the application for notification.

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

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

(Unchanged) Waitakere City Council v Rodney District Council ("RDC") (April 2007)

An appeal and s 274 notices were filed by WCC regarding decisions by RDC on the Rodney Proposed District Plan regarding future urban development issues. A pre-hearing conference occurred on 27 and 28 June 2007, at which time the Court directed a case management process going forward. This involves workshops and mediations from August 2007 with a hearing scheduled (if required) for 2008. The Court intends to resolve all outstanding appeals in respect of the Rodney Plan by the end of 2008.

(Changed) L Aalbers v Waitakere City Council (May 2007)

An appeal against two abatement notices which were issued by the Council to require cessation of a home occupation for the provision of sexual services from a rear site without resource consent. The Council contends that the activity is in breach of the District Plan Rules which require resource consent to operate as a home occupation because it is on a rear site as defined by the District Plan (Rule 11). The appellant initially disputed the need for consent and has therefore appealed the abatement notices. The appellant was granted an application for stay whilst the matter is being resolved. The Council opposed the application for stay and the appeals on the basis that they are out of time and the activity cannot continue without resource consent. The Court nevertheless granted the application for stay. Three surrounding neighbours have joined as parties.

A one day mediation was held between all the parties and facilitated by an Environment Court Commissioner. The parties have entered into a confidential agreement which permits the activity to continue. The parties are reviewing the matter again on 8 October 2007 after which a decision on the appeal will be made. If the appeal is to proceed, it has been set down for a back-up fixture in early December 2007.

(Changed) The Tree Council and the Sunnyvale Protection Society v Waitakere City Council (June 2007)

An appeal against Council's decision to grant subdivision and land use consent to Sunshine Boulevard Limited for a 56 unit medium density residential development at 25-27 Awaroa Road and 20 Sunnyside Road, Sunnyvale. A notice of reply has been filed. Mediation has been scheduled (tentative date) for 19 September 2007.

(New) Waitakere City Council v Auckland Regional Council, IMF v Auckland Regional Council and NZ Steel v Auckland Regional Council

This is an appeal regarding ARC's decision to grant resource consents to Waitakere City Council for the discharge of stormwater and wastewater for the Hobsonville Peninsula, Waiarohia Stream, Totara Creek and New Lynn East catchments. The appeals seek changes to some of the consent conditions. We await ARC's notices of reply and case management directions from the Environment Court. It is expected that Waitakere City Council's issues can be resolved through mediation/negotiation.

(New) Action Against Theme Park v Waitakere City Council and R Karpuk v Waitakere City Council (August 2007)

Appeal opposing the Council's decisions to grant resource consent to A and S Nogueira to establish and operate a theme park (including entertainment rides and a private zoo) at 74-80 Candia Road, Swanson. Notices of reply will be filed and served shortly.

Mawhinney Matters in the Environment Court

(Changed) Perceptus Limited and Swanson Heights Limited v Waitakere City Council, Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v Waitakere City Council

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney filed his submissions in opposition on 30 January 2007. These matters are listed for call over on 27 August 2007, with a hearing on Council's strikeout application likely to occur in the week of 3 September 2007.

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

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the 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.

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). The proceedings have recently been reactivated and Council has filed a strike out application with the Court. Mr Mawhinney has filed a notice of opposition. Submissions in support of Council's strike out application have been filed and submissions in opposition received from Mr Mawhinney. The Court has notified us that it is likely the strike out application will be heard in the week of 3 September 2007.

PLAN CHANGE HEARINGS

(Unchanged) I and Z Farac v Waitakere City Council (March 2004)

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. The appellants sought to rezone a greater part of the property as 'Living 2 Environment' (as opposed to "Living 4").

Subsequent to discussions and consultant input, the appellants and Council have agreed on the rezoning of part of the subject property from Living 4 to Living 2. Consent documentation is being prepared.

DISTRICT COURT

(New) S & ST Zaidi - 97 Luckens Road, West Harbour (August 2007)

Charges have been laid under the Building Act in relation to unauthorised building work on the property. The unauthorised work consists of the conversion of a dwelling into two flats and includes the laying of a concrete slab, removal of sub-floor foundations and piles, and the installation of a kitchen sink, toilet and shower and associated plumbing and drainage. All works were undertaken without a building consent, and not in compliance with the building code. A notice to fix was issued in respect of the unauthorised works instructing the Zaidi's to apply for a building consent to remove all the unauthorised work, and reinstate the work in accordance with the building code. Charges have also been laid in relation to the Zaidi's failure to comply with the notice to fix.

The first call on this matter is **15 October 2007**.

(New) Hong Chen - 15 Ayrton Street, Te Atatu South (August 2007)

This relates to unauthorised building works being undertaken at the property which included the construction of front and rear lean-to attached to the dwelling, unauthorised plumbing and drainage, the installation of windows and the construction of sub-floor framing and foundations. The building works required a building consent, and are not in compliance with the building code.

Charges have been laid by Council under the Building Act in relation to the unauthorised works and in relation to Hong Chen's failure to comply with two separate notices to fix issued by Council in March and May 2007.

The first call on this matter is **15 October 2007**.

(New) G Yuan and J Wang - 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home and is known as “Abbey Heights Rest Home”. Ms Yuan and Mr Wang built a conservatory on an existing deck, and installed a shower enclosure and vanity in the staff room without a building consent. The deck area/conservatory is used as the rest home’s dining room. Any building works undertaken on a building intended for public use requires a building consent, or the public should not have access to that area.

Council instructed the owners to cease using the conservatory area as a public area, and laid charges in relation to the unauthorised work, failure to comply with the notice to fix, and failure in permitting the use of the premises by the public where no building consent has been issued.

The first call on this matter is **15 October 2007**.

(New) N & KG Bishop, AR Kiff and DR Jordan - 15 Williams Road, Hobsonville (August 2007)

This matter is in relation to the unauthorised re-cladding in a monotec exterior cladding system, of a minor household unit on the property. Council has laid charges under the Building Act against the following parties: The owners’, the builder and the contract plasterer.

The unauthorised works consisted of the removal of exterior cladding, the removal and reinstatement of windows and joinery, and the installation of a monotec exterior cladding system without building consent.

Further charges were laid in respect of the plasterer who failed to comply with a “stop work” directive given by a Council Officer.

The owners have recently applied for a Certificate of Acceptance for work attended to, and a building consent for work yet to be completed. The Council is currently considering the application.

The first call on this matter is **15 October 2007**.

(New) Nick & L’s Food Bar - 1A/264 Swanson Road, Henderson (August 2007)

Charges have been laid by Council under the Food Safety Bylaw 2005 in respect of the proprietor’s failure to display a food grading certificate as required by the bylaw. The matter is serious in that the proprietor received a “D” grading from Council’s Environmental Health Officer, and was observed displaying a photocopy of a previous “B” grade certificate. On investigation, the proprietor had kept coloured photocopies of the “B” certificate. The officer removed these from the store. The proprietor continues to obscure the food grading certificate with a flag outside the store.

Information's have been sworn and filed with the court, but we have yet to receive a court date.

(New) Swiss Royal Heights Butchery - 138-144 Royal Road, Massey (August 2007)

This matter relates to a certificate for food premises under the Health (Registration of Premises) Regulations 1966, the Food Hygiene Regulations 1974, and the Food Safety Bylaw 2005.

The proprietor is a manufacturing butcher who manufactures packs and distributes high-risk ready-to-eat poultry and meat products from the premises.

After an inspection of the premises by Council's Environmental Health Officer ("EHO"), the premises was downgraded to a "D" because of Council's concerns about food safety. The Proprietor applied for a renewal of a food premises certificate required under the regulations, and Council declined to grant the renewal. The Auckland Regional Public Health Services ("ARPHS") has also removed the "Designated Officer Approval" required for all food premises trading. The current food premises certificate expired on 30 June 2007. Council's decision was appealed which has allowed the appellant to continue operating as if a food premises certificate were in place.

The matter has had a first call, with timetables sought by Council and granted by the Court to ensure this receives a priority fixture. No fixture dated has been granted yet, and Counsel for the appellant has requested a further extension for the exchange of evidence. We understand that the proprietor has not been operating from the premises, and that he is setting up a manufacturing plant in Albany.

We are monitoring the appellant's intentions in relation to the appeal.

(Unchanged) J and P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)

Charges were laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. One of the defendants, Mr P Cottingham pleaded guilty to a charge of permitting building work without consent. The other charges of contraventions of the Resource Management Act and charges against Mrs J Cottingham were withdrawn by the leave of the Court. The Resource Management Act contraventions are being addressed by negotiation. The defendants have applied for a determination from the Department of Building and Housing ("DBH") in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH have appointed an investigator who is looking into this matter. The Council is making a submission to set out its reasoning for the decision to decline a certificate of acceptance. and the matter is now set down for 12 November 2007.

(Changed) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads (August 2006)

This prosecution relates to the removal of six houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The Council was fined \$4,800 plus costs (90% of the fine will be remitted back to the Council as prosecuting authority). The matter was set down for a first call on 1 December 2006. The Council entered a guilty plea. The other defendants entered guilty pleas on behalf of the company on 12 February 2007 and the charges against the directors personally were withdrawn.

Mr Dickey of Meredith Connell appeared on behalf of WCC at the sentencing of the Fistonich and Walker on 27 July 2007. Moore J presided and fined Fistonich and Walker each \$1000.00 per information (3 per each defendant), \$200.00 solicitor's costs and \$130.00 court costs per information. (90% of the fine will be applied to the Council as informant).

The fines, while light, are consistent with the fines imposed on Eco-water. Generally, the case had high public interest. Mr Dickey will provide Moore J sentencing notes which contain comments on the appropriateness of the proceedings, and the likelihood of higher penalties for future cases.

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

This matter relates to breaches of the Resource Management Act and Building Act. When the matters were called on 31 March 2006 at the Waitakere District Court Mr Gordon has pleaded entered not guilty 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 is to proceed to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007 but due to administrative issues it did not. This matter is now set down for a jury trial on 18 February 2008 with the Building Act charges set to be heard by a judge alone in the week of 25 February 2008. Mr Gordon has been assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This is a result of Mr Gordon refusing to obtain legal representation. This should enable the matter to proceed without Mr Gordon seeking further time to consider the matter of legal representation.

(Unchanged) M and D Gladwin - 45 Kay Road, Swanson (April 2007)

Charges have been laid under the Resource Management Act 1991 for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200 m² were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without a resource consent. This matter was called on 23 July 2007 and transferred to the Auckland District Court without plea for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter.

(Unchanged) Hobsonville Residential Developments Limited and Treecare Services Limited - 18-28 Banning Way, Hobsonville (Limeburners Bay) (April 2007)

Charges have been laid under the Resource Management Act 1991 against the developer and contractors for doing earthworks of approximately 2.49 hectares, undertaking vegetation clearance, and doing work in scheduled archaeological site without resource consent in contravention of the General and Managed Natural Area and Heritage Rules of the District Plan. The matter was called on 23 July 2007 and transferred to the Auckland District Court without plea for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter. In the interim the Council has been working with the developer to properly assess the damage, particularly to the archaeological areas of the site in the preparation of their subdivision consent application.

(Unchanged) W L Garrett - 7 Sarona Avenue, Glen Eden (April 2007)

Charges have been laid under the Resource Management Act 1991 and the Building Act 2004. These charges relate to the breach of an abatement notice, undertaking earthworks (to excavate the basement of an existing house of approximately 256 m², and build two retaining walls of 3-5 metres each) without resource consent, and in contravention of the General Natural Area Rules. Charges under the Building Act relate to doing building work without building consent in contravention of section 40(1), and non-compliance with a notice to fix in contravention with s. 168(1) of the Building Act. The building work related to: the building of the retaining walls, alteration of the foundations and the drainage system of the house, the removal of structural walls, and the re-cladding of the exterior of the house. The matter was called on 23 July 2007 and transferred to the Auckland District Court without plea, for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter.

(Changed) R Brooky - 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act 2004 for non-compliance with a notice to fix for work undertaken to reclad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter is set down for 20 August 2007 for the defendant to plead. When the matter was called on 20 August the defendant pleaded not guilty. The matter is set down for a call over on 4 September 2007 so that the Court can set the matter down for a one day hearing.

(Changed) R Narayanaraja, P Ramasubramanian, S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed.

Leaky Building Claims

(Changed) Claims statistics are as follows:

- (a) Claims currently being handled are 30
 - High Court: 3
 - District Court: 2
 - WHRS: 25
- (b) Number of claims for Waitakere City as at 30 August 2007, which may include some consent processed by building certifiers, was 338. This is an increase of 3 since 30 July 2007.
- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.

RECOMMENDATION

That the Legal Update (As 30 August 2007) report be received. This is the date of the report being completed and sent to the Planning and Regulatory Committee, not the date of the meeting.

Report prepared by: Mary Davenport, Contract Solicitor.



6 49 SUNNYVALE ROAD, SWANSON - MRS SM BORRETT

GLOSSARY

Resource Management Act 1991 (RMA)

PURPOSE OF THE REPORT

A1-A31

The purpose of this report is to update the Planning and Regulatory Committee as to the current position in relation to compliance with the court orders made by consent in the Environment Court on 16 October 2003, a copy is attached at pages A1 to A31.

BACKGROUND

There is a significant historical background to this matter. For the purposes of the current discussion the following summary will suffice:

- Mr and Mrs Borrett were prosecuted by the Council for offences under the Resource Management Act 1991 (RMA) relating to unauthorised earthworks and vegetation clearance at their property at 49 Sunnyvale Road Swanson. They were convicted and fined. Mr Borrett was sent to prison following unsuccessful appeals against sentence. The fines are being paid by instalments at \$30 per week, with approximately \$7,500 presently outstanding.
- In addition to the prosecutions, Council took enforcement order proceedings under the RMA for restoration of the vegetation and the land form. Those proceedings were settled by way of consent order. The terms of the consent order were used by Mr and Mrs Borrett to their advantage in relation to sentencing on the criminal charges and were taken into account by the court at the time of the original sentencing and on the subsequent appeals.
- The terms of the consent order can be divided into three parts:
 - removal of an culvert crossing over the Momutu Stream;
 - construction of a palisade retaining wall and re-contouring of a gully to provide stability to areas of uncontrolled and un-compacted fill; and
 - re-vegetation of the areas in which that work is to be undertaken and to other parts of the site where vegetation had been cleared.

The intention behind the consent order was that Mr Borrett would do the work because he had the time and resources to do so. The work required was proposed by Mr and Mrs Borrett and peer reviewed by the Council. Council officers were not too concerned about the scope of that work provided that it met their minimum requirements. The terms of the consent order are personal to Mr and Mrs Borrett and do not run with and bind a successor in title. If the property was sold the Council would have no ability to enforce the terms of the consent order against the purchaser and further steps in relation to the enforcement orders would become pointless.

After Mr Borrett was released from prison Council staff made an appointment to inspect the property to ascertain what progress had been made towards compliance with the conditions of the consent order. Mr Borrett died of a heart attack the night before this inspection was due. Mrs Borrett blames her husband's death on the Council's decision (to request an inspection). The Council's site inspection was therefore cancelled and some time passed before it was considered appropriate to tackle this issue again.

The Council finally made an inspection of the property in March 2006. The physical works had not been attempted, but some revegetation was occurring by a natural process, although hampered by weed infestation.

Mrs Borrett says that she does not have the financial or physical resources to do the work contemplated by the consent order. She is 43 years of age. She has four children ranging in age from 20 to 9. It is unclear whether all four children remain at home. She receives a widow's benefit of \$291 a week. Her only asset is the property which has a current (2005) government valuation of \$405,000. It would appear she has no liabilities by way of mortgage, other than the outstanding fine. A recent title search disclosed an historical mortgage in favour of Countrywide Bank, which no longer trades under that name. (The title still also shows Mr Borrett as a proprietor; a survivorship transmission has not been registered). Mrs Borrett completed and provided a financial capacity form to the Council late in 2006. A copy of that form is available for inspection by those Councillors who might wish to do so. It makes clear that Mrs Borrett does not have much, if any, discretionary spending power.

STRATEGIC CONTEXT

One of the Council's strategic priorities is a Sustainable City. In a sustainable city earthworks and vegetation clearance are undertaken in a manner which minimises adverse effects on the environment for the benefit of future generations. Compliance with the requirements of the district plan assists the Council to achieve its sustainability priority. The Council is obliged under the RMA to enforce compliance with the rules in its district plan and, where the district plan rules are broken, to ensure that where a court orders directing remediation are implemented.

ISSUES

The Council's options:

- **Do nothing** - this is not considered a practical option. There is an expectation from the Court that a consent order will be complied with, and that the Council will take steps to enforce compliance. Part of the work must be done. "Do nothing" only becomes an option if the terms of the consent order was to be varied to permit that to occur, in whole or in part.
- **Warrant of committal** - this is a remedy of last resort and may not be available to the Council in any event. There is authority that a warrant will not be granted where the defendant does not have the money to enable the work to be carried out (Auckland City Council v Yates [1991] DCR 166). This does not therefore seem to be an option at this time.
- **Prosecution** - the Council could commence a prosecution for non-compliance with the terms of the consent order. There are no limitation issues since the offence is a continuing one. A number of statutory defences are however available. The financial circumstances of the defendant have never been pleaded as a basis for a statutory defence but Mrs Borrett's legal adviser has previously indicated that a defence of this type would be run. The fact that the defendant is impecunious may however be relevant to penalty. A prosecution does not achieve the goal of getting the work done. This is not therefore considered to be a practical option at this time, but it may be an option of last resort.

- **Seek an order under Section 315 RMA** - here the option is to seek an order authorising Council to do all, or some, of the work described in the consent order. In the course of seeking this order there will be an opportunity to revisit the terms of the order and to test the appropriateness of the terms of the order against the changed circumstances. It is unclear whether the court has an inherent jurisdiction to amend the terms of the original order (but that seems likely). An alternative outcome might be that the court would only give the Council authority to do some of the work, would direct Mrs Borrett to do some of the work and leave completion of the rest of the work as a "voluntary" obligation for Mrs Borrett. If the Council is authorised to go upon the land and to do some of the work the money expended is a debt due to the Council and is secured against the land by way of statutory land charge. The normal process to recover the cost of the work is to seek a judgment (from which date interest will run on the judgment amount) and in the absence of payment to seek to bankrupt the debtor and/or to sell the property in execution of the judgment debt. All of this is technically possible over time but there are sound social and political reasons why it might not be considered entirely appropriate to go down that path with someone who is in difficult financial circumstances. The alternative is to obtain a judgment, (otherwise interest will not accrue), register a charging order (in addition to the statutory land charge) and then just sit back and wait to see what develops. While those circumstances might continue for many years at least there will be a mechanism to ensure recovery of the Council's expenditure over time.
- **Court assisted mediation** - it is unlikely that Mrs Borrett will volunteer to meet with Council to discuss compliance with the terms of the consent order voluntarily. A Court assisted mediation, in the context of an application under s315, may be helpful in working out a plan to progress the matter.

The outstanding work

While considering of the options available to the Council some thought has been given to whether all of the work described in the consent order was strictly necessary. If revegetation was necessary to stabilise the landform what would happen if there was a failure? Would there be any off-site effects? If there were no off-site effects was it appropriate to get involved in the expenditure of public funds without some reasonable reassurance as to prompt repayment?

In the same vein, it seemed that the palisade retaining wall was essentially for the benefit of the dwelling on the site and to that extent the expenditure of public funds to protect the investment in the dwelling on the property did not seem entirely appropriate. If there was a failure of the filled area to what extent, if any, would any landslip extend beyond the boundaries of the site and was there a risk of siltation of the stream through the property or beyond the boundaries of the site?

A32-A43

It was therefore, decided to obtain an updated report from the Council's technical consultants, Hugh Fendall Consultants Ltd in respect of geotechnical matters and Ruth Andrew in respect of revegetation. Both of these consultants had been involved with the peer review of the proposals from Mr and Mrs Borrett at the time of the consent order. An inspection of the property was undertaken on 21 June 2007 and the reports provided are attached at pages A32 to A43. The report writers were asked to specifically consider possible off-site effects from any future instability.

The Fendall report concludes that:

- the palisade wall is still necessary to stabilise the land upon which the house is located but that work is principally related to the safety of the dwelling and its occupants and not to potential off-site effects. It was most unlikely that there would be any measurable off-site effects in relation to a slope failure;

- the re-contouring work originally proposed is no longer necessary (this is the work described in Consent Conditions 16 and 17 of Appendix B of the consent order);
- removal of the stream culvert and embankment is still required.

The Andrew report concludes that the 2003 planting proposals remain valid, with some minor changes. Revegetation of the site was being inhibited by uncontrolled grazing of horses and the report notes that the grazing of animals within the Protected Natural Area is a non-complying activity under the district plan. Ms Andrews recommended some control over the grazing activities and ongoing monitoring following planting to ensure a successful final outcome.

These reports provide a basis upon which an attempt can be made to attempt to persuade the Court to revisit the terms of the consent order or to limit the extent to which the Council is directed to ensure compliance with the terms of that order. Clearly the culvert over the stream needs to be tackled sooner rather than later. Undertaking this work will not be easy. If Mrs Borrett does not have the money to do that work then the Council should undertake the work and secure its position for the costs incurred in a manner which does not result in the ratepayers being exposed to loss of capital or interest until repayment occurs. The Council may be able to provide assistance to Mrs Borrett to complete her planting obligations. It may be able to assist her to source appropriate plants at reasonable prices. It may be that Council can provide resources to assist with completion of the replanting programme. These are matters that need to be explored further as the matter progresses.

There is however nothing to recommend the expenditure of public money on the construction of a palisade wall which will provide minimal, if any, environmental benefits and is prima facie for the benefit of the stability of the house and its occupants. With the benefit of hindsight the Council might have taken a more critical view of the need for this work, from an environmental perspective, at the time of the consent order.

RESOURCES

There are no resources required other than staff time.

CONCLUSION

The Council is obliged to take steps to ensure that the work required by the consent order is completed. It is already exposed to the risk of criticism for the delays to date but the circumstances which have occurred since Mr Borrett's release from prison provide some mitigation to that criticism. It is arguable that the extent of work required by the consent order goes beyond what was reasonably required to mitigate the environmental effects of the vegetation removal and unauthorised earthworks. Given Mrs Borrett's financial and personal circumstances there is the potential that if Council is required to do all of the work that will place that Council in the invidious position of having to choose between options of selling the property to recover the costs incurred or leaving the money owing, with interest accruing, until repayment occurs. There is, in both of those options, the potential for some unhappiness and an ongoing commitment by the Council in staff time to deal with and monitor the matter on an ongoing basis. There is much to recommend a process by which the Council attempts to achieve a final solution by engaging Mrs Borrett, through a court process, in a discussion of these matters to see what she is able to do for herself and also with a view to trying to persuade the Court that some relaxation from full compliance with the terms of the consent order is appropriate. If that is unsuccessful, and the Court directs the Council to enforce compliance without alteration of the terms of the order, then the risk of adverse criticism of the Council will be reduced.

Whatever the outcome there is a need to bring this matter to finality.

RECOMMENDATIONS

1. That the 49 Sunnyvale Road, Swanson - Mrs SM Borrett report be received.
2. That the Chief Executive Officer proceed to seek an order under s315 of the Resource Management Act 1981, and court assisted mediation, with a view to seeking a modification or relaxation of the terms of the consent order made by the Environment Court on 16 October 2003.
3. That the Council abide by any directions or order of the Court which requires the Council to undertake work on the land at 49 Sunnyvale Road, Swanson to ensure compliance with the requirements of the consent order.
4. That if the Council is required by court order to undertake work on 49 Sunnyvale Road, Swanson to ensure compliance with the terms of the consent order appropriate steps be taken to ensure that the Council is a secured creditor, with interest accruing, until repayment occurs and that a further report will be provided to this Committee before any steps are taken to enforce payment of any judgment obtained.

Report prepared by: Denis Sheard, Manager: Legal Services.



7 DOG CONTROL ACT 1996 - MENACING DOGS AND PLACEMENT POLICY

PURPOSE OF THE REPORT

The purpose of this report is to receive the Dog Control Act 1996 - Menacing Dogs and Placement Policy as requested by the Planning and Regulatory Committee.

BACKGROUND

There have been a number of dog attacks reported in the media. The more recent attack was in Christchurch and it involved an American Staffordshire Terrier (Pit Bull) cross breed which resulted in injury to a two year old girl. In Waitakere there have been no reported dog attacks by the specified dangerous breeds resulting in serious injury to children in the past two years. In this period there were two serious attacks on children carried out by a German Shepherd and a Mastiff cross. However, in attacks reported across the country the dangerous breeds, particularly Pit Bull, feature prominently. Council has an obligation to mitigate this risk where possible and Council's adoption policy should ensure that dogs that could harm are not adopted out to the community.

The Planning and Regulatory Committee at the meeting held on 7 August 2007 requested further information on Council's policy for dealing with menacing dogs and its placement policy for dogs into the community:

- “4. *That the Chief Executive Officer be requested to bring back a report to the Planning and Regulatory Committee addressing the Council's policy for dealing with menacing dogs and its placement policy for dogs into the community.*”

3228/207

STRATEGIC CONTEXT

Animal Welfare and in particular implementation of Waitakere's Dog Control Policy and Control of Dogs Bylaw, contribute towards the Council's Safe City priority.

ISSUES

Placement of Dogs

A44-A48

Key elements in the Menacing Dogs and Placement Policy attached at pages A44 to A48 are as follows:

Before a dog is put up for adoption it undergoes a comprehensive temperament assessment by a qualified staff canine behaviourist. This covers behavioural tests such as interaction with people and the environment, reactions with toys, food, sudden movement, touch, other animals, food aggression, and basic commands. If the dog fails the temperament test it is euthanased.

At the time of placement a photograph is taken of the dog for identification purposes.

No Pit Bulls or Pit Bull crosses (includes American Staffordshire Terrier) or any of the specified menacing dog breeds are adopted out. Dogs in these circumstances are instead euthanased.

Risk

The purpose of this policy is to avoid any risk of adopting out an animal which may cause harm. There is enough evidence to justify discrimination based on breed irrespective of the results of a behavioural assessment. Council's strategic priority "first priority for children" provides a strong driver for this policy as many victims of dog attacks are children.

RESOURCES

There are no resources required other than staff time.

CONCLUSION

The holistic approach to dog control and animal welfare in Waitakere ensures that the service to the Waitakere community is of a high standard. The Menacing Dogs and Placement Policy, together with the Dog Control Act 1996, provide adequate risk mitigation to ensure only "safe dogs" are adopted out.

RECOMMENDATION

That the Dog Control Act 1996 - Menacing Dogs and Placement Policy report be received.

Report prepared by: Neil Wells, Manager: Animal Welfare.



8 **DOG CONTROL ACT 1996, SECTION 10A - ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2007**

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to forward the Dog Control Act 1996, Section 10A - Annual Report for the year ended 30 June 2007 to the Department of Internal Affairs, and for public notice of same to be published in accordance with Section 10A(3) of that Act.

BACKGROUND

The Dog Control Act 1996 was amended in 2003 to require territorial authorities to report to the Department of Internal Affairs on the administration of its dog control policy and dog control practices.

STRATEGIC CONTEXT

A49-A55

Animal Welfare, and in particular implementation of Waitakere's dog Control Policy and Control of Dogs Bylaw, contribute towards the Council's Safe City priority. The Annual Report, attached at pages A49 to A55, on the administration of Waitakere's dog control policy and dog control practices meets the requirements of the Dog Control Act Amendment 2003.

ISSUES

This report is a requirement under the Dog Control Act 1996, as amended in 2003, and relates to the 2006/2007 year. The Annual Report on the administration of Waitakere's dog control policy and dog control practices meets the requirements of the Dog Control Amendment Act 2003

As at 30 June 2007 there were 13,543 dog on the database, an increase of 994 (7.9%) over 12 months.

In the 2005/2006 report it was commented that "it is estimated that between 45% and 50% of the dogs in the City are not known to Council and are therefore unregistered." That estimate was based on a mixture of sampling and anecdotal information.

A statistical programme based on a larger sample is being implemented to determine the level of unknown dogs more accurately. Random street checks are currently finding that up to 21% of dogs in some streets are unknown and therefore unregistered. Enforcement action is followed up against the owners of the unregistered dogs.

Field Services in Waitakere have now been enhanced by a new roster that commenced on 23 August 2007 and provides for additional field coverage from 4.00pm to midnight and weekends from 8.00am to 4.00pm responding to all calls and from midnight to 8.00am responding to priority calls within 60 minutes. Previously only priority calls were attended after hours. General patrols are carried out during the extended hours.

RESOURCES

There are no resources required other than staff time.

CONCLUSION

The Annual Report provides for Council's obligations in Section 10A of the Dog Control Act 1996.

RECOMMENDATIONS

1. That the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2007 report be received.
2. That the Annual Report for the year ended 30 June 2007, in relation to the Dog Control Act 1996, Section 10A, be approved and sent to the Department of Internal Affairs within one month following the Planning and Regulatory Committee's decision.
3. That a public notice advising that the report has been adopted and is available for inspection at Animal Welfare, Libraries and the public counter at Waitakere Central be published in accordance with Section 10A(3) of the Dog Control Act 1996.

Report prepared by: Neil Wells, Manager: Animal Welfare.



PART C - DISTRICT PLAN / STRUCTURE PLANS

9 ISSUES SURROUNDING TALL VEGETATION ALONG BOUNDARIES

PURPOSE OF THE REPORT

This report to the Planning and Regulatory Committee discusses an issue raised by a property owner regarding the difficulties associated with tall vegetation on an adjacent property. The property owner queried why the District Plan regulates built structures that serve as fences, but does not regulate vegetation that serves as fencing.

BACKGROUND

Vegetation is generally regulated through the Natural Area Rules. The vegetation rules are different for each Natural Area, and have most recently been determined through Environment Court processes arising from various District Plan appeals. The District Plan establishes height and girth thresholds that are applied when vegetation is proposed to be altered or cleared. Pruning of vegetation is enabled on the basis of a set percentage of the vegetation being able to be pruned each year. The District Plan also lists environmentally damaging plants and species that can be removed without a resource consent.

ISSUES

The Chair of the Planning and Regulatory Committee was approached by a land owner who has experienced difficulties with a neighbour who has bamboo along the common property boundary. This bamboo has grown to a height of approximately 6-8 metres, causing shading and loss of sunlight.

The property owner queried whether rules that apply to built fences (and in particular the height rules) could be applied to limit the height of vegetation.

STRATEGIC CONTEXT

The District Plan Vegetation Alteration rules contribute to the Sustainable Development Strategic Priority and the following Strategic Platforms:

- **Strong Innovative Economy** - less complex and more results focussed regulation.
- **Green Network** - more effective control of adverse effects on the green network.

DISCUSSION

The District Plan treats fencing and vegetation very differently, as one is a built structure usually associated with property boundaries, and the other provides a component of the City's natural heritage and requires a completely different approach to management.

Fencing is generally permitted up to 2.0 metres in height, without the need, in most cases, for a building consent. This height enables property owners to establish their boundary with their neighbours, and provides privacy and screening between properties. It is an essential component of urban and suburban living. Boundary fences greater than 2.5 metres in height require a resource consent, as structures above that height infringe the "Height in Relation to Boundary" Rule, can cause adverse effects in terms of sunlight and daylight access, and may become structures that are out of scale with the neighbourhood amenity values that exist. It is considered that the 2.5 metre threshold for fencing works well and does not require consideration in terms of a change to the District Plan.

Vegetation is planted throughout the City, and may act as a fence (although it does not meet the definition of fence in the District Plan). Occasionally inappropriate plant species are planted as fences (such as bamboo), and usually the adverse effects associated with inappropriate planting are maintenance issues (leaves in house gutters), shading, loss of daylight, escape of weed species into native bush, and fire risk when certain vegetation is planted in proximity to buildings.

The issue raised by the property owner is one of maintenance of vegetation that is acting as a fence. In this case the property owner has indicated that the owner of the vegetation is not willing to prune or remove the bamboo. Such disputes are relatively common.

The District Plan enables the pruning of vegetation (up to 20 percent of the vegetation each year), and enables, as a permitted activity, the removal of species listed in the Removable Vegetation Appendix and the Environmentally Damaging Plants Appendix. Consequently it is considered that the District Plan creates no impediment to the removal of vegetation such as bamboo, but such removals do require the commitment of the owner of the vegetation to remove it.

A56-A57

The Council does provide advice to property owners about the avenues available to them to address vegetation issues on their boundaries. A copy of this information is attached at pages A56 to A57. This advice is considered to be sufficient to address most issues and a change to the District Plan is not required.

CONCLUSION

Overall it is concluded that a District Plan change to address pruning of tall vegetation on property boundaries is not appropriate.

RECOMMENDATIONS

1. That the Issues Surrounding Tall Vegetation report be received.
2. That no further investigation be undertaken at this time into reviewing District Plan rules relating to pruning or removal of vegetation located on property boundaries.

Report prepared by: Eryn Shields, Principal Planner.



10 UPDATE ON RODNEY DISTRICT PLAN - APPEALS TO THE ENVIRONMENT COURT

GLOSSARY

Waitakere City Council	(WCC)
Proposed Rodney District Plan 2000	(the Plan)
Rodney District Council	(RDC)

PURPOSE OF THE REPORT

The purpose of this report is to update the Planning and Regulatory Committee on the status of appeals either lodged by Waitakere City Council (WCC) or where WCC has joined appeals by others, to the Proposed Rodney District Plan 2000 (the Plan), and to seek delegation to sign off on those appeals that have reached a satisfactory conclusion.

BACKGROUND

Waitakere City Council has made several submissions, and further submissions to the Plan, which was notified in November 2000.

The initial submissions were discussed by this Committee on the meeting of 12 June 2001, and lodged later that month, and further submissions discussed by this Committee at the meeting of 26 June 2002, and lodged early the following month.

Following the release of Rodney District Council's (RDC) decision reports between 2006 and early 2007, this Committee, at its meeting of 12 December 2007, resolved:

- "2. *That delegated authority be given to the Chairman of the Planning and Regulatory Committee to approve the lodgement of appeals to the Environment Court under Section 120 of the Resource Management Act 1991, or to join proceedings under Section 274 Resource Management Act 1991, in respect of decisions of the Rodney District Council on the Proposed Rodney District Plan 2000, where those decisions impact on Waitakere.*"

2453/2006

In accordance with this resolution, a single 'primary' appeal was lodged by WCC, and several other appeals by others have been joined as a Section 274 'Interested Party'.

Appeals have now reached the Environment Court, which proposes an aggressive case management approach to settling the multitude of appeals on the Plan.

This report provides an update for the Committee on the Environment Court process, and seeks approval for delegated authority to settle those appeals that have been joined where they are consistent with the relief originally sought.

STRATEGIC CONTEXT

Waitakere City shares its northern boundary with Rodney District. There are considerable cross-boundary relationships, covering a whole spectrum of Environmental, Social, Cultural and Economic matters.

Access to the Upper Waitemata Harbour and to the West Coast beaches crosses the Territorial Authority boundary, and several water catchments and Ecological Districts are also shared.

The proposed Waitakere Ranges Heritage Area Boundary also includes portions of Rodney District.

Rodney District Council, along with North Shore City Council and the Auckland Regional Council are partners with Waitakere City Council in the Northern and Western Sectors Agreement which is a Memorandum of Understanding addressing growth management issues required to implement the Regional Growth Strategy, including transport and infrastructure.

Given the considerable amount of interface and inter-dependence between the two territorial areas, the way Rodney District manages the sustainable development of the area under its jurisdiction via the Proposed Rodney District Plan 2000 will have implications for the sustainable management of Waitakere City, particularly on and near the northern boundary.

ISSUES

The Environment Court has set out its proposed process for managing the large number (296) of appeals on the Plan, which involved splitting the appeals into topics, which would then be dealt with in a logical and timely manner.

The Environment Court also proposes a number of other 'innovative' approaches to address the issues under appeal, including mediated workshops for appellants and the RDC to resolve issues as much as possible prior to any hearing, so only outstanding matters (if any) are argued before the Environment Court.

This approach will have cost efficiencies as legal representation is not required (nor considered appropriate) at the workshops, and only non-agreed issues may be argued in Court, meaning many issues may be resolved through application of officer time at workshops, rather than via a more costly, formal Environment Court process.

Comments from the presiding Judge indicate that the intention is to make the Plan operative as soon as practicably possible, and there will be little leeway given for any further delays from any party.

Primary Appeal

WCC lodged a single 'primary' appeal on the Plan. This appeal relates to the subdivision provisions of the Future Urban Zone. This appeal essentially sought to correct an error in the Plan as a result of the decision notice.

A58-A61 This appeal has been placed in the 'Resolution Pending' topic list, as no other parties joined the appeal, and RDC have proposed to settle the matter by 'consent order' - asking the Environment Court to settle the appeal, by consent, on the basis set out in the draft memorandum attached at pages A58 to A61.

The proposed wording changes are exactly consistent with the relief sought in the notice of appeal, and it is therefore recommended that the Committee approves the signing of the Consent Order to settle the matter

There is no order for costs.

Section 274 Party Proceedings

WCC has also joined a number of appeals lodged by other parties as a Section 274 party, allowing WCC to maintain an interest in the proceedings, and influence them if necessary.

These Section 274 interests generally relate to appeals that seek major changes to the Plan's Rural Objectives, Policies or Rules, as the majority of the area on, or near the boundary is in the General Rural or Landscape Protection Rural Zones.

A62-A68 However, due to the wide ranging nature of the appeals lodged, they may be broken down into appeal points by topic. The Environment Court's topic list is attached at page A62 to A68, along with an explanatory minute.

Timing

A69-A89 Counsel for the Council have provided a matrix outlining the Environment Court's proposed Topic List, with the primary appellant, other Section 274 parties and a summary of WCC's reasons for joining the appeals (summarised from the lodged Section 274 notices), which is attached at pages A69 to A89.

At this stage, the Environment Courts timetable is for the 'Resolution Pending' issues to be dealt with by 31 August 2007, with other topics proceeding in order from November 2007.

Due to the meeting date cycle of this Committee, the 31 August date has not been met, but an explanation has been provided to the Environment Court, which is expected to be accepted.

Following November 2007, as the latter 'topic' hearings progress, there may be further consent orders or developments that are consistent with the original reasons for joining the appeal.

For timing reasons it is therefore requested that the Planning and Regulatory Committee delegate to the Chief Executive Officer the ability to approve the settlement of appeals by Consent Order where they are consistent with the relief sought in the initial appeal. Further reporting to this Committee will be provided as required or where timing allows.

RESOURCES

Provision has been made in the 2006/2007 and 2007/2008 budgets to cover legal costs to pursue issues in the Environment Court. This funding is for professional legal services, in addition to officer time, both of which form part of the Operational Budget of the Long Term, Urban and Environmental Group of the Strategy Unit.

CONCLUSION

An aggressive case management approach will allow RDC to make the Plan operative in a timely fashion, thereby providing certainty for the sustainable management of the land under the Plan's jurisdiction as well as for WCC. This will also minimise the costs for all parties involved in the process through efficient use of legal counsel and the Environment Court's time.

This approach may not provide sufficient time to fully report back to this Committee on every development, and it is requested that the Chief Executive be provided the delegated authority to approve the settlement of appeals by Consent Order where they are consistent with the original objective and reasons for joining the appeal, original submission or further submission.

Appeals that are not settled by Consent Order proceed to Court, where the Environment Court will make a determination in due course.

Regular reporting to this Committee will be provided as developments require or allow.

RECOMMENDATIONS

1. That the Update on Rodney District Plan appeals to the Environment Court report be received.
2. That the Planning and Regulatory Committee approve the Draft Consent Order for Future Urban Zone Subdivision to settle that appeal.
3. That the Planning and Regulatory Committee delegate authority to the Chief Executive Officer to approve the settlement of other appeals by consent order, where those consent orders are consistent with the reasons for joining the appeal, original submission or further submission.

Report prepared by: Kyle Balderston, Strategic Advisor: Sustainable Management.



11 ISSUES SURROUNDING THE EARTHWORKS PROVISIONS OF THE DISTRICT PLAN

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to prepare a draft Plan Change on the earthworks rules of the District Plan.

BACKGROUND

Existing Provisions of the Waitakere City District Plan Relating to Earthworks

Earthworks are regulated through the Natural Area Rules contained in the District Plan. The earthworks rules are different for each Natural Area. Generally earthworks over a specified volume or area require resource consent, although there are some exceptions.

In the 2005/2006 financial year, 598 resource consents authorised earthworks. The majority of these resource consents were multi-infringement, meaning that consent was required for other reasons as well as earthworks.

Most earthwork consents are for activities in the General Natural Area. This is because the General Natural Area encompasses the urban and peri-urban parts of the City where most human activity occurs.

Control over earthworks may be required to control any one or more of the following effects:

- erosion and sediment runoff into waterways;
- instability of land;
- visual effects and impact on outstanding landscapes;
- noise from earthworks and associated truck movements;
- traffic safety issues arising from truck movements;
- damage to historic and cultural sites;
- dispersal of contaminated soils;
- damage to infrastructure.

Issue/s Identification

Ongoing experience with implementation of the earthworks rules by Consents and Monitoring staff indicate a range of issues that need further investigation and a likely Plan Change.

Initial analysis of the issues indicates that they are significant enough in terms of:

- in some cases, unnecessary regulatory cost to the community; and
- in other cases, inadequately controlled adverse effects;
- that they should be reviewed now rather than waiting to the first review of the District Plan.

Also the science and applied technology of erosion and sediment control has advanced since the District Plan was notified. This makes it timely to review the rules in light of those advances.

STRATEGIC CONTEXT

Long Term Council Community Plan

A review of the District Plan earthworks rules will contribute to the Sustainable Development Strategic Priority and the following Strategic Platforms:

- **Strong Innovative Economy** - less complex and more results focussed regulation;
- **Green Network** - more effective control of adverse effects on the green network;
- **Three Waters** - more effective control of sediment contamination of waterways and reduced operating costs of permanent stormwater treatment devices.

The Resource Management Act 1991

The purpose of the Resource Management Act 1991 as outlined in Part II, 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 1991 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 Resource Management Act 1991. 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. Section 35 of the Resource Management Act 1991 requires Council to monitor the efficiency and effectiveness of policies, rules, or other methods in its plan. Other sections of the Resource Management Act 1991 are relevant in terms of any change to the earthworks rules.

Firstly - there is the purpose of the Resource Management Act 1991, which is found in Section 5, Part II, where the Resource Management Act 1991 promotes the sustainable management of natural and physical resources.

Secondly- Section 6 of the Resource Management Act 1991, which talks about matters of national importance.

Thirdly - Section 7 - other matters that need to be considered in terms of achieving the purpose of the Resource Management Act 1991.

Auckland Regional Council

Section 75 of the Resource Management Act 1991 requires that the District Plan must give effect to a regional policy statement and is not to be inconsistent with a regional plan.

The Auckland Regional Policy Statement contains a number of relevant objectives and policies listed as follows: Objectives 8.3 and 12.3(3); Policies 8.4.1(1), 8.4.4, 8.4.7 and 12.4.4(4).

The Auckland Regional Plan - Sediment Control contains objectives, policies and rules controlling earthworks for the purpose of sediment and erosion control to protect the natural environment such as water bodies and associated ecosystems. However, it does not manage the effects of earthworks on the human environment.

The Auckland Regional Plan - Coastal contains objectives, policies and rules on the discharge of contaminants to the coastal marine area. These mainly focus on managing toxic and biological contamination, but sediment may still be a contaminant with adverse effects. The Auckland Regional Plan: Coastal does not regulate activities on land.

The Auckland Regional Plan - Air, Land and Water contains objective and policy relating to the discharge of sediment as follows: Objectives 5.3.1 and 5.3.13, and Policies 5.4.1, 5.4.27 and 5.4.25. The Auckland Regional Plan: Air, Land and Water also regulates agricultural cultivation of the soil for the purpose of erosion and sediment control.

The New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement contains policy on the coastal environment. Some of these policies are relevant to the issue of the effects of sediment on the coastal environment. Policy 3.2.7 requires that plans identify ways that land management practices can improve coastal water quality.

ISSUES

The District Plan regulates earthworks for the reasons discussed in section 2.1 above. The majority of issues relate to the General Natural Area earthworks rules as this is where most activities requiring earthworks occur. Additional issues arise from the way earthworks are defined in the plan: These issues are summarised as follows:

The Definitions

The current earthworks definition both includes and excludes some land disturbance activities from "earthworks." Issues that have been identified to date are:

- (a) Trenching is currently excluded from the definition of earthworks. This reflects the fact that the majority of trenching projects disturb relatively small land areas, e.g. less than 200m² at one time. However it has been noted that many trenching projects occur on roadsides, and there is a potential for sediment to enter stormwater systems if good site practices are not followed. Further, District Plans sediment control appendix cannot be enforced as trenching is not defined as earthworks. This does not necessarily mean that trenching should require resource consent but the matter requires further investigation.

- (b) Drilling, thrusting and pipe jacking are methods of installing cables and pipes underground that are an increasingly commonly used alternative method to traditional open trenching. The District Plan does not expressly recognise these new methods creating uncertainty as to whether they are “trenching”. The plan needs to be updated to reflect the change in technology and the environmental advantages it brings.
- (c) The exemptions for infrastructure trenching and maintenance do not include connections. This appears to be an oversight as trenching and maintenance for connections should be treated in the same way as infrastructure.
- (d) Enforcement proceedings and Court decisions indicate a need to clarify that the exemption for tillage only includes preparation of the surface soil and does not include large scale recontouring, terracing or other earthmoving.
- (e) The exemption for “solid waste landfill” is creating legal uncertainty as solid waste landfills are not otherwise regulated in the natural area rules. This issue needs to be reviewed.
- (f) The existing definition of “cleanfill” does not allow a minimum proportion of material potentially subject to breakdown. This is impractical and needs to be reviewed.

General Natural Area Rules

General Natural Areas Rules 3.1 to 3.5 regulate earthworks. Issues have been identified with the following:

- (a) Rule 3.1(a) permits earthworks within an approved building platform subject to compliance with the sediment control measures set out in the plan. This provision assumes that most houses would have wooden platform floors and the amount of associated site disturbance would be relatively small. However, over the last decade, concrete pad floors have become the preferred construction technique, with typically greater site disturbance required and consequently greater potential for effects. Also the distinction between earthworks within the building platform and earthworks outside the platform has proved somewhat impracticable to apply on a typical building site where earth excavated or deposited for the platform must be contoured with the remainder of the site. In addition, driveways can infringe the earthworks rules, even if the platform does not. On today’s smaller sites, it is not uncommon to find that the whole site is disturbed in order to construct a house. This issue needs to be reviewed in conjunction with a review of the thresholds set in rule 3.1(b).
- (b) Rule 3.1 sets conditions for earthworks outside of approved building platforms. These conditions set the thresholds at which resource consent is required. Various issues have arisen about the individual thresholds. These are summarised as follows:
 - (i) The rationale for the 50m³ volume threshold is not entirely clear. Volume is not a standard indicator of erosion potential (area and slope are the accepted standard indicators). Volume may be an indirect indicator of truck movements and landscape change, but this is not clear. The need for this condition should to be reassessed.
 - (ii) The area threshold is a useful indicator but may be set too low at 100m². The level at which the area threshold applies needs to be reviewed in the context of costs and benefits and accepted regulatory practice in other districts.
 - (iii) The threshold including all works within 1.0 metre of a boundary is triggering consents for minor activities. It also intrudes into the area of neighbourly disputes that are arguably more properly addressed as civil matters, rather than RMA matters. Consideration needs to be given to removing this condition or replacing it with a slope stability indicator appropriate to boundaries.

- (iv) Provision may need to be made for allowance of some minor earthworks within watercourses and floodplains as a permitted activity. An example would be debris removal from watercourses.
- (c) Rule 3.4 requires an earthworks management plan for all discretionary consent applications. However, this is not required for other categories of consent, nor is it required in other Natural Areas. This provision needs to be reviewed to determine whether it should remain mandatory, and if so determine the consistency of its application.
- (d) There is a complex hierarchy in rules General Natural Area 3.1 to 3.5 and it is possible that this could be simplified.

Consents Required for Minor Works

Asset management staff have identified a number of activities with minor effects that nevertheless require earthworks resource consent under current rules. Some of these activities associated with the Open Space Environment have been addressed in Plan Change 12. However, the remainder, mostly associated with the Transport Environment and network utilities, remain to be addressed.

Other Natural Areas

While this review would mainly concentrate on the General Natural Area earthworks rules, any issues that arise with earthworks rules in other Natural Areas will also be addressed.

Sediment and Erosion Control Appendix

It is also timely to review the sediment and erosion control appendix in conjunction with a review of the rules that refer to it.

Section 32

Section 32 of the Resource Management Act 1991 requires the Council to take into account the costs and benefits of the rules when reviewing them. This will be considered in more detail during the investigation but the main points are summarised below.

Controlling earthworks can bring benefits in terms of reducing the adverse effects on the environment described in section 2.1 above. These benefits are generally not quantifiable in dollar values, but are nevertheless significant. Also national and regional policy requires effects arising from erosion and sediment runoff to be managed.

One benefit that is quantifiable is the cost saving gained by preventing sediment runoff entering the Council's stormwater treatment wetlands and sandfilters. There is a cost saving of between \$80 - \$324m³ depending on circumstances.

Resource consent processing incurs a transaction cost comprised of the consent preparation cost and the processing and monitoring costs. An initial investigation indicates that the median earthworks processing cost is approximately \$1,820. The majority of consents are for small scale earthworks, i.e. less than 300m². There is no obvious relationship between consent processing cost and the area of earthworks. No figures are available at this point in time on consent application preparation costs.

Sediment and erosion control also incurs a cost. For example, straw mulching costs around \$0.6 - 0.8m² or approximately \$1000 to prevent a m³ of sediment runoff.

Potential Plan Change

The scope of the issues raised above deals with the detail of the rules rather than the overall policy direction of the District Plan. Essentially the issues revolve around the practicality and effectiveness of the existing rules in achieving the desired environmental results. While the strategic direction of the District Plan will not be altered, the matter is important in terms of maintaining public confidence in the effective administration of the Council's functions.

Approaches taken by other Local Authorities to the Issue

All the major territorial authorities in the Auckland region regulate earthworks via their district plans. However, the rules vary considerably from district to district, particularly in the choice of regulatory threshold for requiring resource consent. A benchmarking process will be undertaken as part of the investigation.

The Auckland Regional Council also regulates large scale earthworks under its Auckland Regional Plan: Sediment Control, and agricultural land disturbance is regulated under the Auckland Regional Plan: Air, Land and Water. The Auckland Regional Council has initiated a review of the approach taken to control of earthworks throughout the Auckland region in conjunction with district councils. Therefore a review of the Waitakere City Council earthworks rules is timely and will contribute to the wider regional review.

Case Law

Waitakere City Council has been involved in Court proceedings regarding earthworks, and the outcomes of these cases will be taken into account.

RESOURCES

The earthworks rules issues have previously been identified as a medium priority potential Plan Change. The recent achievement of the Local Government (Auckland) Amendment Act 2004 decision milestone means that staff resources are now available to undertake a review of the earthworks rules. No significant costs other than staff time are anticipated. It is proposed to have a draft ready for Council consideration by early 2008.

CONCLUSION

Overall it is concluded that a review of the District Plan earthworks rules is appropriate.

RECOMMENDATIONS

1. That the Issues Surrounding the Earthworks Provisions of the District Plan report be received.
2. That further investigation is undertaken in relation to earthworks provisions of the District Plan.
3. That a Plan Change to the earthworks provisions be brought back to the Planning and Regulatory Committee for consideration.

Report prepared by: Christopher Turbott, Senior Planner: Policy Implementation.



PART D - ENVIRONMENTAL MANAGEMENT

12 GENETICALLY MODIFIED ORGANISMS - UPDATE

PURPOSE OF THE REPORT

This report provides an update to the Planning and Regulatory Committee on the Inter-Council Initiative for Community Management of Genetically Modified Organisms (GMOs). It follows a recent meeting of the Inter-Council Working Party on Genetic Engineering on 8 June 2007, and public meetings in Kaiwaka and in the Far North in 2006. At the meeting in June 2007 the Working Party considered it appropriate that the respective councils confirm their respective positions on further lobbying of Central Government, noting the importance of a joint "Northland Peninsula" approach.

BACKGROUND

There have been a series of actions by the Joint Officer Technical Group to implement decisions of the Working Party. Following further reporting to the respective councils, the Inter-Council Working Party on GE will reconvene in September 2007 to agree upon further actions. Waitakere City Council is currently represented on the Working Party by Councillor Stone.

At its meeting on 16 November 2005, the Council considered options for its on-going participation in the Working Party, and opportunities for advocacy at central government level related to the issue of regulatory gaps in the Hazardous Substances and New Organisms Act 1996. The Committee last considered this issue at its meeting on 10 October 2006. At that time the Committee resolved:

1. *That the Genetically Modified Organisms Update report be received.*
2. *That Mr Richard Gardiner, Senior Policy Advisor for Federated Farmers of New Zealand (or his nominee), be invited to attend a forthcoming meeting of the Planning and Regulatory Committee to present views on the benefits of genetically modified organisms.*
3. *That the Planning and Regulatory Committee notes the on-going technical work, and the possibility of further advocacy related to genetically modified organisms at the Central Government level."*

1955/2006

STRATEGIC CONTEXT

Waitakere City's GE-free status supports the Strong Innovative Economy Strategic Platform, through supporting the locally based organics cluster's desire to provide organic and GE-free products. The Long Term Council Community Plan 2006-2016 adopted the following.

Strong Innovative Economy

He tupuranga kaha ihi wana

The vision - Waitakere is a place of innovative economic activities, providing local, quality work and development options for its people. Environmentally responsible businesses are supported and flourishing.

Summary - This platform is about promoting local enterprise, jobs and economic growth in high quality town centres designed for the task. It includes promoting research and development; identification and development of business clusters (organics, film etc); working with businesses to improve the environment, **being GE free in field and food**; increasing the city's profile as a good place to do business; working with other councils to develop the regional economy; maintaining our environmental advantages; and providing the basis for sustainable economic growth.

ISSUES

The following issues are currently under consideration by the Inter Council Working Party and Council's actions in relation to these issues seek to assist in achieving the Strong Innovative Economy Strategic Platform.

CENTRAL GOVERNMENT LOBBYING

A90-A93

All councils have a mandate to lobby Central Government to address the community, environmental and council liability issues. All of the Councils participating in the Working Party agree that addressing the matter of GE at Central Government level is the best outcome. Unfortunately a positive response from Central Government has not been forthcoming in the most recent round of lobbying. The response by the Minister for the Environment contained within a letter is attached at pages A90 to A93. In that context, the Working Party proposes further lobbying of Central Government at a political level with particular attention to liability issues.

This report seeks approval from the Committee for Council representatives to continue to participate in the Working Party and embark on further lobbying.

PUBLIC CONSULTATION

The Working Party councils are ready to proceed with public consultation (at the appropriate time) based on project briefs and quotes received. This consultation is currently planned to take the form of a survey. The findings of this survey will seek to further inform the debate and address community, environmental risk and liability issues locally if necessary.

The Far North District Council has declined to undertake public consultation on the issue at this time, and the Kaipara District Council is currently reserving its decision. Both Councils have held public workshops on the matter.

Auckland City Council and the Auckland Regional Council have recently become full members of the Working Party. North Shore City Council has observer status.

Some of the councils in the Working Party have indicated that their participation in this public consultation will occur subject to satisfactory participation by other councils. This is an appropriate stance to take by Waitakere City Council.

RESOURCES

Council has previously allocated \$8,350.00 for joint consultation on District Plan options. Council has allocated a further \$10,000 for joint consultation on District Plan options. Staff time is also being expended on this matter by attending and participating in the Working Party.

CONCLUSION

The Council continues to participate in the Inter-Council Working Party. This Working Party continues to explore options for putting into practice a genetic free policy approach. The next step in this process will be further lobbying of Central Government by the Working Party.

RECOMMENDATIONS

1. That the Genetically Modified Organisms Update report be received.
2. That the Planning and Regulatory Committee note the on-going collaborative approach to investigating a regulatory response to the field release or trials of genetically modified organisms.

3. That the Planning and Regulatory Committee note the letter dated 30 March 2007 from the Minister for the Environment to the Inter-Council Working Party on Genetic Engineering.
4. That the Planning and Regulatory Committee reaffirm its support for further lobbying of Central Government following the Minister for the Environment's letter.
5. That, subject to satisfactory participation of Northland and Auckland Councils, the Council participate in the proposed process of public consultation.
6. That the Planning and Regulatory Committee indicate its preference be recorded for the participation of all or most Northland and Auckland Councils, as may be required, to ensure the effectiveness of the public consultation.

Report prepared by: Eryn Shields, Principal Planner.



13 REMOVAL OF DEFENCE PURPOSES DESIGNATION OVER PART OF THE LAND AT HOBSONVILLE AIRBASE

PURPOSE OF THE REPORT

The purpose of this report is to inform the Planning and Regulatory Committee of the removal of part of the Defence Force designation over a portion of land at the Hobsonville Airbase.

BACKGROUND

A94-A96

The Defence Force is in the process of vacating the Hobsonville Airbase and the Minister of Defence has given notice that the "Defence Purposes" designation is no longer required over a total of nearly 12.1572 hectares of land at the Hobsonville Airbase. The land has been purchased by Waitakere City Council. A copy of the Notice of Removal, including a plan of the land to which it relates, is attached at pages A94 to A96.

STRATEGIC CONTEXT

This land will form part the Hobsonville Marine Industry Special Area identified in Proposed Plan Change 13 - Hobsonville Airbase. Removal of the designation over this area of land is necessary to give effect to Proposed Plan Change 13 and Council's strategic intent to facilitate the development of a marine industry cluster on the Hobsonville Peninsula.

ISSUES

Section 182 of the Resource Management Act 1991 applies to any proposal to remove a designation. This section of the legislation states:

"182. Removal of designation-

- (1) *If a requiring authority no longer wants a designation or part of a designation, it shall give notice in the prescribed form to-*
 - (a) *The territorial authority concerned; and*
 - (b) *Every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and*

- (c) *Every other person who, in the opinion of the requiring authority, is likely to be affected by the designation.*
- (2) *As soon as reasonably practicable after receiving a notice under subsection (1), the territorial authority shall without further formality, amend its district plan accordingly.*
- (3) *The provisions of the First Schedule shall not apply to the removal of a designation or part of a designation under this section.*
- (4) *This section shall apply, with all necessary modifications, to a notice by a territorial authority to withdraw its own designation or part of a designation within its own district.*
- (5) *Notwithstanding subsection (2) to (4), where a territorial authority considers the effect of the removal of part of a designation on the remaining designation is more than minor it may, within 20 working days of receipt of the notice under subsection (1), decline to remove that part of the designation.*
- (6) *A requiring authority may object, under section 357, to any decision to decline removal of part of a designation under subsection (5)."*

In summary, once a requiring authority gives notice that a designation is to be removed then it should be done "as soon as reasonably practical" and "without further formality". When only part of a designation is to be removed, section 182 (5) does give Council some ability to decline to remove the part of the designation if the "effect of the removal of part of the designation on the remaining designation is more than minor". In this instance the Minister is seeking to remove part of the designation and this would have no effect on the remainder of the designation. Therefore, the request to remove part of the designation has been actioned without further formality.

RESOURCES

There are no additional or unbudgeted resources required in order to remove the designation.

CONCLUSION

The Minister of Defence has given notice that the designation for "Defence Purposes" over part of the land at Hobsonville Airbase is no longer required. Section 182 of the Resource Management Act 1991 requires that Council remove the designation from the Planning maps as soon as practicable and without formality. Although only part of the designation would be removed this would have no effect on the remaining designation. Therefore the designation has been uplifted as requested by the Minister of Defence.

RECOMMENDATION

That the Removal of Defence Purposes Designation over Part of the Land at Hobsonville Airbase report be received.

Report prepared by: Christopher Turbott, Senior Planner, Policy Implementation.



PART E - PUBLIC EXCLUDED MATTER

14 GROWTH AND TRANSPORTATION INTEGRATION PROGRAMME - PROPOSED REGIONAL POLICY STATEMENT APPEALS

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of the proceedings of this meeting, namely, Growth and Transportation Integration Programme - Proposed Regional Policy Statement Appeals.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of the matters, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Growth and Transportation Integration Programme - Proposed Regional Policy Statement Appeals.	The withholding of information is necessary in order to: <ul style="list-style-type: none"> • maintain legal professional privilege; • enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); • prevent the disclosure of use of official information for improper gain or improper advantage. 	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(g)(i) and (j) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The report contains information which if released could result in the loss of legal professional privilege and could affect future Council negotiations.*

