



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 December 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 December 2007

Ngareta Delamere
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8552

MEMBERSHIP:

| | | |
|-------------|-----|------------------------------------|
| Councillors | VS | Neeson, JP (Chairman) |
| | WW | Flaunty, QSM, JP (Deputy Chairman) |
| | DQ | Battersby, JP |
| | MFP | Chan, JP |
| | LA | Cooper, JP |
| | AK | Corban, OBE, JP |
| | MM | Jolley |
| | JP | Lawley, JP |
| | PG | Mitchell |

Mayor RA Harvey, QSO, JP (ex officio)
Deputy Mayor (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 DECEMBER 2007
COMMENCING AT 9.30 AM**

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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 DECEMBER 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

Extraordinary Meeting Minutes - 13 November 2007

RECOMMENDATION

That the minutes of the Extraordinary Meeting of the Planning and Regulatory Committee held on Tuesday, 13 November 2007, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 NOVEMBER 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) |
| Resource Management Act 1991 | (RMA) |
| Department of Building and Housing | (DBH) |
| Weathertight Home Resolution Service | (WHRS) |

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

(Changed) **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. The decision has recently been released in favour of Carter Holt. Council has now agreed and filed an agreed form of declaratory orders. Council is waiting on final orders from the Court. The parties will also need to address costs. Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process Council has prepared and presented submissions on the supplementary order paper to the Waste Management Bill which submissions address the necessity for a new definition of waste.

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 carpark 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 was heard on 28 November 2007 and granted by Williams J. The parties have agreed to try and obtain a priority fixture in the Court of Appeal if possible.

(Changed) 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. The matter will be argued on Tuesday, 4 November 2007.

Substantive hearings involving Mr Mawhinney

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

A final costs Judgment was issued by the Court on 26 September 2007. Mr Mawhinney has been ordered to pay costs of \$46,653.60 to the Council. The order has been sealed and payment by the High court out of the security held by the Court (\$60,000) is awaited. The payment is taking longer than it should and steps are being taken to chase up the Court.

(Changed) 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. We have filed submissions on the appeal this month.

Debt Recovery proceedings involving Mr Mawhinney

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

The Council continues to pursue a claim for indemnity costs of \$2,491.00 incurred on obtaining substituted service of a bankruptcy petition on Mr Mawhinney. All other costs awards in favour of the Council in respect of this matter have been paid.

(Changed) Waitakere City Council v Glorit Subdivision Limited & Mawhinney (March 2006)

On 14 February 2007, Council was awarded costs of \$480.00 (for an appearance by counsel in Court) and costs of \$1,216.87 (for Substituted Service) of 14 March 2007. Council made a final application for indemnity costs for the steps required to oppose Mr Mawhinney's application to set aside bankruptcy notice.

On 6 November 2007, Associate Judge Abbott awarded Council further costs of \$3,345.50 and also helpfully considered Council's costs awards for this matter into a global figure of \$5,042.37 so all three costs awarded can be enforced as a single award.

Council has made demand on Mr Mawhinney requiring payment of the award. If payment is not received a bankruptcy notice will be served on Mr Mawhinney for payment of the award.

ENVIRONMENT COURT

(New) Hall v Waitakere City Council (November 2007)

This is an appeal against the Council decision to grant resource consent to subdivide a property at 587 West Coast Road into two lots. The property is within the Oratia Structure Plan. The appellant was the applicant for consent and would like the removal of three conditions from the consent. These conditions relate to financial contributions, undergrounding of power and telecom services, and removal of certain buildings within 6 months of grant of consent. The appellant would like these conditions removed from the consent.

The Environment Court has issued standard track directions and it has been directed to mediation. It is likely that mediation will occur early next year, if not late December. A notice of reply is currently being drafted.

(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 collector road. This appeal is due to be heard in February 2008.

**(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 was 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 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.

(Unchanged) 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 sought for the application to be notified, the Council has notified the application. The period for making submissions closed on 26 October 2007. The Council is extending the timeframe to have the matter set down for hearing due to the seeking a further specialist report arising from matters raised in submissions to the application.

The Council is reporting this progress to the Court on 7 December 2007.

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

An appeal and Section 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.

Waitakere City Council's appeal has been resolved by consent order. The appeal concerned a decision by Rodney District Council which addressed Waitakere City Council's concerns but which had not been properly worded in changes to the Rodney District Plan text.

Waitakere City Council's officers have attended workshops and mediations on matters regarding which Waitakere City Council has a Section 274 interest.

(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.

A Court assisted mediation occurred on 19 September 2007, at which agreement in principle was reached subsequently, the parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under Section 116 RMA to allow the partial commencement of the consent (removal of some vegetation and initial earthworks). A further consent order will be sought once the applicant has revised its development plans in accordance with the mediated agreement.

(Changed) 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. It is expected that Waitakere City Council's issues can be resolved through mediation/negotiation. A mediation to address all appeals is scheduled for 16 October 2007. A further mediation date has been requested to progress this matter.

(Changed) 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 have been filed and served.

Meanwhile, the applicant has challenged the standing of Action Against Theme Park as an appellants however, that challenge is no longer being processed. A reporting memorandum will be filed shortly, seeking mediation and advising the Court the key issues for hearing.

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 filed an application to strike out the appeals. The Court has reserved the decision pending the outcome of the High Court appeal by Mr Mawhinney against striking out on a similar matter (See above).

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

This is an appeal against a refusal to issue a certificate of compliance under 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. Council's strike out application was heard before Judge Whiting and Commissioner McConalley on 6-7 September 2007. Various aspects of Mr Mawhinney's appeal were abandoned during the hearing. A decision is awaited on the remaining elements.

(Unchanged) Abacus Developments Limited and 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.

Plan Change Hearings

(Changed) 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. The Court issued a consent order on 26 November 2007 to resolve this appeal in accordance with the agreement reached.

(Unchanged) Local Government (Auckland) Amendment Act Plan Change Appeals

A1-A3 From this month the legal update will set out the appeals against Plan Changes 13 to 18. The appeals will be set out in a summary format as to who the appellants are and which plan changes have been appealed. There are currently 28 appeals. Further reports will be provided as time goes by. These appeals are set out as Annexure 1 to this report attached at pages A1 to A3 of this agenda.

In addition to appeals on Council's Plan Changes 13-18, Council has filed an appeal regarding some decisions on ARC Change 6. Progress reports will be included in further legal updates in due course.

DISTRICT COURT

(New) GM Garland - 82 Woodlands Park, Titirangi (November 2007)

Council has laid informations in relation to unauthorised building works that include the development of the basement/garage of the dwelling into a habitable space. The works have not been carried in otherwise in accordance with a building consent.

The matter has been set down for a first call on 17 December 2007.

(Unchanged) Metlifecare Pinesong - 48-72 Avonleigh Road, Green Bay

Charges have been laid under the Building Act 2004 for building work undertaken without consent. The building work relates to a partial re-cladding of 20 houses owned and operated by Metlifecare Pinesong Limited as retirement village where the occupants have a lifetime lease of the properties. The building work was undertaken by Apsec Construction. Both parties are being prosecuted. The matter is set down for a first call on 17 December 2007.

DS and AM Axmann - 62 Ferry Parade, Herald Island (September 2007)

(Unchanged) Informations have been served on Mr and Mrs Axmann in relation to the construction of a 35m² carport on the site. The works were undertaken without building consent, and charges have been laid under Sections 40 and 168 of the Building Act 2004. The Council sent two Notices to fix requiring the Axmann's to either remove the structure, or apply to the Council for a Certificate of Acceptance ("COA") for the unauthorised works. The Axmann's did not comply with Council's requirement within the time granted.

We appeared on Monday, 15 October 2007 before Kerr J. The matter was adjourned without pleas to 17 December 2007.

(Unchanged) D Fermah/Sunnyvale Property Trust Limited - 59A Awaroa Road, Sunnyvale (September 2007)

Mr Fermah is in the process of developing the above property. Infringement notices were issued pursuant to the RMA in relation to inadequate sediment controls on the site, and illegal vegetation removal in an area designated as "Restoration Natural Area", in breach of the district plan, and resource consent conditions.

Mr Fermah was given an opportunity to comply with the requirements of his resource consent and remediate the site, as well as providing Council with landscape, and weed control plans. He did not comply within the timetable offered, nor did he pay the infringement fees.

Mr Fermah requested a hearing in relation to the infringement notices. Under the Summary Proceedings Act 1957, and the RMA, the Council must apply for a hearing on behalf of the defendant. This matter will be heard by the District Court at Auckland for a first call over on 10 December 2007.

(Changed) K Poulton and L Lyons - 45 Whatipu Road, Huia (October 2007)

This matter is in relation to the felling of approximately 25 native trees on the above site, and also on neighbouring sites including a Council owned reserve known as "Marama Plantation", without resource consent. The trees included Rimu, Kauri, Rewarewa, and Kanuka. A number of the trees were in excess of 30 years old.

The property is located in the "Protective Vegetative" zone in Council's District Plan. The owners have admitted felling the trees, and charges have been laid under Section 9 and Section 338(1) of the Resource Management Act 1991 ("the RMA"). The Council undertook a survey of the site and an arborist's report to confirm the position of the trees felled, the age and health of the trees, and the species felled.

The Council laid informations on 3 October 2007. The matter was transferred by consent to the Auckland District Court, for a first call on 11 February 2008.

(Unchanged) S and 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 was 15 October 2007, and was adjourned without plea to 17 December 2007.

(Changed) 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 was 11 October 2007. Ms Chen entered a guilty plea in relation to the unauthorised building works, and not guilty pleas in relation to the notice to fix offences.

Counsel appeared on 13 November 2007. The matter has been set down for a defended hearing on 19 February 2008 in relation to Ms Chen's failure to comply with Council's two Notices to Fix.

(Unchanged) 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 (Trustees of the Family Trust which owned the property) 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.

Ms Yuan sold the operation in late August 2007. The new owners have been instructed to cease using the conservatory as a dining area and to close it to the use of residents. We understand the new owners have complied with Council's instructions. The Council has also referred the matter to the Ministry of Health.

The first call on this matter was 15 October 2007. The matter was remanded to 17 December 2007 for a plea to be entered.

(Changed) N and 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 yet to apply for a building consent for work yet to be completed.

The first call on this matter was 15 October 2007.

- **KG Bishop** - The Council withdrew the informations against Mrs Bishop due to limited involvement in the unauthorised building works;
- **N Bishop** - The matter was remanded to 17 December 2007 for a plea to be entered;
- **DR Jordan** - The matter was adjourned by consent to 19 November 2007. Mr Jordan did not appear and the matter has been further adjourned to 19 December 2007, where a plea is to be entered;
- **AR Kiff** - Mr Kiff appeared, and the matter was adjourned without plea to 17 December 2007 as Mr Kiff has only just sought legal representation and was not in a position to enter a plea.

(Changed) Nick and 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 continued to obscure the food grading certificate with a flag outside the store.

Mr Shun appeared in Court on 15 October 2007 without his interpreter. The matter was adjourned to 17 December 2007 so that a Court interpreter could be appointed by the Court.

Mr Shun then applied to the Court to have the matter heard on 29 October 2007 as he was leaving New Zealand for China. Mark Casey appeared for the Council. Mr Shun informally requested name suppression which the Council opposed. No formal application to the Court for name suppression has been made and the matter has been adjourned to 12 February 2008 for a plea to be entered.

(Changed) 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 were downgraded to "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) also removed the Designated Officer Approval (DOA) required for all food premises trading. The current food premises certificate expired on 30 June 2007. Council's decision was appealed which would have allowed the appellant to continue operating as if a food premises certificate were in place had it not been for the withdrawal of the DOA.

A fixture was granted by the Court for the matter to be heard on 19 November 2007.

In the meantime, we report the following developments:

The ARPHS have reassessed the premises in light of work undertaken by the proprietor. The Designated Officer Approval ("DOA") has been reinstated, and the ARPHS are satisfied that the premises meet the requirements set down from the proprietor to continue manufacturing.

We understand that the proprietor has not been operating from the premises, and that he is setting up a manufacturing plant in Albany.

The appellant sought to discontinue the proceedings on 16 November 2007 because he is no longer operating from the premises. The Council has filed a memorandum seeking costs against the appellant. This was filed with the Court on 26 November 2007. The Court should resolve the issue as to costs on the papers filed.

(Changed) 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 appointed an investigator to look into this matter. That report has now been received by the Council. It generally accepts that there are 7 unauthorised dwellings on the property. A draft determination has not yet been issued. The matter is set down for a call before the Court on February 2007.

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

This matter relates to breaches of the RMA 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 RMA 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, as a judge was not available the matter was unable to proceed and is now set down for a jury trial on 18 February 2008. The Building Act charges have been set down 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 RMA 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. The matter was called on 3 September 2007 where the informations against D Gladwin were withdrawn and M Gladwin reserved the right to enter a plea until 11 February 2008. The Court was informed that the Gladwin's intended to apply for retrospective resource consent to regularise the breach so as to mitigate the offending.

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

Charges have been laid under the RMA 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 3 September 2007 where the parties reserved the right to enter a plea. The Court permitted the parties further time to consider the matter. The matter was called on 24 October and guilty pleas were entered by the companies. In the interim, the Council is continuing to work with the developer in the preparation of their subdivision and development application. Sentencing will take place on 11 February 2008.

(Changed) 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 Section 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. Mr Garrett entered a guilty plea to the charges of undertaking building work without consent and earthworks without resource consent on 12 November 2007. Sentencing will take place on 11 February 2008.

(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 re-clad 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 was set down for a one day on 9 November with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November, the Court had not allocated adequate time and the considered that because Mr Brooky had not served summonses on his witnesses the Court ought to set the matter aside until 2008; particularly because Mr Brooky is a lay litigant. The Court has set the matter down for call over on 11 January 2008 and asked that Mr Brooky issue the relevant summonses by that time. At that point in time, the Court will allocate hearing time to this matter.

(Unchanged) R Narayanaraja, P Ramasubramanian and 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. Mr Hosaini entered a guilty plea on 15 October and charges against P Ramasubramanian were withdrawn. The other parties are still considering their plea. The matter is set down for a call on 17 December 2007.

Leaky Building Claims

(Changed) Claims statistics are as follows:

- (a) Claims currently being handled are 31
 - High Court: 4
 - District Court: 2
 - WHRS/WHT: 25
- (b) Number of claims for Waitakere City as at 30 November 2007, which may include some consents processed by building certifiers, was 338. This is an increase of 1 since 30 October 2007.
- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.

- (d) The latest High Court claim relates to a property at 4 Keeling Road, and is a block of 22 units. The other defendant's include James Hardies and the architect. The builder, and other contractors, has not been identified. The claim is presently for \$1.7M consisting of remedial work, plus \$220,000.00 general damages (\$10,000.00 per unit), loss of market value, fees, interest and costs.

RECOMMENDATION

That the Legal Update (As at 30 November 2007) report be received.

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 WAITAKERE CITY DISTRICT PLAN PROPOSED PLAN CHANGE 25: CORBAN ESTATE SPECIAL AREA

GLOSSARY

| | |
|--------------------------------|---------------|
| Corban Estate Creative Quarter | (the Quarter) |
| Resource Management Act | (Act) |

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee the Proposed Plan Change relating to the amendment of the District Plan provisions that apply to the Corban Estate Special Area and seeks approval to enable the Proposed Plan Change to be publicly notified.

BACKGROUND

In 1991 the Council purchased the 9.6 hectare Corban Estate site. Since 1997 planning for the site has focused on establishing an integrated arts and cultural centre, which maximises the development potential of this strategic site, but minimises (to the extent possible) the funding requirements on the Council.

In May 2007, technical spatial design and planning workshops were held to develop a viable concept plan for the site. This work built upon previous planning and consultation and resulted in a draft schedule of spaces and a site layout. A preliminary concept master plan for the future development of the estate and a way to progress the project was presented to Council in September 2007 for endorsement.

At its meeting on 19 September 2007, the Council resolved:

- 1. That the Corban Estate Development Project report be received.*
- 2. That the Corban Creative Quarter vision statement as set out in the Agenda be endorsed.*
- 3. That the preliminary concept master plan for the Corban Estate as presented at the meeting be approved as a basis for further development and feasibility testing and that a further report be brought back to the incoming Council in early 2008 once further feasibility is completed."*

A4-A7 On the basis of this resolution, the Proposed Plan Change at attached pages A4 to A7 has been prepared.

STRATEGIC CONTEXT

Corban Estate is identified in the 2003 Waitakere Arts and Cultural Strategy as one of two key arts precincts, along with Lopdell House, that contribute significantly to the cultural infrastructure of the City. The Long Term Council Community Plan 2006-2016 identifies the development of Corban Estate as a priority in the major programme schedule. The Corban Estate is referred to as a key development area within the wider Henderson Concept Plan.

The Corban Estate Creative Quarter (the Quarter), is the name that has been adopted for the proposed development by the parties involved, and is expected to become a major arts and cultural facility for Waitakere City, complementing Lopdell House and the Glen Eden Playhouse Theatre. In order to achieve this, the Quarter will be a distinctive arts centre, readily accessible and welcoming to the broadest range of potential local and regional visitors. The proposed relocation of both Unitec's New Zealand's Design and Visual Arts and Performing and Screen Arts schools to the Corban Estate has a major synergy with Council's vision for the Special Area and would provide linkages to the burgeoning film and screen industry in Henderson and Waitakere. The proposed development of the Quarter will result in greater levels of activity within the Henderson town centre, with positive economic spin offs for local business.

The expanded range of tertiary education opportunities in the City that will eventuate from Unitec's involvement will contribute significantly to the economy and community and to the Council's Lifelong Learning Priority.

DISTRICT PLAN POLICY FRAMEWORK AND RULES

The District Plan has a well established policy and rule framework. The District Plan includes a number of Special Areas, which have been utilised to provide an appropriate planning framework for unique resources. Special Area Policies and Rules are site specific, in that they only apply to the defined special area as indicated on the District Plan Maps. As noted in the Strategic Context Section above, the Corban Estate represents a significant, unique resource in a strategic location in the City. It is therefore considered appropriate to continue to utilise the existing Special Area Policy and Rule framework of the District Plan (albeit as amended by the Plan Change) to enable the future development of this Special Area to proceed.

THE PROPOSED PLAN CHANGE

A4-A7 The Proposed Plan Change is attached at pages A4 to A7. The Proposed Plan Change includes:

- Amendments to the existing Special Area Definition of the Corban Estate Special Area, to include educational facilities, residential activity (medium density housing and / or apartment dwellings), retail services, and car parking;
- Amendments to the existing Special Area Rule 5 to enable educational facilities, residential activity (medium density housing and / or apartment dwellings), retail services, and car parking;
- consequential amendments to the other District Plan Rules that apply to development within the Special Area; and
- a correction of the title of the Special Area, replacing "Corbans Estate" with Corban Estate".

There are no changes to the District Plan Objectives and Policies, nor to the District Plan Natural Area Rules that apply to the land within the Corban Estate Special Area, and no changes to the District Plan Maps.

At time of writing, the provisions relating to car parking were not finalised, and will be tabled at the Committee meeting.

These Proposed Plan Change is critical to ensuring the viability of the Corban Estate Creative Quarter redevelopment project, which includes the proposed relocation of Unitec New Zealand's Design and Visual Arts and Performing and Screen Arts Schools to the Quarter. It also enables commercial activity in the form of retail of goods associated with creative endeavour, retail associated with servicing the daytime community on the site (cafes, wine bars etc), retail services, and residential development.

STATUTORY CONSIDERATIONS AND SECTION 32 ANALYSIS

The purpose of a district plan, as outlined in Section 72 of the Act, is to assist Council to carry out its functions. All councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

Section 5 describes the purpose of the Resource Management Act:

"The purpose of this Act is to promote the sustainable management of natural and physical resources.

- (2) *In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while -*
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Environment is defined in Section 2 of the Act as follows:

"Environment" includes -

- (a) *Ecosystems and their constituent parts, including people and communities; and*
- (b) *All natural and physical resources; and*
- (c) *Amenity values; and*
- (d) *The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters."*

Section 74 (1) of the Act is the statutory basis on which Council undertakes changes to its plan. Section 74(1) states that:

"A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations."

Section 32 of the Act requires a rigorous test to ensure that before any objective, policy, rule or other method is adopted, a local authority has had regard to

- (3) *An evaluation must examine -*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (3A) *The subsection applies to a rule that imposes a greater prohibition on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstance of the region or the district.*
- (4) *For the purposes of the examinations referred to in 3 and 3A, an evaluation must take into account –*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*
- (6) *The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.*

A section 32 analysis for the Proposed Plan Change has been prepared and will be provided at the Committee meeting. The Resource Management Act 1991 requires, via section 32(6), that the Section 32 report is made available at the time of public notification of the Proposed Plan Change.

RESOURCES

All specialist studies required for this Draft Plan Change have been completed through existing budgets. The resources required to progress the Proposed Plan Change through the statutory process are also adequately resourced from existing budgets.

CONCLUSION

The purpose of this report is to present to the Planning and Regulatory Committee the Proposed Plan Change and seek the Committee's approval to publicly notify it. Work on the development of the Corban Estate as a creative quarter has been significantly advanced, and detailed feasibility work is about to begin. It is critical that the District Plan be amended to ensure that future development opportunities for the site are enabled, while any adverse environmental effects are appropriately managed. The Proposed Plan Change therefore amends the Special Area Rule for the Corban Estate Special Area. The notification of this Proposed Plan Change represents another step along the path towards the development of the Corban Estate Special Area as a key development area within the wider development of the Henderson Town Centre.

RECOMMENDATIONS

1. That the Waitakere City District Plan Proposed Plan Change 25: Corban Estate Special Area report be received.

- A4-A7
2. That pursuant to the First Schedule to the Resource Management Act 1991, the Planning and Regulatory Committee resolve to publicly notify Waitakere City District Plan Proposed Plan Change 25: Corban Estate Special Area, as set out in attached pages A4 to A7.

Report prepared by: Eryn Shields, Principal Planner.



7 REMOVAL OF DEFENCE PURPOSES DESIGNATION OVER PART OF THE LAND AT HOBSONVILLE ROAD

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 of portion land along Hobsonville Road, in the vicinity of the intersection of Hobsonville Road and Trig Road and adjacent to 76 Hobsonville Road.

BACKGROUND

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 2665 square metres of land in the vicinity of the intersection of Hobsonville Road and Trig Road.

- A8-A9
- A copy of the Notice of Removal, including a plan of the land to which it relates, is attached at pages A8 to A9.

STRATEGIC CONTEXT

This portion of land is likely to be included in the Council's forthcoming work to extend the Auckland Regional Council's Metropolitan Urban Limits to include all land south of the new State Highway 18. This work is programmed to occur after 2011. Following the removal of the Minister of Defence's designation, the land will be managed via the Countryside Environment Rules in the District Plan.

ISSUES

Section 182 of the Resource Management Act 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 all of the designation. Therefore the request to remove the designation should be undertaken 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 of the removal of the designation for "Defence Purposes" over a portion of land along Hobsonville Road, in the vicinity of the intersection of Hobsonville Road and Trig Road and adjacent to 76 Hobsonville Road. This designation 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. Therefore the designation has been uplifted as requested by the Minister.

RECOMMENDATION

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

Report prepared by: Eryn Shields, Principal Planner.



8 **ALTERATION OF TRANSIT NEW ZEALAND DESIGNATION AT KEDGELY DRIVE, MASSEY NORTH**

PURPOSE OF THE REPORT

The purpose of this report is to inform the Planning and Regulatory Committee of the alteration of part of the Transit New Zealand designation over a portion land at Massey North.

BACKGROUND

Transit New Zealand is the requiring authority for the District Plan designation TSNZ4. This designation provides for the future construction and operation of the new State Highways 16 and 18 which will run respectively to the north and east of the current end of the north-western motorway. Construction of these new motorways will remove Kedgley Drive, a privately owned road which provides access to some properties in Massey North. Consequently condition 9(ii) of designation TSNZ4 requires Transit to construct a replacement to Kedgley Drive further to the West. The existing designation boundaries provide for a curvilinear replacement road running generally north of and opposite to the Westgate entrance on Hobsonville Road.

The design of the indicative roading network for the future Massey North town centre has advanced since the designation TSNZ4 was inserted into the District Plan. The designation alignment would partially, but not completely overlap the proposed Massey North mainstreet. It was proposed to alter the designation so that it follows the proposed alignment of the Massey North mainstreet. This will avoid unnecessary double-up in road construction costs, as one alignment can serve both a new Kedgley Drive and a new mainstreet.

A10

A copy of a plan showing both the old designation alignment and the new alignment is attached at page A10

STRATEGIC CONTEXT

This land will form part the Massey North Town Centre Special Area within Proposed Plan Change 15. This Proposed Plan Change provides for a new town centre and includes an indicative road network. Realignment of the Kedgley Drive designation will facilitate development of the Massey North Town Centre Special Area.

ISSUES

Once a designation is in place, the Resource Management Act 1991 provides a relatively simple procedure for making minor alterations. Section 181(3) of the Resource Management Act 1991 states:

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

- (a) The alteration—*
 - (i) Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
 - (ii) Involves only minor changes or adjustments to the boundaries of the designation or requirement; and*
- (b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*
- (c) Both the territorial authority and the requiring authority agree with the alteration—*
and sections 168 to 179 shall not apply to any such alteration.”

Provided that the proposed alteration complied with the matters set out in Section 181(3) (a), (b) and (c), the designation in the District Plan can be amended without further formality.

The information provided by Transit in support of the designation alteration proposal is thorough, and addresses all the relevant issues. All landowners have given written approval of the alteration to the designation. Council staff are satisfied that the correct procedure has been followed in relation to the proposal.

The alteration is minor in terms of its environmental effects. There are no heritage features or sites within the realigned designation boundary. No other parties are considered to be affected by the realignment. The realignment also facilitates implementation of Proposed Plan Change 15.

The proposed alteration therefore complies with all three matters set out in Section 181(3) (a), (b) and (c) and the boundary of the designation has been altered as requested by the requiring authority.

RESOURCES

No additional or unbudgeted resources are required.

CONCLUSION

Transit New Zealand has requested an alteration to the boundary of designation TSNZ4. The requested alteration meets the requirements of Section 181(3) of the Resource Management Act 1991. Therefore the designation has been altered as requested by Transit New Zealand.

RECOMMENDATION

That the Alteration of Transit New Zealand Designation at Kedgley Drive, Massey North report be received.

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



9 APPEALS IN RELATION TO DISTRICT PLAN CHANGES 13-18

GLOSSARY

| | |
|---|---------|
| Local Government (Auckland) Amendment Act | (LGAAA) |
| Resource Management Act 1991 | (RMA) |
| Auckland Regional Policy Statement | (ARPS) |

PURPOSE OF THE REPORT

This report seeks to update the Planning and Regulatory Committee on appeals lodged in response to Councils' decisions on Plan Changes 13-18. The report summarises the implications of the appeals, and outlines the likely process and timeframe for resolving them.

In addition, the endorsement of the Committee is sought for section 274 notices that have been lodged by the Council in relation to appeals on the plan changes of other councils.

BACKGROUND

Proposed Plan Changes 13-18 were publicly notified on 31 March 2005 as a mandatory requirement of the Local Government (Auckland) Amendment Act 2004 (LGAAA).

The LGAAA mandates that all councils in the Auckland Region integrate their land transport and land use provisions and ensure these give effect to the growth concept contained within the Auckland Regional Growth Strategy.

The Auckland councils jointly constituted a hearings panel to hear submissions on the plan changes and to make recommendations to each council. After receiving the panel's recommendations, the Council adopted Plan Changes 13-18 with some amendments in July 2007. The Council's decisions were sent to all submitters at that time.

The Resource Management Act 1991 (RMA) provides for any party who lodged a submission on a plan change to appeal to the Environment Court if they are dissatisfied with the council's decision.

STRATEGIC CONTEXT

Plan Changes 13-18 are of key strategic importance to the Council. Amongst other things, the Plan Changes seek to reinforce the strategic approach to growth management that the Council has adopted, integrate transportation and land use, redress the local employment deficit that prevails in Waitakere, and introduce improved methods for managing amenity issues arising from intensification.

ISSUES

Appeals and Section 274 Parties

A11-A19 In total, the Environment Court has received 28 appeals against the Council's decisions on Plan Changes 13-18. A table indicating the appellants and the basis of their appeals is attached at pages A11 to A19.

A20-A22 Section 274 of the RMA provides for persons to register an interest in appeal proceedings that are before the Environment Court. Where a person advises the Court of their interest in a particular appeal, they are then entitled to participate in any hearing that is convened to resolve the appeal. A number of parties have lodged Section 274 notices in relation to the Plan Change 13-18 appeals, although they largely comprise the existing appellants. The identities of the Section 274 parties, and the appeals that they are involved in, are noted within the table attached at pages A20 to A22.

Likely Process for Resolution of Appeals

In addition to the Plan Change 13-18 appeals, the Environment Court will also need to address appeals lodged in relation to Plan Changes 6 and 7 of the Auckland Regional Policy Statement (ARPS), and appeals against other plan changes promulgated by Auckland territorial local authorities under the LGAAA.

The Court is proposing to deal with all these appeals as a package, given the interconnected nature of the issues that have been addressed through the various LGAAA plan changes.

From the Council's perspective, it is clearly desirable for the appeals to be disposed of in the shortest possible time and with a minimum of cost. However, there may be some obstacles to achieving this objective, given that the appeals are subject to a judicial process that is largely beyond the control of the Council.

There are some actions that the Council can take that may assist in the efficiency of the process.

Firstly, the Council could actively engage in discussions with the appellants and section 274 parties, either informally or through Environment Court mediation, in an attempt to resolve appeals without the need for a hearing. Staff have analysed the appeals to determine which of them may have potential for resolution between the parties, and have commenced informal discussions in some instances. Staff will continue to pursue such opportunities where there is some realistic prospect of a negotiated settlement.

Secondly, the Council may benefit from the sequencing of hearings that the Environment Court adopts. It is considered that there are potential efficiencies to be gained from the Court hearing appeals relating to ARPS Changes 6 and 7 early in the process, and then issuing an interim decision on those appeals.

There is some logic in hearing and determining appeals in relation to the overarching regional objectives and policies first, in order to ensure regional consistency, and because the RMA requires that district plans must give effect to any regional policy statement. If the hearings were sequenced in this way, it would provide an early opportunity for the Court to issue an interim decision effectively confirming the Metropolitan Urban Limit (MUL) shift. This would provide greater certainty for investors, the business community and others that the land in question will be urbanised.

Furthermore, an interim decision on 'big picture' issues may result in the withdrawal of district plan appeals that were unheard at that stage, if the relief that they are seeking was inconsistent with the interim decision.

For these reasons, Council officers are proposing to advocate for the ARPS appeals to be considered first and for the Court to issue an interim decision once those hearings have been completed. Preliminary discussions with the Environment Court have suggested that this approach may be acceptable to the Court.

Environment Court Hearing Timeframe

The Court has indicated that it will convene a judicial conference in early 2008 to hear from each party in relation to the manner in which they propose to pursue their appeals and the expert witnesses they intend to call to present evidence.

Once the Court has heard from the various parties, it will either set appeals down for hearing or invite the parties to participate in mediation. If some of the appeals are to proceed to a hearing, a sequential evidence exchange timeframe would be established. The evidence exchange timing would mean that hearings would be unlikely to commence before the middle of 2008 at the earliest. An interim decision would not be expected much before the end of next year.

Subsequent hearings, dealing with the more detailed matters such as those covered in Plan Changes 13-18, would follow in 2009. Given the number of appeals, and the complexity of the issues they raise, it is considered that resolution of all the appeals through the statutory process is likely to take at least two years.

Implications of the Appeals

The appeals have the potential to significantly delay the commencement of development that would be facilitated by Plan Changes 13-18.

A review of the appeals indicates that there are few, if any, provisions of Plan Changes 13-18 that are not subject to challenge. On this basis, it appears that there are no significant aspects of the Plan Changes that are effectively operative.

The consequence of this widespread and direct challenge is that the Council is obliged to afford greater weight to the operative District Plan than to the provisions of Plan Changes 13-18 when assessing applications for resource consent. This situation will prevail until the appeals have been resolved.

Effectively the appeals are an obstacle to the timely commencement of development, particularly in those areas in the north of the City that are proposed to be urbanised. As noted previously in this report, it is possible that many of the appeals may still remain unresolved in two years time.

The length of this potential delay reinforces the benefits of proactive negotiation with appeal parties, with a view to achieving resolutions of appeals outside of the formal Court process where possible.

It is noted that these statutory delays may not be the only issue that prevents development of the northern growth area in the near future. The area is largely devoid of bulk infrastructure at the current time, and the planning and establishment of such infrastructure may also take a period of time that is similar to that required to resolve the appeals.

Council's Section 274 Notices

The Council has advised the Environment Court that it has an interest in a number of appeals lodged in relation to ARPS Changes 6 and 7, and in relation to plan changes promulgated under the LGAAA by the other Auckland territorial local authorities.

The Council's Section 274 notices are intended to ensure that the Council has some input into resolution of various appeals, to ensure that its interests are not compromised in some way.

A20-A22

Council officers arranged for the Section 274 notices to be lodged under the delegated authority of the Chief Executive Officer, as the closing date for Section 274 notices expired at a time when Council Committees had yet to be constituted following the local authority elections. A list of the appeals to which the Section 274 notices relate is attached at pages A20 to A22.

The endorsement of the Planning and Regulatory Committee is now sought to the action taken in lodging the section 274 notices.

RESOURCES

Resolution of the appeals will require allocation of staff time, together with funding for legal costs and costs for the engagement of expert witnesses.

Council officers time is already allocated toward this project. Some provision for legal and expert witness costs exists within budgets, sufficient to cover costs in the current financial year, although it is likely that some further funding will need to be provided in Council budgets for upcoming years. This issue will be addressed through the 2008/2009 Annual Plan process.

CONCLUSION

A number of appeals have been lodged with the Environment Court in relation to Council's decisions on Plan Changes 13-18.

Council officers are attempting to facilitate the resolution of the appeals in the most efficient and cost effective manner possible. However, it is likely that the appeals may delay many of the development opportunities that are facilitated by the Plan Changes, for a period of two years or more.

RECOMMENDATIONS

A20-A22

1. That the Appeals In Relation To District Plan Changes 13-18 report be received.
2. That the Planning and Regulatory Committee endorse the actions of the Chief Executive Officer in lodging Section 274 notices in relation to the appeals listed in the table attached at pages A20 to A22.
3. That the Planning and Regulatory Committee be kept informed of progress in resolving the appeals, through regularly updated information contained in the Legal Update report that is a standing item on the meeting agenda.

Report prepared by: Philip Brown, Group Manager: Planning & Community Services.



PART D - ENVIRONMENTAL MANAGEMENT

10 DETERMINATION REPORT - REVIEW OF BYLAW NO.7 (1991) - TRAFFIC

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to commence a review of Bylaw No.7 (1991) - Traffic.

BACKGROUND

A23-A32

The current bylaw is attached at pages A23 to A32. The existing bylaw was made pursuant to Section 72 Transport Act 1962 and to a lesser degree, Section 684 Local Government Act 1974. Section 158 Local Government Act 2002 states that all bylaws made before 1 July 2003 under the provisions of the Local Government Act 1974 must be reviewed by 1 July 2008 or they will expire on that date.

Section 684(13) of the Local Government Act 1974 empowers Council to make bylaws 'concerning roads and cycle tracks and the use thereof, and the construction of anything upon, over, or under a road or cycle track'. This is quite a far reaching power, but the current bylaw only specifically relies on this section in relation to cycle tracks. The rest of the existing bylaw relies upon Section 72 Transport Act 1962. That section provides a power to make a bylaw for a number of very specific purposes including one way streets, u-turns, special vehicle lanes, parking and so on. Because the majority of the current bylaw relies upon Section 72 Transport Act 1962, it will not expire in July 2008. The Transport Act 1962 is however due to be repealed on 1 July 2009. Whereupon any bylaw made under that Act will also expire, unless a saving provision is included in any subsequent legislative change.

The Planning and Regulatory Committee will recall that Council officers are working on one overarching public places bylaw which will encompass parks and reserves, beaches and waters, street trading, and cemeteries. Roads are also public places. Currently Council has a Use of Roads Bylaw (No.22 of 1990) which covers issues such as obstruction, parking, filming, disturbing the surface of the road, skateboarding, street damage, vehicles crossings etc. It is proposed to also incorporate those clauses that are still required from the Use of Roads Bylaw into the new Public Places Bylaw. Given that there is a degree of overlap between the Use of Roads Bylaw and the Traffic Bylaw it was thought timely to consider whether to review the Traffic Bylaw now (as part of the promulgation of the Public Places Bylaw) or leave it alone to see what takes the place of Section 72 Transport Act 1962 in the next 18 months to enable Council's to enforce and manage traffic issues.

This report commences a review of the Traffic Bylaw under Section.155 LGA 02. The main issue discussed in this report for the Committee's consideration is however whether to leave the main review of the bylaw alone and await legislative developments or whether to review now.

The report concludes that:

- A bylaw is the only method available to Council to enforce traffic and parking restrictions. There is no other clear legal method of dealing with the issues;
- There is no power under the Local Government Act 2002 to make a bylaw for the purpose of managing and regulating vehicular traffic and parking issues;
- The existing bylaw was made under Section 72 Transport Act 1962 and Section 684 Local Government Act 1974. Those bylaw clauses that rely on the 1974 Act will expire on 1 July 2008 unless they are reviewed before that date. The rest of the current bylaw that relies on the Transport Act 1962 will continue until 1 July 2009 when the Transport Act expires;
- If Council decides to makes a new Traffic Bylaw the legal power to do so is derived from the Transport Act 1962 provisions, which means that when that Act is revoked on 1 July 2009, so will the new bylaw insofar as it relates to traffic issues;
- The question for the Committee is whether it is appropriate or desirable to undertake a full review of the bylaw given that some form of legislative change is highly probable within the next 18 months.

STRATEGIC CONTEXT

One of Council's Strategic Priorities is "Safe City" requiring that the general safety of the community be integral to all of Council's activities and planning. In addition one of Council's nine Strategic Platforms is Integrated Transport and Communication. This platform focuses on the development of an efficient communication and transport system that supports the growing population, offers choices, and ensures accessibility to thriving town centres.

ISSUES

Legal Powers

The first step is to determine whether a power exists to make a new bylaw. Section145 LGA 02 outlines the general bylaw making powers available to local authorities under that act as:

- (a) protecting the public from nuisance;
- (b) protecting, promoting and maintaining public health and safety;;
- (c) minimising the potential for offensive behaviour in public places.

Possibly (b) would apply to some aspects of traffic regulation, but it would be difficult to argue that provisions relating to bus priority lanes and parking restrictions fell under any of the general purposes outlined above. There are no specific bylaw making powers contained within Section 146 LGA 02 that relate to traffic regulation.

As outlined above, legal powers do however still exist (and this appears to have been a deliberate move on the part of the Legislature) to make a bylaw to manage and regulate vehicular movement pursuant to Section72 Transport Act 1962 and Section 684 Local Government Act 1974.

If the Committee determines to make a new bylaw, the bylaw will therefore be made under the provisions of the 1962 and 1974 Acts. The parts of the current bylaw that rely upon the 1974 Act must be reviewed before 1 July 2008 or they will expire. If a new bylaw is made pursuant to the 1962 Act, the bylaw will be revoked when the Act is revoked on 1 July 2009. It is anticipated that before the 1962 Act is revoked, new provisions will be introduced by means of a new Land Transport Rule or an amendment to the Land Transport Act 1998 enabling all road controlling authorities to regulate and manage traffic issues within their districts without relying on a bylaw. At the moment there appears to be nothing else available.

Problem Identification

Section 155 LGA 02 requires a local authority, before commencing the process of making a bylaw, to determine whether a bylaw is the most appropriate way of addressing the perceived problem. The perceived problem to be addressed must therefore be identified. The current bylaw gives Council the powers to enforce restrictions imposed by Council resolution relating to one way streets, u turns, stopping of vehicles, loading, standing, parking places, (and terms of parking) and heavy vehicle restrictions. The bylaw also contains provisions relating to the establishment of cycle tracks, special parking areas and bus priority lanes.

Council needs to be able to enforce its vehicle management decisions to ensure as far as practicable that traffic is managed, congestion is addressed and accessibility particularly in the town centres is maintained. The bylaw at the moment provides that enforcement tool. The existing bylaw also contains sections on speed limits and speed controls. There is now a separate Speed Limits Bylaw 2004. Speed Limits therefore do not need to be discussed further in this report.

From time to time Council receives complaints from residents relating to the parking of heavy vehicles in residential streets causing an obstruction, noise nuisance and safety issues. North Shore City Council has a bylaw provision enabling Council to prohibit heavy vehicle parking in certain areas and Waitakere City Council has been asked by some local residents to consider a similar provision.

Option Analysis

Retain the Status Quo - the 1991 Current Bylaw

A33-A36

The current bylaw was adopted over 16 years ago. Unlike most other current bylaws, it will not entirely and automatically expire on 1 July 2008. Only those clauses that rely on the Local Government Act 1974 expire on that date. A copy of Section 72 Transport Act 1962 and Section 684 (13) Local Government Act 1974 are attached at pages A33 to A36. The only existing clauses that fall within the LGA 1974 powers and requiring review in the next six months are 10 'Cycle Tracks' and (possibly) clause 4 'Traffic Control' which relates to fixing or varying charges.

There is no resource implication involved in leaving the current bylaw in place. There would be no change to the existing rules and no increase in costs. Except clauses 4 and 10 which do need to be reviewed and dealt with, the advantage of leaving the rest of the bylaw alone is that it allows Council to see what Parliament decides to replace the Transport Act 1962 with. It also means that a new bylaw adopted after full public consultation, would not be revoked within a year. Team Manager: Parking Services confirms that there is no pressing operational need for a new bylaw at the moment. If the revocation of the Transport Act 1962 is subsequently postponed by the Legislature (as it has been previously, from 2005 until 2009), it remains open to Council to undertake a review of the bylaw at any time.

The advantage of reviewing the bylaw now is that all other bylaws relating to public places and roads are currently being reviewed in accordance with Council's statutory duty under the LGA 02. It is therefore cost effective and efficient to review the Traffic Bylaw at the same time, ensuring it remains relevant and consistent with other bylaws.

Transport Assets advise that enquiries with other Councils in the Auckland region (Rodney, North Shore and Manukau) confirms that Waitakeres' neighbours have either completed a review of their bylaw, or intend to do so in the near future.

Revoke Bylaw and Rely on Other Methods for Management and Regulation

If the current bylaw was revoked and no bylaw put in its place, it is doubtful whether Council would have any other legal tools available to enforce parking and traffic restrictions. Without retaining the current bylaw or adopting a new one, Council would not have sufficient regulatory power to deal with parking and traffic issues. That is not a practicable option.

Although there have been legislative developments since the current bylaw was adopted, the Land Transport Act 1998 does not establish powers for road controlling authorities to regulate traffic or parking. The Act does give the Minister power to make Rules. The Land Transport (Road User) Rule 2004 contains provisions relating to the use of certain designated lanes, parking and stopping. However it does not clarify how the road controlling authority is to make decisions on those matters or how those restrictions are to be enforced. Council's are therefore left to rely on the bylaw making powers retained in Section.72 Transport Act 1962 and 684 Local Government Act 1974 for matters relating to parking, specified lanes, stopping and standing, heavy vehicles and one way streets after 1 July 2008.

Create a New Bylaw

Bearing in mind that the bylaw making provisions contained within the Transport Act 1962 will be repealed on 1 July 2009 the real option here is whether to leave the existing bylaw alone, or look at drafting a new bylaw.

A new bylaw as a specific part of the new public places bylaw, would allow Council to look at traffic issues in the context of a general review of all other bylaws relating to public places.

It would also allow Council to consider which provisions of the current bylaw are now outdated for example the speed limit provisions; which provisions should perhaps be extended, for example the current provisions relating to bus priority lanes could be extended to cover different special vehicles. There are also calls for Council to consider heavy vehicle parking restrictions in certain residential areas.

If a bylaw subsequently becomes redundant due to the introduction of new legislative provisions within the next two years, then this part of the public places bylaw would simply expire.

Unless considerably more enforcement action is likely or proposed under a new bylaw, there should not be any major resource implications. The only cost envisaged is that relating to promulgation of the bylaw itself. A new bylaw would be consistent with all new traffic regulations and Road User Rules. The aim would be to reflect the changing needs and demands of the community and would be consistent with Council's strategic platforms and priorities.

CONCLUSIONS

Council requires an effective method of managing parking issues and vehicle movements within the city. Given the lack of other options, it is recommended that Council continue to manage and regulate by means of a bylaw. The question for the Committee to consider is whether it is appropriate to a) review the Traffic Bylaw now within the context of the draft Public Places Bylaw and seek public consultation on all proposed measures at the same time, or b) review only those parts of the Traffic Bylaw that will expire in July 2008 leaving the current bylaw alone to await legislative developments. There are pros and cons for both options as outlined above.

RECOMMENDATIONS

1. That the Determination Report - Review of Bylaw No.7 (1991) - Traffic report be received.
2. That a bylaw is the most appropriate way of addressing the perceived problem, namely the better management and regulation of parking and traffic.
3. That Council officers either:
 - (a) Prepare a draft Traffic Bylaw to be incorporated into the draft Public Places Bylaw, for consideration and discussion at a future Planning and Regulatory Committee meeting; or
 - (b) Review only those clauses of the Traffic Bylaw that will expire on 1 July 2008 and incorporate any of those clauses that remain appropriate and relevant into the draft Public Places Bylaw with the rest of the existing Traffic Bylaw to remain in force, to await legislative developments for the reasons given in the Agenda report.

Report prepared by: Yvonne Donaldson: Team Leader: Legal Services, Jane Harris: Transport Technician and Colin Waite: Team Manager: Parking Services.



11 OTAHUHU TO HENDERSON TRANSMISSION LINE UPGRADE - SECTION 274 NOTICES

GLOSSARY

Transpower New Zealand Limited (Transpower)

PURPOSE OF THE REPORT

The purpose of this report is to advise the Planning and Regulatory Committee of two Section 274 notices that Council has lodged with the Environment Court. The notices relate to two appeals against Auckland City Council's decision to grant consent to upgrade the Otahuhu to Henderson 220kV power transmission line.

The endorsement of the Planning and Regulatory Committee is sought for the action of Council officers in lodging the two Section 274 notices.

BACKGROUND

Transpower New Zealand Limited (Transpower) sought resource consent for the operation of the existing Otahuhu to Henderson 220kV transmission line above the currently permitted operating capacity during a forced outage.

Although the transmission line traverses three territorial districts, the application is sought only from Auckland City Council, as the upgrading of those parts of the transmission line in Waitakere City and Manukau City are permitted under their respective district plans.

The transmission line provides power to all areas to the north of the Auckland isthmus, including Waitakere City, Rodney District and North Shore City. The upgrading is required to provide a secure supply of electricity to homes and businesses in these areas.

At present, during the peak load experienced in the winter months, the transmission line is operating close to its maximum peak operating capacity. If there is a fault in one of the two circuits that make up the line, it will be necessary to disconnect customers. The shortfall in capacity is equivalent to 7,000 households, which represents the magnitude of the disruption should a fault occur in the transmission line.

A37-A55 Given the potential for significant impacts on residents and businesses in Waitakere, the Council lodged a submission supporting the application. On 31 August 2007, Hearing Commissioners appointed by Auckland City Council issued a decision granting consent to the application. A copy of the decision is attached at pages A37 to A55.

A56-A66 Two of the submitters have appealed the Council's decision to the Environment Court. Copies of the appeals are attached at pages A56 to A60. The Council was advised of the appeals, and the Chief Executive Officer authorised staff to arrange for Section 274 notices to be served on the Court. This action was taken under delegated authority, as the closing date for Section 274 notices fell within the period before committees had not been constituted following the local authority election. Copies of the Section 274 notices are attached at pages A61 to A66.

Section 274 of the Resource Management Act provides for persons to register an interest in appeal proceedings that are before the Environment Court. Where a person advises the Court of their interest in a particular appeal, they are then entitled to participate in any hearing that is convened to resolve the appeal.

STRATEGIC CONTEXT

Council's strategic platforms recognise the importance of ensuring secure supply of utilities to residential and business areas of the City.

In particular, the Council's Strong Innovative Economy strategic platform states that the Council will work toward providing conditions that form the basis for sustainable economic growth. The Sustainable Energy and Clean Air platform supports work that the Council undertakes to ensure that there is a sustainable energy supply for residents and businesses of the City. Strategic platforms such as the Strong Communities platform state that Council will support the health and wellbeing of the City's residents.

ISSUES

The Council's Section 274 notices were lodged to ensure that the appeals could not be resolved in a manner that prejudiced the interests of Council, without an opportunity for the Council to have an input.

The potential exists for Transpower to reach an agreement with the appellants in order to settle the appeal without the need for a hearing. Any such settlement could include, for example, an undertaking by Transpower to limit the extent of the upgrade that is otherwise provided for under the resource consent. If this were to occur, the benefits of a more secure supply of power for Waitakere consumers may be significantly compromised.

The Section 274 notices would at least provide an opportunity for the Council to advocate to the Environment Court for the interests of Waitakere residents and businesses, in the event that a negotiated outcome between the other parties was achieved.

For these reasons, it is recommended that the Committee endorse the Section 274 notices that have been lodged by staff under delegated authority.

RESOURCES

Sufficient resources are available in existing budgets to negotiate with the parties and, if necessary, be represented at the hearing.

CONCLUSION

Transpower has obtained resource consent to upgrade their Otahuhu to Henderson transmission line in order to ensure continuity of supply to areas north of the Auckland isthmus. Two appeals have been lodged against that consent, and the Council has joined the proceedings as a Section 274 party.

RECOMMENDATIONS

1. That the Otahuhu to Henderson Transmission Line Upgrade - Section 274 Notices report be received.
2. That the Planning and Regulatory Committee endorse the action of the Chief Executive Officer in lodging section 274 notices in relation to the Jackson Electrical Industries Limited and the Onehunga Enhancement Society Incorporated appeals.

Report prepared by: Philip Brown, Group Manager: Planning & Community Services.



PUBLIC EXCLUDED MATTERS

12 AUCKLAND INTERNATIONAL AIRPORT PLAN CHANGE SUBMISSIONS

13 AUCKLAND REGIONAL COUNCIL AIR, LAND AND WATER PLAN - CHAPTER 5 - CONTAMINATED LAND - CONSENT ORDER

These items will be considered in the Confidential Supplement of the agenda, and have been circulated to members separately with this agenda.

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely Auckland International Airport Plan Change Submissions and Auckland Regional Council Air, Land And Water Plan - Chapter 5 - Contaminated Land - Consent Order.

The general subject of these matters to be considered while the public is excluded, the reason for passing this resolution in relation to each of these 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 each of the matters to be considered. | Reason for passing this resolution in relation to each of the matters. | Ground(s) under Section 48(1)(a) for the passing of this resolution. |
|--|--|--|
| Auckland International Airport Plan Change Submissions | The withholding of information is necessary in order to: <ul style="list-style-type: none"> • enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations). | That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist. |
| Auckland Regional Council Air, Land And Water Plan - Chapter 5 - Contaminated Land - Consent Order | The withholding of information is necessary in order to: <ul style="list-style-type: none"> • maintain legal professional privilege | 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 Sections 7(2)(i) and 7(2)(g) 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.*

