



**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 MARCH 2008, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFLICTS OF INTEREST**

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



**4 CONFIRMATION OF MINUTES**

Meeting Minutes – 12 February 2008

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 12 February 2008, as circulated, be taken as read and now be confirmed.



## **PART B - REGULATORY / ENFORCEMENT**

### **5 LEGAL UPDATE (AS AT 29 FEBRUARY 2008)**

#### **GLOSSARY**

Ritchies Transport Holdings Limited	(Ritchies)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Auckland Regional Public Health Service	(ARPHS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Waitakere City Council	(WCC)
Notice to Fix	(NTF)
Certificate of Acceptance	(COA)
Public Works Act	(the Act)

#### **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 (WCC), North Shore City Council and Rodney District Council, (RDC) (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. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter left is resolution of costs. Council is waiting on final orders from the Court.

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. Carter Holt has now directly contacted the Mayors to discuss among other things costs of the High Court and appeal hearings. This will require further attention from Legal Services.

## HIGH COURT

### **(Unchanged) WCC 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. A decision is not now expected before March 2008.

### **(Changed) C W Williams and others v WCC (February 2006)**

Council has been served with seven sets of proceedings under the Public Works Act (the 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 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, the 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. Security for costs on the appeal has been lodged with the Court and a tentative hearing date of 24 April 2008 has been allocated.

We are currently preparing submissions for the Court of Appeal hearing.

### **Substantive hearings involving Mr Mawhinney**

### **(Unchanged) Mawhinney and Glorit Subdivision Limited v WCC (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.

Mr Mawhinney's appeal was heard in the High Court before Venning J on 7 December 2007. Judgment was received just before Christmas and the appeal was dismissed on all grounds. A costs application has been lodged this month and we are waiting for a reply from Mr Mawhinney. We have sought an 'above scale' award of \$13,320 in respect of the appeal hearing.

The time for Mr Mawhinney to file an application in reply expired Friday, 8 February 2008. The matter will now be referred back to the Judge.

### **Debt Recovery proceedings involving Mr Mawhinney**

**(Changed) WCC v P W Mawhinney (February 2006)**

An indemnity cost application was made as Council was required to obtain substituted service of a bankruptcy notice on Mr Mawhinney last year. Council was awarded indemnity costs. The full costs sought of \$2491.00 were fixed on 15 February 2008. Demand has been made on Mawhinney for payment; however, Mr Mawhinney has failed to pay the award. A further bankruptcy notice will be issued.

**(Changed) WCC v Glorit Subdivision Limited and Mawhinney (March 2006)**

On 6 November 2007, Associate Judge Abbott awarded costs to Council and consolidated a previous cost award. Council is owed \$5042.37 by Mr Mawhinney. Demand has been made for payment but Mr Mawhinney has not paid the award. A further bankruptcy notice will be issued in relation to his matter.

### **ENVIRONMENT COURT**

**(Unchanged) 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, under-grounding 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. A notice of reply has been filed. The appellants have also lodged an objection to the conditions under Section 357 of the Resource Management Act 1991 (RMA). The Council is of the view that the matter is best resolved through the objection process and has communicated this to the appellant and the Court. The matter is currently 'on hold' until the outcome of the objection process has been finalised.

**(Changed) WCC v Estate Homes Limited (28 March 2002) (Ranui Station Road)**

This matter relates to the powers of Council to require developers to construct roading that ensures connectivity between individual subdivisions and the broader roading network. It involves important legal questions relating to the costs of infrastructure, and the extent to which developers should be required to meet those costs, in reciprocation for the benefits arising from the right to subdivide, and connect into the pre-existing infrastructure, constructed and owned by Council.

Council ultimately succeeded on an appeal to the Supreme Court, resulting in a referral back to the Environment Court on the question of whether the developer should pay for a collector rather than local road. The Environment Court determined that the developer should only pay for a local road, on the basis that this was proportionate to the demand that would be placed on the roading system by its development. Council has appealed this ruling, alleging that the Environment Court has committed the same error that led to the Supreme Court intervening. A hearing took place before Priestley J on 27 February 2008 and the decision is expected before June 2008.

**(Unchanged) Auckland Regional Council (ARC) v WCC (May 2005)  
Waitakere Ranges Protection Society Incorporated (WRPS Inc.) v WCC (May 2005)  
(the Duncan appeal)**

An appeal by the ARC and WRPS Inc. 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 ARC and WRPS Inc. 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. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

**(Unchanged) M and C Brickell, W Ashton and L Schwab v WCC (June 2005)**

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the RMA against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The ARC and WRPS Inc. 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 in order that the Court could hear the evidence of a witness for a Section 274 party that was not available during the March 2008 hearing.

The hearing has now been completed. The Court has reserved its decision. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

**(Changed) WCC v R and 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 contract is to commence on Monday, 3 March 2008. The remedial works include: concrete fill, buttressing, and reinstatement of vegetation. Approximate timing on completion is two weeks.

The Court has directed that the matter is to remain on hold with a further report due 2 May 2008.

**(Changed) Ritchies Transport Holdings Limited, v WCC, 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, joined the proceedings as an interested party.

The application for stay was granted in 13 October 2006 following a judicial conference. In the interim, Ritchies lodged an application for resource consent to extend the scope of their activities. As a result of the consent process taking longer than anticipated, Mr Campbell found that he was no longer satisfied that the stay could continue without conditions. The matter was called into Court on 31 January 2008 by Mr Campbell to determine the appropriateness of the stay continuing whilst the resource consent was being determined. Mr Campbell took issue with the level of noise, traffic and fumes emanating from the Ritchie's depot. Mr Campbell agreed for the stay to continue whilst the Council processes the resource consent to address the matters raised in the abatement notice subject to two conditions. Firstly, that Ritchie's cease using the workshop between 9.00 pm and 6.00 am, and secondly, that no buses are parked within 10 metres of the eastern boundary on the Ritchie's property where those buses are going to be used between 9.00 pm and 6.00 am. Ritchie's agreed to these conditions and the Council will abide by the Court's decision.

The stay will remain in place pending the outcome of the resource consent hearing. The council is to report back to the Court 28 days after the consent decision has been notified. The resource consent hearing occurred on 18 and 19 February 2008 and 22 February 2008.

**(Unchanged) WCC v 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.

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

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

**(Unchanged) The Tree Council and the Sunnyvale Protection Society v WCC (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. The parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under Section 116 to the 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) WCC v ARC, IMF v ARC and NZ Steel v ARC**

This is an appeal regarding ARC's decision to grant resource consents to WCC 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 WCC's issues can be resolved through mediation/negotiation. A mediation to address all appeals is scheduled for 16 October 2007. A further mediation date will be scheduled some time in March 2008, to allow internal discussions and expert caucusing to take place.

**(Changed) Action Against Theme Park v WCC and R Karpuk v WCC (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.

The Court has set a timetable for evidence exchange in February and March 2008. A hearing fixture will be set down for a date after 14 April 2008. In the meantime, however, the Court has allocated a mediation date of 5 March 2008.

**Mawhinney Matters in the Environment Court**

**(New) Perceptus Limited v WCC**

This is a new proceeding lodged in the Environment Court by Mr Mawhinney on 21 January 2008. The Council was not served until 13 February 2008. The proceedings involve Mr Mawhinney seeking an enforcement order under Section 314 of the RMA directing the Council to give public notice on the Council's decision to reserve control over "roads" under the subdivision rules. The Council amended the subdivision rules in 2001. We are of the view that the proceedings have been filed out of time and will endeavour to have them struck out and seek costs.

**(Unchanged) Perceptus Limited and Swanson Heights Limited v WCC, Waitakere Resource Consents Limited and Glorit Subdivision Limited v WCC, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v WCC**

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 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.

**(Unchanged) Waitakere Resource Consents Limited v WCC (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 WCC (February 2000)**

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

**Plan Change Hearings**

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

**(Changed)**

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 27 appeals. Further reports will be provided as time goes by. These appeals are set out as Annexure 1 to this report at pages A1 to A3 of this agenda.

A1-A3

In addition to appeals on Council's Plan Changes 13 to 18, Council has filed an appeal regarding some decisions on ARC Plan Change 6 to the Auckland Regional Policy Statement. Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with Council's appeal. Progress reports will be included in further legal updates in due course.

**DISTRICT COURT**

**(Unchanged) AHC Reuben-Shepherd – 137 Simpson Road, Henderson Valley (January 2008)**

This matter is in relation to an abatement notice issued under the RMA by Council in August 2007. The abatement notice required the defendants to remove significant numbers of disused vehicles, machinery, and miscellaneous metal and other objects from the property by the date specified in the abatement notice.

The use of the property by the defendants contravenes Council's district plan amenities rules. The defendant did not comply with the abatement notice, namely they did not remove any of the specified articles and vehicles from the property in accordance with the abatement notice.

Information has been filed with Waitakere District Court, and the matter has been set down for a first call at the Auckland District Court on 10 March 2008.

**(Unchanged) JS Choi – 163 Brighams Creek Road, Whenuapai (January 2008)**

This matter relates to a breach of the district plan in that the defendant undertook earthworks on his property in excess of what is permitted under the General Natural Area Rules.

The illegal earthworks were discovered in 2004. Council granted retrospective resource consent for the earthworks. The resource consent lapsed in March 2007. Council's resource monitoring officers inspected the property in July 2007 and discovered that the resource consent had not been implemented, namely that the defendant had not complied with the conditions of the consent, or undertaken the work required to regularise the illegal earthworks. Further, the Council discovered that more earthworks had recently been undertaken on the property.

Council has been in negotiations with the defendant and his lawyer over the matter, and required immediate measures for soil and silt control to be implemented. The defendant has engaged engineers to advise him. The Council also issued an abatement notice on 18 December 2007 giving the applicant one month to comply. We are advised that the defendant has signed contracts to undertake the required soil and sediment control work.

The Council has filed informations in relation to the illegal earthworks with the matter set down for a first call at the Auckland District Court on 10 March 2008.

**(Unchanged) RJ Dyas – 211 Laingholm Drive, Laingholm (January 2008)**

This matter relates to charges laid for substantial unauthorised building works at the property. The works include internal structural works and significant structural changes to the basement area.

All the building works discovered were not in accordance with a building consent.

Council filed informations on 30 January 2008. The matter will appear on 31 March 2008.

**(Changed) V Kumar and others – 9-11 Aetna Place, Henderson (January 2008)**

This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store and warehouse currently under construction at Henderson.

A building consent application was submitted to Council proposing three stages. Stage 3 related to the construction of mezzanine offices within the warehouse, and was not previously approved under the primary consents granted by Council. No building consent application was received for stage 3.

Despite not having a building consent, the owners commenced building this third stage which consisted of a steel framed mezzanine, two staircases, external aluminium window, and associated plumbing, drainage and ventilation. Council discovered the breach on 19 October 2008, and meetings between the parties have resolved the regulatory issues. A Certificate of Acceptance (COA) has been granted for the works that were either completed, or partially completed without consent, and a building consent for all outstanding work was granted on 16 January 2008.

Council laid informations against the parties for the unauthorised building works on 30 January 2008.

Council has agreed to withdraw informations relating to Kris Willering and Podoko Steel Frame Structures Limited (and its directors) because of new evidence that proves their involvement in the project was limited, and not considered an offence under the Act. The parties have been advised of this and the informations will be withdrawn on 31 March 2008.

Statutory defences do not appear to be available to any of the other parties involved.

Further charges will be laid against other parties involved.

The first call date for this matter is 31 March 2008.

**(Unchanged) GM Garland – 82 Woodlands Park Road, 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 adjourned to 31 March 2008 for a plea to be entered.

**(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 27 March 2008.

**(Changed) DS and AM Axmann – 62 Ferry Parade, Herald Island (September 2007)**

Informations were served on Mr and Mrs Axmann in relation to the construction of a 35m<sup>2</sup> carport on the site. The works were undertaken without building consent, and charges were laid under Section 40 of the Building Act 2004.

A COA has been granted by Council for the building works. The defendants have been very cooperative, and are very remorseful. The charges were withdrawn against Mrs Axmann, and Mr Axmann pleaded guilty to the Section 40(1) charges on 18 February 2008.

Sentencing has been set down for 31 March 2008.

**(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.

The Court has directed that disclosure be made by Council prior to the next call over date on 10 March 2008.

**(Unchanged) 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 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 and adjourned to 10 March 2008 for a plea to be entered.

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

Charges were laid under the Building Act in relation to unauthorised building work on the property. The unauthorised work consisted 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.

Mr Zaidi appeared on 29 January 2008. Council has withdrawn the charges against Mrs Zaidi due to her lack of involvement substantiated by affidavit, and amended the particulars to reflect the reduced scope of the works undertaken by Mr Zaidi.

Mr Zaidi pleaded guilty to undertaking unauthorised building works, and was sentenced to a fine of \$2,200.00 with costs amounting to \$130.00 Court costs, and \$266.00 Solicitors costs.

**(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 were 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 (NTF) issued by Council in March and May 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.

Council appeared at a defended hearing where the defendant pleaded guilty to both NTF charges. Sentencing has been set down for 28 April 2008.

**(Unchanged) G Yuan – 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 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. 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.

Council laid informations in relation to the following offences:

- Unauthorised Building Works;
- Failure to comply with Council's Notice to Fix; and
- Failure to cease using the conservatory for public use as instructed.

Ms Yuan has pleaded not-guilty to all of the charges and the matter has now been set down for a defended hearing on 3 April 2008.

**(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 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.

Mr Bishop, the owner, pleaded guilty and appeared on 28 February 2008 for sentencing. Mr Jordan, the builder also pleaded guilty and appeared on the same date.

The matters were heard together, and the Judge has reserved his decision and will deliver a written decision.

Mr Kiff appeared on 17 December 2007, and pleaded not guilty to the charges of Unauthorised Building Works, and failure to comply with instructions by Council to cease work.

This matter has been set down for a defended hearing on 3 April 2008.

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

Charges were laid under the RMA 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. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 7 buildings on the property into sleep outs. The other charges of contraventions of the RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court and an out of court solution is being pursued in respect of issues under the RMA. The defendant 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 along with a draft determination. The draft determination accepts that there are 7 unauthorised sleep outs on the property. The matter has yet to be set down for sentencing. It is expected that it may be early April 2008.

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

This matter relates to breaches of the RMA and Building Act.

Mr Gordon pleaded not guilty to both charges on 31 March 2006. The RMA matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court.

The matter proceeded to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007, but as a judge was not available, it was unable to proceed and was set down for a jury trial on 18 February 2008.

The Building Act charges had been set down to be heard by a Judge alone in the week of 25 February 2008.

Mr Gordon was 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 was because Mr Gordon refused to obtain legal representation.

Mr Gordon has now pleaded guilty to 5 of the 6 counts in the indictment. Two of the charges were laid in the alternative. One has now dropped off because Mr Gordon pleaded guilty to the other.

Sentencing has been adjourned to 30 June 2008 to allow Mr Gordon to take steps to undertake works in accordance with Council's requirements.

The works will include:

- Removal of car wrecks from the property by 14 April 2008;
- Removal of house trucks and caravans by 30 June 2008;
- Provide a fire report by 10 March 2008;
- Cease all earthworks;
- Cease depositing organic and inorganic material on the property;
- Apply for all necessary consents by 14 April 2008;
- Permit reasonable access by Council employees.

The Building Act prosecution and application for costs will be adjourned to 30 June 2008.

In the event of non-compliance, the Crown will seek a custodial sentence.

**(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 6,000m<sup>2</sup> (approximately 200 m<sup>2</sup> 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 not 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.

Mr Gladwin has pleaded not guilty and a depositions hearing has been set down for 10 March 2008.

**(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.

The Council sought a fine of \$10,000.00 in respect of each defendant. The Court accepted that this was appropriate and awarded fines of \$10,000.00 and costs of \$1424.00 against each defendant.

**(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 m<sup>2</sup>, 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.

The Court fined Mr Garrett \$3000.00 in respect of the breaches of the district plan, and \$3000.00 in respect of the unauthorised building work offences. Solicitor's costs of \$513 and court costs of \$260 were also imposed.

**(Unchanged) 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 was set down for 20 August 2007 for the defendant to plead. The defendant pleaded not-guilty.

The matter was set down for a one day hearing on 9 November 2007 with a potential of further two days being reserved if needed. Although the Council was ready to proceed on 9 November 2007, the Court had not allocated adequate time and 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 now set the matter down for hearing on 6 March 2008.

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

Charges have been laid under the Building Act 2004 relating to undertaking 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 2007 and charges against P Ramasubramanian were withdrawn. The other entered not-guilty pleas. These matters are set down for a half day hearing on 9 April 2008.

### **Leaky Building Claims**

**(Changed)**

Claims statistics are as follows:

(a) Claims currently being handled are 30.

- High Court: 3
- District Court: 3
- WHRS/WHT: 24

(b) Number of claims for Waitakere City as at 29 February 2008, which may include some consents processed by building certifiers, was 338. This is the same as the number reported on 30 January 2008.

(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 defendants 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 29 February 2008) report be received.

Report prepared by: Mary Davenport: Contract Solicitor.



## **PART C - ENVIRONMENTAL MANAGEMENT**

### **6 DETERMINATION REPORT – REVIEW OF THE CONTROL OF LIQUOR IN PUBLIC PLACES BYLAW 2003**

#### **GLOSSARY**

Control of Liquor in Public Places Bylaw 2003 (the bylaw 2003)

#### **PURPOSE OF THE REPORT**

The purpose of this report is to seek approval from the Planning and Regulatory Committee to commence the review of the Control of Liquor in Public Places Bylaw 2003 (the bylaw 2003), to determine whether a bylaw is the most appropriate way of dealing with the perceived problem of alcohol related issues within the City, pursuant to section 155 of the Local Government Act 2002.

## BACKGROUND

Section 147 of the Local Government Act 2002 gives local authorities specific power to make a bylaw for liquor control purposes. In addition, the general bylaw making powers contained within Section 145 of the Local Government Act 2002 allow local authorities to make bylaws for one or more of the following purposes:

- (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.

A4-A6 In November 2003, Council adopted the Control of Liquor in Public Places Bylaw 2003, (copy attached at pages A4 to A6). The bylaw introduced a summer holiday period liquor ban in areas of Piha in response to Council, community and Police concerns about ongoing problems caused by the consumption of alcohol at Piha during summer months.

The bylaw also permits Council to impose 'Special Event Liquor Bans' when satisfied that the benefit of the ban outweighs any disadvantage to members of the public. This provision has been used successfully to prohibit the consumption and possession of alcohol at particular summer concerts held within the City.

Council officers and the Police report that the holiday ban at Piha has discouraged unacceptable behaviour associated with, and resulting from, alcohol consumption. The existing bylaw does not expire under the provisions of the Local Government Act 2002 until November 2008. Any extension to the current bylaw would enable consideration of incorporating a continued liquor ban at Piha.

Other areas within the City have been identified by Council officers, Police and community associations as experiencing alcohol related problems. An analysis of Police intelligence has been undertaken, and this has identified that the three central business districts of Henderson, Glen Eden and New Lynn are of particular concern.

A7-A10 Because of the high incidence of alcohol related offending in these areas, a working party was established consisting of Safe Waitakere representatives, Police, Maori Wardens and ACC. The group formulated a range of strategies under the heading of "Project Respect" and obtained financial support from the Ministry of Justice for local initiatives. These initiatives have been highlighted for the Committee's information and are attached at pages A7 to A10. One of the initiatives identified was to explore the possibility of an alcohol ban in key areas of the city.

It is clear that a legal power exists to make a bylaw for the purposes of controlling liquor in public places pursuant to Sections 147 and 145 of the Local Government Act 2002. The Committee must now determine whether a bylaw is the most appropriate way of addressing the perceived problem pursuant to Section 155(1) of the Local Government Act 2002.

The extension to the bylaw, if any, will be used as an additional tool, in conjunction with other non-regulatory measures being planned.

## STRATEGIC CONTEXT

The initiative is directly aligned with Council's strategic priorities of Safe City and First Call for Children, and Council's strategic platform of Strong Communities; supporting the health and wellbeing of the City's residents, building community pride and local identity. It also aligns with the City Wide Alcohol Strategy, adopted by Council in July 2005.

## ISSUES

As indicated, Section 155(1) of the Local Government Act 2002, requires that local authorities must determine whether a bylaw is the most appropriate way of addressing the perceived problem. In order to determine whether a bylaw is an appropriate response to the perceived problem, the first step has been to establish just what the actual problem is. Comments by the Police and community indicate that drinking in public places raises issues of annoyance and intimidation for members of the public, anti-social behaviour, littering, vandalism, under age drinking and violence. The Police will be presenting their analysis and recommendations to the Committee during consideration of this report.

In summary, there is ample evidence to show alcohol is a primary cause of disorderly behaviour and criminal offending both in public places and elsewhere. Alcohol consumption in public places is also often associated with increased problems of littering and vandalism. The presence of alcohol can also have an intimidating effect on other people using the public space for recreational and business purposes.

The Police statistics indicate that those who drink alcohol in public places are predominantly young people under the age of 25. In Waitakere, many of these young people have increasingly sought to congregate in high visibility town centre locations. When the Police arrive at the scene the behaviour is toned down, alcohol is hidden or the adults claim ownership. Police will arrest individuals if there is sufficient evidence of a substantive offence, such as supplying alcohol to a minor or behaviour type offences (disorderly behaviour, offensive language, intimidation, fighting, wilful damage), or offences under the Litter Act. Often, however no substantive offence is detected and groups also modify their behaviour in the presence of the Police. Acts of violence, intimidation or harm then occur after the Police have left the area.

The outcome sought is to lessen the impact of alcohol consumption in those public places identified by the police as areas where drinking and offending is a noticeable problem. The aim is to reduce anti-social and offensive behaviour and increase the safety (and perception of safety) for members of the public.

## CONSULTATION

### Pre-Consultation Results

As part of the pre-consultation on the issues of alcohol related offending in public places, a survey was recently conducted at the Waitakere fireworks display held at The Trusts Stadium on 3 November 2007. The survey was conducted utilising the new "Touch Pole" technology which involves the use of interactive computer tablets. The results of the survey indicate strong support for permanent 24-hour liquor bans across the City, including parks, beaches and town centres.

A phone survey of 300 people was undertaken recently and the results of that survey indicate strong support for liquor bans as a means of controlling alcohol related behaviour.

A11-A39

A copy of both reports are attached at pages A11 to A39.

### City Wide Alcohol Strategy

The extension of liquor bans within Waitakere was discussed at length through the consultation process employed when drafting the City Wide Alcohol Strategy. The City Wide Alcohol Strategy, which was adopted by Council in 2005, specifically outlines the following:

4. *Problem Limitation*

- *Support community initiatives that focus on reducing alcohol – related crime and safety issues in areas where liquor bans have been requested.*
- *Implement and review the Control of Liquor in Public Places Bylaw 2003.*

### **The Licensing Trusts**

Discussions relating to liquor bans within the town centres have been held with the management of the Portage and Waitakere Licensing Trusts on several occasions. The Trust management have indicated their support for implementing liquor bans as a tool to restricting drinking in public places, and specifically town centres.

### **Community Boards**

The option of extending the bylaw 2003 to key hot spot areas within Waitakere was presented to all the Community Boards. The Community Boards have indicated that drinking in public places and the associated problems was an issue raised by the public within their respective wards on numerous occasions, and therefore they supported the extension of the bans into key hot spot areas within Waitakere.

### **Police**

A40-A72

Extensive consultation with Police has taken place over this issue; they have requested that Council consider the implementation of liquor bans throughout Waitakere. The Police will be presenting a separate report to the Planning and Regulatory Committee at this meeting outlining alcohol related crime statistics and their support for the bylaw extension. A copy of the Police report is attached at pages A40 to A72.

### **Henderson Business Association**

The Henderson Business Association have indicated their support for the introduction of a liquor ban within the Henderson town centre. On 23 April 2007, a public meeting was hosted by Mayor Bob Harvey in response to concerns raised by their members.

## **OPTIONS**

### Extend the Bylaw

- The Police would acquire additional powers under Section 169 of the Local Government Act 2002 to search containers and vehicles, seize and remove liquor and arrest those committing an offence or persons who refuse to leave the public place or surrender their alcohol. It effectively gives the Police a pre-emptive strike option. These powers exist for the Police in Piha during the seasonal months and would be applicable to any areas included in an extension to the bylaw.
- Early intervention and removal of alcohol is seen as reducing the likelihood of disorderly behaviour and criminal offending. It also increases the perception of safety so people using public areas subject to a liquor ban may feel more comfortable and more likely to return.
- Licensed premises and private property would not be affected. People purchasing liquor from outlets within a liquor ban area, or transporting alcohol across the area, are not affected either, pursuant to Section 147(3) of the Local Government Act 2002. Further street trading (dining) within a licensed area on the streets will also not be affected.

- If it was proposed that the liquor ban should cover parks and recreation areas, then families who wish to consume alcohol whilst picnicking could potentially be affected. That effect could be minimised if for example the ban was limited to specific periods, such as between 8pm and 8am.
- One risk of extending the bylaw is that problem areas are simply displaced. Groups of drinkers may simply move outside the ban area. Whilst this is a real risk, the bylaw still removes the problem of alcohol consumption in areas of high visibility and public use.

#### Do nothing (retain the status quo)

Whilst the current liquor control bylaw is effective in Piha during the summer months and for special events, it does not address alcohol related problems evident in areas of the City identified by the Police. If the bylaw is not extended to cover those additional areas then the options are:

- (a) Public education campaigns. There are benefits in pursuing this option, but it is unlikely to have an obvious positive effect in the short term.
- (b) Support for increased Police numbers in the City providing increased visibility and action where appropriate. The Police have already increased their presence in the town centres and as discussed above, do take action where there is evidence of a substantive offence.
- (c) Patrols by community associations/Maori Wardens. Again this option increases the visibility of an 'official' presence in hotspot areas. Without giving these persons power under a bylaw (as Enforcement Officers) they are largely powerless. Furthermore, they could be exposed to unacceptable safety risks.

The Resource Management Act 1991 is not able to respond to this type of problem. There is no other regulatory mechanism available to address the issues without an Act of Parliament. Parliament has indicated that if a local authority determines that there is a need to control alcohol in public places, then a bylaw under Section 147 of the Local Government Act 2002 is the appropriate means to do so.

#### **SUMMARY**

If the Committee are persuaded that there is a need to control alcohol in town centres and perhaps elsewhere within the City, then the analysis undertaken confirms that the most appropriate way to do so is by means of a bylaw. Initial feedback from the Community Boards and the public has been overwhelmingly supportive of such action. The proposed extension to the current bylaw is in accordance with Council's strategic document: "Waitakere City Council City Wide Alcohol Strategy, Minimising Alcohol Related Harm and Promoting Safe Alcohol Environments in Waitakere City". The proposed extension to the bylaw will be used in conjunction with a range of multi pronged, best practice approaches, as outlined in the Strategy.

The next step is for Council officers to prepare a draft bylaw for the Council's consideration. In order to do so, those public areas within the City where there is a demonstrable need for control must be thoughtfully defined. Thought must be given not only to location, but also to hours of operation and days of the week for which the ban should apply. Further, more detailed Police statistics may be required. It may, for example, be appropriate to impose a 24 hour ban in some areas such as town centres, but no demonstrable need to do so in other areas. It is important that these matters are considered carefully. It is incumbent upon Council, pursuant to s.155 Local Government Act 2002 to be satisfied that the proposed bylaw is the most appropriate approach and that it does not contravene provisions in the New Zealand Bill of Rights Act 1990.

## RESOURCES

The costs associated with the implementation extend to promulgating the bylaw, including the special consultative procedure, public notification and signage costs. The actual costs associated with the bylaw will depend on the number of locations identified for implementation. Any such costs will be reported to the Committee for their consideration, as part of the final determination report.

There are no additional resource implications for Council as the Police would enforce the bylaw.

## CONCLUSION

This report concludes that Council has a specific legal power to make a bylaw for liquor control purposes pursuant to Section 147 of the Local Government Act 2002.

Further consultation with the public is required to explore the issues outlined, and to determine the most appropriate way of progressing solutions. If the Committee agrees with the recommendation that a bylaw is the most appropriate method of addressing the perceived problem, then Council officers in consultation with the Police will prepare a draft updated bylaw together with a draft Statement of Proposal and Summary of Information for discussion at a future Planning and Regulatory Committee meeting.

## RECOMMENDATIONS

1. That the Determination Report – Review of the Control of Liquor in Public Places Bylaw 2003 report be received.
2. That Council officers be directed to engage in the required consultation to explore the issues raised in this report, and canvass views on the options to address these issues including the appropriateness of a review of the Control of Liquor in Public Places Bylaw 2003, and report back to the Planning and Regulatory Committee on the outcome of that consultation.

Report prepared by: Roy Hunt: Project Leader, Alcohol Issues, Safe Waitakere and  
Yvonne Donaldson: Team Leader Legal Services.



## 7 PRESENTATION BY ENVISION NZ LIMITED ON WASTE MINIMISATION AND RESOURCE RECOVERY BILL

### GLOSSARY

Bill by Supplementary Order Paper (SOP)  
Local Government and Environment Select Committee (the Select Committee)

### PURPOSE OF THE REPORT

The purpose of this report is to introduce Mr Warren Snow of Envision NZ Limited to the Planning and Regulatory Committee to provide an independent view of the progress of the Waste Minimisation and Resource Recovery Bill currently before the Local Government and Environment Select Committee (the Select Committee) as requested by the February 2008 meeting of the Planning and Regulatory Committee.

## BACKGROUND

Envision NZ Limited and Waitakere City Council have had extensive involvement in the progress of dedicated waste legislation. Council officers reported to the July 2007 meeting of the Finance and Operational Performance Committee on the progress of the Waste Minimisation (Solids) Bill, now referred to as the Waste Minimisation and Resource Recovery Bill by Supplementary Order Paper (SOP) dated 20 September 2007.

Due to the narrow timeline between release of the SOP and Council's formal submission response to it, the Finance and Operational Performance Committee meeting of 6 August 2007 resolved as follows:

- “2. *That the supplementary submission to the Environmental Select Committee considering the Waste Minimisation (Solids) Bill be approved and submitted.*
3. *That upon release of the Supplementary Order Paper on the Waste Minimisation (Solids) Bill, Council officers make reference to this in the supplementary submission to the Environmental Select Committee and that authorisation to sign-off on these amendments be delegated to the Chief Executive Officer.”*

(3198/2007)

A73-A89

Waitakere City Council's last formal submission dated November 2007 to the Select Committee is attached at pages A73 to A89.

## STRATEGIC CONTEXT

In 1994 as part of Council's eco city principles Waitakere adopted the 'Green Print' targets that included waste reduction as a key objective. In 2002, Waitakere City Council adopted the platform of Zero Waste as one of the City's nine core objectives. In 2002, the Ministry for the Environment, in association with Local Government New Zealand, released the National Waste Strategy that set targets for waste reduction. These national targets were consistent with Waitakere's objectives but the National Waste Strategy lacked appreciation of the very extreme circumstances that existed between regions in New Zealand and further the National Waste Strategy did not provide any legislative power to allow councils to meet their objectives.

## ISSUES

A90-A107

In an agenda report to the February 2008 meeting of Planning and Regulatory Committee entitled 'Legal Update,' the Committee was advised that the outcome of this legislation before the Select Committee is likely to have an impact on the City waste bylaws. At that meeting an invitation was extended to Mr Warren Snow of Envision NZ Limited to provide an independent view of the progress of the Waste Minimisation and Resource Recovery Bill. Mr Snow's report is attached at pages A90 to A107.

## RESOURCES

No additional resources are required.

## CONCLUSION

The Select Committee is due to report back to Parliament on 7 April 2008 on the Waste Minimisation and Resource Recovery Bill.

A Waitakere City Council officers report to the Planning and Regulatory Committee will follow the release of that Select Committee report.

### **RECOMMENDATION**

That the Presentation by Envision NZ Limited on Waste Minimisation and Resource Recovery Bill report be received.

Report prepared by: Ben Somaratne: Solid Waste Engineer: Solid Waste Business Unit.



## **8 DOG CONTROL ACT 1996 – PUBLIC SAFETY POLICY OPTIONS AND DOG CONTROL AMENDMENT BILL**

### **PURPOSE OF THE REPORT**

The purpose of this report is to seek approval from the Planning and Regulatory Committee to ratify submissions made on the Dog Control Amendment Bill and to seek approval to forward to the Department of Internal Affairs submissions on the discussion document *Improving Public Safety under the Dog Control Act 1996: Policy Options*.

### **BACKGROUND**

A bill to amend the Dog Control Act 1996 is before the Local Government and Environment Select Committee. Submissions closed on 29 February 2008 and a submission from Council was forwarded to the Local Government and Environmental Select Committee after consultation with Local Government New Zealand.

The substantive amendment in the bill is to require mandatory neutering of all dogs classified as menacing because of their breed or type. In that respect the bill is in accordance with established Council policy and the submission to the Select Committee reaffirms Council policy. Submissions closed prior to the March 2008 meeting of the Planning and Regulatory Committee.

Further, in December 2007 the Department of Internal Affairs released a policy document *Improving Public Safety under the Dog Control Act 1996: Policy Options*. The deadline for submissions is 31 March 2008.

### **STRATEGIC CONTEXT**

Animal Welfare, and in particular implementation of Waitakere's Dog Control Policy and Control of Dogs Bylaw, contributes towards the Council's Safe City priorities. The submissions on both documents are consistent with those priorities.

### **ISSUES**

#### **Dog Control Amendment Bill (No. 2)**

The substantive amendment is to require mandatory neutering of all dogs classified as menacing because of their breed or type.

Administrative amendments would allow additional matters to be added to what must be included in the Council's Policy on Dogs through regulation rather than by an amendment to the Dog Control Act 1996.

A further amendment would allow other breeds to be added to the schedule of prohibited breeds by Order of Council rather than by a resolution of the House of Representatives.

The submission from Council supports submissions made by Local Government New Zealand and is consistent with Council's Safe City priorities.

A key issue is that the proposed administrative amendment is inconsistent with the intent of the principal Act to enable and promote local decision-making by local communities on methods to achieve appropriate dog control outcomes. Council supports the submission of Local Government New Zealand that Councils must have the discretion to make decisions that are appropriate for each district.

A108-112

Council's submission is attached at pages A108 to A112.

### **Improving Public Safety under the Dog Control Act 1996: Policy Options**

The discussion paper issued by Hon. Nanaia Mahuta, Minister of Local Government, is part of a series of government initiatives on improving dog safety and control.

The discussion paper seeks comment on the following:

- Including additional breeds to the list of prohibited breeds.
- Destruction of dangerous dogs.
- Increasing controls of menacing dogs.
- Mandatory neutering of menacing dogs.
- Owner licensing.
- Proof of breed.
- Dog containment standards.
- Destruction of unregistered dogs.

The submission from Waitakere City Council is consistent with the need to improve public awareness of unsafe dogs and to apply Council resources in a manner that has the greatest effect on implementing Council's Safe City priorities.

Council supports the submissions of Local Government New Zealand. Council's submission is consistent with policy issues developed by Local Government New Zealand in consultation with a representative group of Territorial Authority dog control practitioners, which includes Council's Manager: Animal Welfare.

In summary Council's response:

- does not propose that further breeds should be added to the prohibited breed schedule.
- does not agree that current controls imposed on dangerous dogs are sufficient.
- agrees that behaviours that determine whether a dog is dangerous are appropriate.
- agrees that there should be national guidelines for recognised behaviours that determine whether a dog is dangerous.

- opposes mandatory destruction of dangerous dogs and offers an alternative approach by obtaining a court order for destruction.
- considers that the current restrictions on menacing dogs are sufficient.
- opposes elevating the level of menacing dog to that of a dangerous dog.
- agrees that menacing dogs should be neutered.
- supports owner licensing and recommends that there be national standards.
- agrees that dog breeders be licensed.
- opposes the basis of proof of breed.
- opposes the term “noticeably” instead of “significantly” in relation to identification of specific breeds.
- agrees that probationary owners must be responsible for dangerous or menacing dogs.
- agrees that owners’ responsibility for dog containment should be more explicit.
- disagrees that councils should be required to round up unregistered dogs.
- disagrees that unclaimed, unregistered dogs should be able to be destroyed in less than 7 days.

A113-A119

Council’s response form is attached at pages A113 to A119.

## **RESOURCES**

No additional resources are required.

## **RECOMMENDATIONS**

1. That the Dog Control Act 1996 – Public Safety Policy Options and Dog Control Amendment Bill report be received.
2. That the submission on the Department of Internal Affairs discussion document *Improving Public Safety under the Dog Control Act 1996: Policy Options* be approved.
3. That Council’s submission on the Dog Control Amendment Bill (No. 2) forwarded by the Chief Executive Officer to the Local Government and Environment Select Committee be ratified.
4. That Council’s submission on the discussion document *Improving Public Safety under the Dog Control Act 1996: Policy Options* be forwarded to the Department of Internal Affairs.

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



## 9 LAPSING OF DESIGNATIONS

### PURPOSE OF THE REPORT

The purpose of this report is to advise the Planning and Regulatory Committee of the findings of the review of Waitakere City Council's designations contained within the District Plan. The report seeks confirmation by the Committee that the designations, which have not been given effect to but are still required, are rolled over for a further five years.

### BACKGROUND

A designation is a provision made in the District Plan to allow land to be secured or used for public works or other projects, and facilitates the establishment and on going protection of what are generally considered to be necessary or essential services.

A review of the existing designations contained within the District Plan has been undertaken. All requiring authorities, including this Council provided responses to the Council regarding the status of their designations in accordance with sections 184 and 184A of the Resource Management Act 1991.

### Strategic Context

It is of strategic importance to Waitakere City Council's function as a local authority, that existing designations which are required to provide essential services are retained within the District Plan. The Council's strategic platforms reinforce the desirability of ensuring the community is served by effective and efficient infrastructure, transportation and communications systems.

### ISSUES

#### Resource Management Act 1991

A120-A125

Waitakere City Council, as a requiring authority under Section 166 of the Resource Management Act 1991, has 74 designations within the District Plan, relating to proposed and existing reserves, water supply, sewerage, solid waste, roads, car parking and cemeteries, as attached at pages A120 to A125.

Section 184A of the Act relates to the lapsing of designations of a territorial authority in its own district and states in 184A (2) that:

*“A designation of a territorial authority in its own district lapses on the expiry of 5 years after the date on which it is included in the district plan unless —*

- (a) It is given effect to before the end of that period; or*
- (b) Within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purposes of this subsection; or*
- (c) The designation specified a different period when incorporated in the plan.”*

184A(3) adds that;

*“Where paragraph (b) or paragraph (c) of subsection (2) applies in respect of a designation, the designation shall lapse on the expiry of the period referred to in whichever of those paragraphs is applicable, unless —*

- (a) It is given effect to before the end of that period; or*
- (b) Within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purpose of this subsection.”*

Section 184 of the Resource Management Act 1991 relates to the lapsing of designations which have not been given effect to by requiring authorities other than the territorial authority. As part of the review outlined above, all other requiring authorities were contacted and requested to undertake a similar review of their designations within the District Plan. Following this, the requiring authorities provided an update of the status of their designations.

## Review

The Waitakere City District Plan was deemed partially operative in March 2003 and therefore the designations listed in the District Plan are due to lapse in March 2008 unless specified otherwise. A review of the Waitakere City Council designations has been undertaken in order to identify the status of each designation as to whether they have been given effect to, are still required within the District Plan with substantial progress being made, or are no longer required, and where applicable, the additional timeframe likely to be required to implement the designation.

The table in Appendix A shows the status of each of the designations listed in the District Plan. Also, where appropriate, the table indicates if the name of the requiring authority has changed since the designation was included in the District Plan, or if the designated purpose requires amending to better reflect the purpose of the designation, specifically:

- **Dept J1 and Dept J2** – there has been no change in the business operation at these sites. The designated purpose name change reflects the terminology used in the Corrections Act 2004, which came into force on 1 May 2005;
- **WCCBF1** – refuse baling on the site was stopped 11 years ago. ‘Processing’ is a broader term that incorporates ‘Baling’ as well; and
- **ME59** – the designated purpose name change shows the actual name of the school - Summerland Primary School and Early Childhood Centre.

These updates will be included in a revised Designations Appendix in the District Plan.

A120-A125

The designations shown as being ‘given effect to’ in the table have been implemented. The designations shown as being ‘still required’ have not been fully implemented yet, however, progress or effort has been made or is continuing to be made towards giving effect to the designation. An explanation of this ‘progress or effort’ is recorded in the table attached at pages A120 to A125. The table also indicates that some designations need to be deleted as they are no longer required. The relevant requiring authorities have been advised that these designations will need to be uplifted under Section 182 of the Resource Management Act 1991 and this will be done shortly.

## Conclusion

As stated above, the designations listed in the District Plan are due to lapse in March 2008 unless an alternative lapse date was specified or effect has been given to the designation.

This report has been presented to the Committee seeking a formal resolution to update and extend the timeframe for a further 5 years for those designations which are required to be retained in the District Plan.

## RECOMMENDATIONS

1. That the Lapsing of Designations report be received.
2. That pursuant to Section 184 and 184A of the Resource Management Act 1991, the designations attached at pages A120 to A125 to the Agenda as being 'still required' are rolled over for a further 5 years.

A120-A125

Report prepared by: Michelle Cooper: Senior Planner: Policy Implementation.



## PART D - REPORTS FROM THE SUBCOMMITTEES

### 10 SWIMMING POOL EXEMPTION SUBCOMMITTEE

**THE SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 21 FEBRUARY 2008.**

#### MATTERS CONSIDERED

A126-A132

The Subcommittee dealt with a number of items for which it has delegated powers to act and a copy of the minutes of the meeting is attached at pages A126 to A132.

#### **The Subcommittee Recommends:**

That the Meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 21 February 2008 be received.

WW Flaunty, QSM, JP

**CHAIRMAN**

