

NOTICE OF EXTRAORDINARY MEETING

PLANNING AND REGULATORY COMMITTEE

Following Council approval on Wednesday, 31 October 2007 of the schedule of meetings, I hereby give notice pursuant to Standing Order 14.3 that an Extraordinary Meeting of the Planning and Regulatory Committee will be held on:-

DATE: **Tuesday, 13 November 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.

8 November 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, QBE, JP
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell

Mayor, RA Harvey, QSO, JP (ex officio)
Deputy Mayor, PA Hulse (ex officio)

(Quorum 5 members)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

(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 AN EXTRAORDINARY MEETING OF THE PLANNING AND REGULATORY
COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY
ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 13 NOVEMBER 2007
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
4 LEGAL UPDATE (AS AT 30 OCTOBER 2007)	2
5 THE NATIONAL TRADING COMPANY OF NEW ZEALAND LTD V WAITAKERE CITY COUNCIL AND AUCKLAND REGIONAL COUNCIL V WAITAKERE CITY COUNCIL APPEAL TO NEW WORLD IN NEW LYNN	13
<u>PART C - ENVIRONMENTAL MANAGEMENT</u>	16
6 WAITAKERE CITY COUNCIL SUBMISSION ON PROPOSED PLAN CHANGE 4 TO THE REGIONAL PLAN: COASTAL - MANGROVE MANAGEMENT	16

AGENDA FOR AN EXTRAORDINARY MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 13 NOVEMBER 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.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 30 OCTOBER 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 are in the process of determining the form of declaratory orders. 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 submissions on the supplementary order paper to the Waste Management Bill.

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 Council

(Unchanged) 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 Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

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

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

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

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

Substantive hearings involving Mr Mawhinney

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

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. Mr Mawhinney has lodged security for costs of \$1,500. Subsequently Glorit Subdivision Limited, of which Mr Mawhinney was a sole director and shareholder, has been wound up, for non-payment of costs award in favour of the Council. The Court has now granted leave to allow the Official Assignee to withdraw from the proceedings. Mr Mawhinney has obtained a short adjournment to early December to allow time for decisions in related Environment Court decisions to be available. Submissions in support of the appeal have been filed this month, and we are responding to these currently.

Debt Recovery proceedings involving Mr Mawhinney

(Changed) 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 and Mawhinney (March 2006)

The Council is continuing to pursue an outstanding costs award of \$1,216.88 in respect of this matter, and is claiming further costs incurred as a consequence of the costs enforcement process. All other costs awards in favour of the Council in respect of this matter have been paid.

ENVIRONMENT COURT

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

(Unchanged) Waitakere City Council v R & G Britten - 19 Church Street, Swanson (October 2005)

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

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

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

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

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

The parties have agreed for the stay to continue whilst the Council processes the resource consent to address the matters raised in the abatement notice. Ritchies sought for the application to be notified, the Council has notified the application. The period for making submissions closed on 26 October 2007 after which the Council will decide if further information is required to process the application for a hearing.

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

This matter related to an appeal against two abatement notices which were issued by the Council to require cessation of a home occupation for the provision of sexual services from a rear site without resource consent. The Council alleged that the activity is in breach of the District Plan Rules which require resource consent to operate as a home occupation when on a rear site (Rule 11). Although the appellant initially disputed the need for consent she subsequently admitted that she needed one. She has now withdrawn her appeal and has informed the Council that she no longer operates her business from the property.

(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. It is hoped that a resolution will be achieved shortly otherwise all parties will need to exchange evidence and proceed to a hearing.

(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.

(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 appellant. The Court will make an order on this issue shortly.

Mawhinney Matters in the Environment Court

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

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the (RMA) declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney filed his submissions in opposition on 30 January 2007. The hearing of Council's strike out application is scheduled for 29 October 2007.

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

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the (RMA). 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 'Living2 Environment' (as opposed to "Living 4").

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

(New) 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 at attached pages A1 to A3 of this agenda.

DISTRICT COURT

(New) 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.

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

Information has 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 Section 40 and Section 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.

(New) 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.

(New) K Poulton & L Lyons - 45 Whatipu Road, Huia (October 2007)

This matter is in relation to the felling of approximately 14 native trees on the above site, and also on neighbouring sites including a Council owned reserve, 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 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 information on 3 October 2007. The matter is set down for a first call on 19 November 2007. It will be transferred to the Auckland District Court - Environmental Division, to be heard by a Judge with an environment Court warrant.

(Changed) S and ST Zaidi - 97 Luckens Road, West Harbour (August 2007)

Charges have been laid under the Building Act 2004 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.

The matter was remanded for callover to 13 November 2007. A date will then be set for a half day defended hearing.

(Changed) 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;
- **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 continues 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.

(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) has also removed the "Designated Officer Approval" required for all food premises trading. The current food premises certificate expired on 30 June 2007. Council's decision was appealed which has allowed the appellant to continue operating as if a food premises certificate were in place.

The matter has had a first call, with timetables sought by Council and granted by the Court to ensure this receives a priority fixture. A fixture was granted by the Court for 19 November 2007.

The ARPHS have reassessed the premises in light of work undertaken by the proprietor. The "Designated Officer Approval" 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.

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

Charges were laid under the RMA and Building Act 2004 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 RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court. The RMA contraventions are being addressed by negotiation.

The defendants have applied for a determination from the Department of Building and Housing (DBH) in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH have appointed an investigator who is looking into this matter. The Council is making a submission to set out its reasoning for the decision to decline a certificate of acceptance. The matter is set down for a call before the Court on 12 November 2007.

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

This matter relates to breaches of the RMA and Building Act 2004. When the matters were called on 31 March 2006 at the Waitakere District Court Mr Gordon has 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.

(Changed) 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 for pleas to be entered. In the interim the Council is working with the developer to properly assess the damage, particularly to the archaeological areas of the site in the preparation of their subdivision and development application.

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

Charges have been laid under the RMA 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. The matter was called on 3 September 2007. Mr Garrett sought further time to consider the charges and to obtain legal advice. The matter is being called on 24 October for pleas to be entered.

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

Charges have been laid under the Building Act 2004 for non-compliance with a notice to fix for work undertaken to reclad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter is set down for 20 August 2007 for the defendant to plead. When the matter was called on 20 August the defendant pleaded not guilty. The matter was called on 15 October and hearing has been set down for one day on 9 November with a potential further 2 days being reserved if needed.

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

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed. 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 30

- High Court: 3
- District Court: 2
- Weathertight Home Resolution Service (WHRS) 25

(b) Number of claims for Waitakere as at 30 August 2007, which may include some consents processed by building certifiers, was 338. This is an increase of 3 since 30 July 2007.

(c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.

RECOMMENDATION

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

Report prepared by: Mary Davenport, Contract Solicitor.



5 THE NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED V WAITAKERE CITY COUNCIL AND AUCKLAND REGIONAL COUNCIL V WAITAKERE CITY COUNCIL APPEAL TO NEW WORLD IN NEW LYNN

GLOSSARY

Resource Management Act 1991	(RMA)
The National Trading Company of New Zealand Limited	(NTC)
Waitakere City Council	(WCC)
Waitakere City District Plan	(District Plan)
Auckland Regional Council	(ARC)
Remedial Action Plan	(RAP)

PURPOSE OF THE REPORT

The purpose of this report is to seek the approval of the Planning and Regulatory Committee to the draft consent orders in respect of the two appeals. The appeals relate to Council's decision to grant consent to The National Trading Company of New Zealand Limited (NTC) to establish and operate a supermarket at 7 Clark Street and 2, 4, 6 Crown Lynn Place, New Lynn.

BACKGROUND

On 30 July 2007, Waitakere City Council (WCC) granted consent to NTC to establish and operate a supermarket at 7 Clark Street and 2, 4, 6 Crown Lynn Place, New Lynn. NTC lodged an appeal with the Environment Court against condition 27 which requires all contaminated fill to be removed from the site and disposed of prior to any construction works. Auckland Regional Council (ARC) appealed against the decision of WCC to grant consent to NTC's application to the Environment Court.

STRATEGIC CONTEXT

One of the WCC's strategic priorities is sustainable development. Urban and Rural Villages is one of the strategic platforms through which sustainable development is facilitated. This platform focuses on creating attractive town centres that encourage growth and economic development, with minimal environmental impacts.

The WCC Growth Management Strategy identifies New Lynn as one of the main centres where intensification should occur. The Waitakere City District Plan (District Plan) assists WCC in achieving its sustainable development and growth objectives. In particular, Proposed Plan Change 17 which relates to the New Lynn town centre seeks to achieve high quality, integrated and compact development.

ISSUES

NTC Appeal

The NTC appeal sought that condition 27 of the resource consent be deleted. The grounds for the appeal were that it was not necessary to remove all contaminated fill from the site prior to construction in order to avoid, remedy or mitigate the adverse effects, as this matter is addressed by conditions 14 and 15.

The application included a Remedial Action Plan (RAP) which was prepared by URS New Zealand Limited (URS). The RAP identified that there is a "hotspot" of contamination on the site. The objective of the RAP is to remove all soil from the site that exceeds the soil acceptance criteria recognised by ARC and WCC. Soil with trace levels of contamination (i.e. below the soil acceptance criteria) would be permitted to remain on site. The RAP recommended that approximately 1100m³ of material was to be removed from the site and disposed of at a licensed facility. Validation sampling would be undertaken, which would involve testing of the soil at the base and sides of the excavated area against the relevant soil acceptance criteria set out in the RAP. Further excavation would be carried out if necessary until validation samples meet the soil acceptance criteria.

Condition 14 of the consent requires the recommendations of the RAP to be implemented prior to site works commencing. Condition 15 requires soil to be tested prior to being removed from the site and to be disposed of to a licensed landfill.

A4-A31

Condition 27 is considered unnecessary as adherence to the recommendations contained in the RAP will ensure that adverse effects on the environment would be negligible. It is therefore proposed that the appeal be settled on this basis. A draft memorandum seeking a consent order from the Environment Court (along with the appeal documents and agreed consent conditions) is attached at pages A4 to A31. The proposed settlement is on the basis that no party would seek costs. It is recommended that the Planning and Regulatory Committee approves the signing of the Consent Order to settle the matter.

Auckland Regional Council v Waitakere City Council

The ARC appeal sought that the Environment Court cancel the decision of WCC to grant consent to the NTC application to establish and operate a supermarket. The grounds of the ARC appeal were that the application is contrary to the provisions of Proposed Plan Change 17. In particular, the appellant asserted that the application would result in the excessive provision of parking and the lack of a continuous street frontage on Clark Street.

The parties to the appeal participated in court assisted mediation on 11 October 2007. At the mediation it was identified that ARC sought certainty that the redevelopment of New Lynn would not result in more Large Format Retail beyond the site towards Todd Triangle. NTC have land holdings to the west of the subject site.

It was agreed that the desired level of certainty could be achieved if the following parts of NTC's appeals on Plan Changes 17 and 18 were withdrawn.

1. Parts of the Plan Change 17 (New Lynn) appeal which challenged:
 - The typologies for Clark Street, and the streets to the south of Clark Street;
 - The kerb side parking provision for Clark Street;
 - The provisions which recognise the activities anticipated for Clark Street;
 - The assessment criterion relating to urban design standards as they apply to Lynn mall.

2. Parts of the Plan Change 18 (Urban Design) appeal which are consequential to the Plan Change 17 relief relating to the typologies for Clark Street, and the streets to the south of Clark Street.

It was further agreed that the following advice note would be inserted in the consent:

“When that part of the site fronting Clark Street is developed, or when the whole of the site is substantially redeveloped, NTC will use its best endeavours to develop the Clark Street frontage in a manner consistent with the Objectives and Policies of the District Plan at the time, including any provision for an active street frontage. For the avoidance of doubt, redevelopment does not include reconfiguration of car park areas as a result of the closure of Crown Lynn Place.”

A32-A33 A draft memorandum seeking a consent order from the Environment Court consent is attached at pages A32 to A33. The proposed settlement is on the basis that no party would seek costs. It is considered that the proposed settlement is in keeping with Council's decision on the application. It is therefore recommended that the Planning and Regulatory Committee approves the signing of the memorandum seeking a draft Consent Order to settle the matter.

A34-A36 The settlement agreement pertaining to both appeals is attached at pages A34 to A36.

RESOURCES

Provision has been made in the 2006/2007 and 2007/2008 budgets to cover legal costs. This funding is for professional legal services, in addition to officer time, both of which form part of the Operational Budget for Consent Services.

CONCLUSION

The appeals by NTC and ARC are capable of settlement in a manner that accords with Council's decision on the application. It is recommended that the Planning and Regulatory Committee approves the signing of the memoranda seeking draft Consent Orders to settle the appeals.

RECOMMENDATIONS

1. That The National Trading Company of New Zealand Limited v Waitakere City Council and Auckland Regional Council v Waitakere City Council Appeal to New World in New Lynn report be received.
2. That the Planning and Regulatory Committee authorise the settlement of the proceedings on the terms set out in the Draft Consent Orders set out at pages A4 to A31.

Report prepared by: Rachel Dimery, Senior Resource Planner and Setareh Masoud-Ansari, Solicitor, Legal Services.



PART C - ENVIRONMENTAL MANAGEMENT

6 WAITAKERE CITY COUNCIL SUBMISSION ON PROPOSED PLAN CHANGE 4 TO THE REGIONAL PLAN: COASTAL - MANGROVE MANAGEMENT

GLOSSARY

Auckland Regional Council	(ARC)
Auckland Regional Plan: Coastal	(Regional Plan)
Coastal Marine Area - The foreshore and seabed below mean high water springs, and which is under the jurisdiction of the Auckland Regional Council (in terms of the Resource Management Act 1991)	(CMA)
Coastal Protection Area 1, which are the areas with the highest values.	(CPA1)

PURPOSE OF THE REPORT

This purpose of this report is to inform the Planning and Regulatory Committee about a recent proposed plan change to the Auckland Regional Plan: Coastal (Regional Plan), in relation to the management of mangroves. The report includes a summary of the proposed plan change, a brief assessment of the implications of the plan change for Waitakere and broadly outlines issues that a possible Council submission to this plan change might address. The report also seeks that the authority to sign off a submission from the Council be delegated to the Chairman of the Planning and Regulatory Committee.

BACKGROUND

On 17 October 2007 the Auckland Regional Council (ARC) notified a change to the Regional Plan. This plan change primarily addresses the issue of mangrove clearance, and introduces policies and rules in relation to this.

The plan change amends the Regional Plan by introducing more explicit policy and rules in relation to mangroves. It identifies a broad policy context in which mangrove removal may be appropriate or inappropriate.

Significant changes to the rules applying to mangrove removal include:

- the introduction of the ability to remove mangrove seedlings from areas other than Coastal Protection Area 1, which are the areas with the highest values (CPA1) areas as a permitted activity (currently there is no explicit provision for this, and any such removal usually a resource consent or is a prohibited activity). In CPA1 areas such seedling removal would be a Discretionary Activity; and
- the 'downgrading' of mangrove removal other than for the purpose of providing access to a lawful structure from a prohibited activity to a non-complying activity, in CPA1 areas.

Due to the timing of the plan change notification and the deadline for submissions, there has been insufficient time for the plan change to be comprehensively assessed, and a detailed submission prepared in time for this agenda. A more comprehensive assessment of these issues, including more detail on the content of a possible submission, will be presented to the Planning and Regulatory Committee at the meeting.

STRATEGIC CONTEXT

Mangroves occur in the Coastal Marine Area (CMA) and hence are not directly under the Waitakere City Council's jurisdiction. However, mangroves form an important part of the ecology, landscape and natural character of both the Manukau and Waitemata Harbours. Mangroves are also known to play a role in reducing coastal and estuarine erosion. Mangroves are thought to play an important habitat role for some native fish species, including eels, although to what degree is not yet clear. In these regard, effects on, or of, mangroves cannot meaningfully be separated from adjacent areas of land or freshwater resources.

However, mangrove encroachment has undoubtedly occurred in Waitakere City over the last few decades, in both the Waitemata and Manukau Harbours. This has impacted to some extent on the ability of the community to access swimming beaches or launching sites. Mangroves can also potentially interfere with drainage systems, for example through obstructing river mouths or stormwater outlets, although this has not been identified as a serious issue in Waitakere City.

Thus, management of mangroves intersects with both the Green Network and Three Waters strategic platforms, and also relates to the Green Network, Sustainable Environment and Waiora (environmental protection and replenishment of nature's food chain) Community Outcomes.

The plan change will have a significant impact on the management of mangroves throughout the region, and inputting into the contents of the Regional Plan is this Council's best chance to influence how mangroves are managed in Waitakere City.

ISSUES

As set out above, at the time of writing this report a detailed analysis of the issues surrounding the plan change has not taken place, and a more comprehensive assessment will be presented at the meeting.

However, a preliminary assessment suggests that the policy basis proposed in the plan change is, on the whole, quite reasonable. Essentially, it retains a somewhat cautious approach to mangrove removal while providing for this where it is demonstrably appropriate. In particular, it identifies that increases in the extent of mangroves has resulted from sediment and nutrients running off from the land, and that this needs to be addressed if encroachment is to be prevented. Mangrove removal may be necessary to enable provision and use of public infrastructure, where there is no practicable alternative location for this, and where this will not result in significant adverse effects on natural features, ecosystems or natural processes. In the most sensitive areas - CPA1 - mangrove removal should only be considered appropriate where this is needed to enhance the heritage features of these areas, to improve public access, or for necessary infrastructure. Outside of these most sensitive areas, mangrove removal may also be necessary where (in addition to above) colonisation is obstructing or interfering with areas of high public amenity and the proposed removal is in the overall public benefit, as opposed to individual private benefit. Policies further identify that applications for mangrove removal should include an assessment of the ecological value of the mangroves to be removed, including in the context of the wider areas. Ideally, such removal should be considered in the context of an integrated management plan.

The operative Regional Plan has very little policy in relation to this issue, meaning that applications for mangrove removal have not been able to be assessed in any understood policy framework. This has hindered the ARC's ability to process applications that have been received, and made the outcome of any such applications very uncertain. The introduction of policy guidance for applications to remove mangroves would be an improvement on the operative Regional Plan.

The rules which relate to CPA1 also appear generally appropriate. While the prohibited activity status for mangrove removal in these areas has been lost, the rules reflect the above policy framework, and in particular make it possible to apply for consent to remove mangroves for a number of specified reasons, including public access and infrastructure, whereas under the operative plan any removal of mangroves in these areas is not possible. The policy framework will help ensure that any such removal is appropriate and necessary, and is carried out in an appropriate manner.

However, there is some concern that other rules included in the plan change do not adequately deliver on this policy framework, in particular in relation to mangrove seedling removal. Almost any removal of mangrove seedlings would be a permitted activity, and this is not confined to areas where mangroves are encroaching. This means that mangrove seedlings could be removed in areas of well established mangrove forest, thus preventing regeneration of these areas.

Additionally, while a number of rules specify a 30m² maximum area standard, there is no indication of how this applies. For example, it may relate to the maximum clearance in a year, or per person, and as currently written could be interpreted as providing for almost unlimited clearance as long as the clearance was staged or carried out by different people.

The plan change also identifies, in particular, that mangrove seedling removal is permitted only where this will not exacerbate coastal erosion from wave action. However, no guidance is given on where this might be the case, or how this should be assessed, meaning that the condition is essentially meaningless.

Some of the mangroves adjacent to Waitakere City's coastline are included in CPA1 areas, and therefore are still afforded a reasonable degree of protection, while still allowing for applications for removal where this can be shown to be appropriate or necessary. In Waitakere City, CPA1 areas (with mangroves) are identified in Big Muddy Creek, to the north and east of Te Atatu Peninsula, a small area below Colwill Esplanade, and an area to the east of Nimrod Pt on the Hobsonville Peninsula.

However, there are significant portions of the City's coastline with mangroves that are not identified as CPA1, including all of the mangroves in the Titirangi area, most of those in Big Muddy Creek and most of those from Lawsons Creek and around the Hobsonville Peninsula. The plan change is considered potentially problematic in these areas in particular.

RESOURCES

Only staff time is required for this issue at this stage.

CONCLUSION

A significant plan change has been proposed for the Regional Plan: Coastal which could impact on mangroves along the coastline of Waitakere City. Waitakere City has the opportunity to influence the outcome of this plan change through a submission.

RECOMMENDATIONS

1. That the Waitakere City Council Submission on Proposed Plan Change 4 to the Regional Plan: Coastal - Mangrove Management report be received.
2. That the Planning and Regulatory Committee authorise the Chairman to sign off the Council's submission to the Auckland Regional Plan: Coastal Proposed Plan Change 4.

Report prepared by: Jenny Fuller, Senior Adviser - Sustainable Management.

