

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 8 APRIL 2008 COMMENCING AT 9.30 AM**

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AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 8 APRIL 2008 COMMENCING AT 9.30 AM

PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

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

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

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



3 CONFLICTS OF INTEREST

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



4 CONFIRMATION OF MINUTES

Meeting Minutes - 11 March 2008

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 11 March 2008, as circulated, be taken as read and now be confirmed.



PART B - PETITON

5 AN ALTERNATIVE PLAN FOR THE HOBSONVILLE AIRBASE LAND

The Mayor has approved the receipt of a petition containing 773 signatures from the Hobsonville/West Harbour Ratepayers Association requesting Council to oppose the Hobsonville Airbase Housing New Zealand Plan. The prayer of the petition reads as follows:

"We oppose the Hobsonville Airbase Housing NZ Plan. We the undersigned fully support the alternative proposal of the Hobsonville West Harbour Residents and Ratepayers Association to protect this water frontage heritage land for this and future generations.

We want parks, small boating, rowing, outdoor arts, picnic areas, outdoor theatre, boutique dining and shopping, ferry terminal, heritage buildings, tourist facilities and an integrated housing development".

For guidance of Councillors, Standing Orders have the following provision in regard to petitions:

1. The petition shall comprise that than 500 words and shall not be disrespectful, nor use offensive language or make statements made with malice.
2. A limit of five minutes shall be permitted for the person to present the petition.



PART C - REGULATORY / ENFORCEMENT

6 LEGAL UPDATE (AS AT 30 MARCH 2008)

GLOSSARY

| | |
|--|--------------------|
| Ritchies Transport Holdings Limited | (Ritchies) |
| Rodney District Council | (RDC) |
| Waitakere City Council | (WCC) |
| Auckland Regional Council | (ARC) |
| Resource Management Act 1991 | (RMA) |
| Department of Building and Housing | (DBH) |
| Weathertight Home Resolution Service | (WHRS) |
| Waitakere Ranges Protection Society Incorporated | (WRPS Inc.) |
| Notice to Fix | (NTF) |
| Certificate of Acceptance | (COA) |
| Building Act 2004 | (the Building Act) |

EXECUTIVE SUMMARY

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.

RECOMMENDATION

It is recommended that the Planning and Regulatory Committee resolve to:

Receive the Legal Update (As at 30 March 2008) report.

COURT OF APPEAL

(Unchanged) 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.

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

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

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. A decision is not now expected before the end of April 2008.

(Unchanged) C W Williams and others v WCC (February 2006)

Council has been served with seven sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 Public Works Act 1991. An application for leave to appeal to the Court of Appeal was heard on 28 November 2007 and granted by Williams J. 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

(Changed) 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.

We have received a costs Judgment this month awarding Council above scale costs of \$12,120 plus disbursements. The cost judgment records that a number of unmeritorious points were taken and that an uplift from a normal award of cost is appropriate. We have made demand for payment and this has not been received. Enforcement action in respect of debt has been commenced in the High Court and our process server is attempting to serve papers currently.

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 bankruptcy notice has been issued and our process server is endeavouring to serve Mr Mawhinney.

(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 \$5,042.37 by Mr Mawhinney. Demand has been made for payment but Mr Mawhinney has not paid the award. A bankruptcy notice has been issued in relation to his matter and our process server is endeavouring to serve Mr Mawhinney.

ENVIRONMENT COURT

(New) Protect Piha Heritage Society Incorporated v WCC and Auckland Regional Council (ARC), Preserve Piha Limited v WCC

The appellant Protect Piha Heritage Society Incorporated (the appellant) has appealed the joint decision of WCC and the ARC to grant consent for the establishment of a café at Piha in a residential environment at 20 Seaview Road, Piha. The appellant was a submitter against the application when it was notified and presented submissions in opposition to the grant of the application at the resource consent hearing in November 2007. In the first instance the appellant would like to see the joint decision of the Councils cancelled and resource consent refused.

In the alternative the appellant would like to see the consent lapse in 2012, and if unexercised, the consents to lapse in 2009; for an archaeological report be commissioned on the heritage status of the old post office that occupies the site; compliance conditions to be included to ensure noise conditions are able to be complied with; that the café only operate 10am to 5pm, and be closed on Sundays and public holidays; that only 35 persons shall be provided for and that there be no seating outside; that no liquor is consumed on site; that no takeaways are to be sold; that there be no music played outside; that no odour is emitted from the property at any time.

In the second instance, Preserve Piha Limited, (the applicant) who was the applicant for the consent, appeals the conditions imposed on the consent by WCC. Specifically the applicant opposes condition 11: food preparation being limited to reheating of pre-prepared food, and condition 41: all activities on site are to comply with the noise standards approved.

There have also been two Section 274 parties who have registered their interest in these appeals. Both Section 274 parties support the applicant and the decision to grant consent.

The matters have been joined together by the Environment Court and standard track directions have been issued. Notices of reply are being drafted. It is likely that the matter will next be referred to mediation.

(Unchanged) Hall v WCC (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.

(Unchanged) 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 Feb 2008 and the decision is expected before June 2008.

(Unchanged) 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 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The 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 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. The works on the property have commenced. 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.

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

This is an appeal against an abatement notice issued 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 Ritchies 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 Ritchies 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 Ritchies property where those buses are going to be used between 9.00 pm and 6.00 am. Ritchies 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 and 22 February.

(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 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. An initial mediation to address all appeals occurred on 16 October 2007. Since then there have been some discussions between the various parties, including caucusing between experts on technical matters. A further mediation date is likely to be scheduled some time in April or May 2008, to allow internal discussions and expert caucusing to take place. It is hoped that these matters can be resolved by mediation/negotiation.

(Changed) Action Against Theme Park v WCC and R Karpuk v WCC (August 2007)

An 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.

The parties attended mediation on 5 March 2008. A settlement was reached within the scope of the appeal. The parties are now working to finalise the details of draft consent to be filed with the Court.

The draft consent order will clarify a number of conditions in accordance with the settlement, including noise staging monitoring/reporting, of landscaping for visual amenity, tree protection, staging of car parking development, and hours of operation. In addition, the applicant/consent holder will investigate the feasibility of constructing a bridle-trail type path along the edge of Candia Road and will discuss with Council the possibility of Council giving priority to the construction of a footpath along the subject stretch of Candia Road (this latter requirement will not form part of the consent order).

Mawhinney Matters in the Environment Court

(Unchanged) 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 stuck 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 Resource Management Act declining subdivision consents and certificates of compliance. Council filed an application to strike out the appeals. The Court has reserved the decision pending the outcome of the High Court appeal by Mr Mawhinney against striking out on a similar matter.

(Changed) 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.

Council's strike out application was heard before Judge Whiting and Commissioner McConally 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) This is a summary of 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 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.

On 7 March 2008 the Auckland territorial local authorities agreed and filed a memorandum with the Environment Court setting out that each Council has summarised the points of relief arising out of each appeal and that the appellants and all Section 274 parties would be invited to comment on those summaries. As a result on the same day the Council wrote to all appellants and Section 274 parties who had appealed the WCC plan changes seeking that they review the manner in which the appeals had been summarised and provide feedback to the Council by 18 April 2008. The appellants and Section 274 parties were informed that the Auckland territorial local authorities would then make any relevant amendments and report to the Court by 2 May 2008. It is expected that a judicial conference will be set down by the Environment Court in the last week of May 2008 to determine the manner in which the appeals should be resolved, including any mediation directions that the Court may wish to give.

DISTRICT COURT

(New) HQH Limited and Others - 193 McLeod Road, Henderson (Riverglade Parkways) (March 2008)

Riverglade Parkways is a subdivision on McLeod Road, Henderson where Council discovered the construction of 14 concrete slabs, and 9 houses framed, all without building consent.

Informations have been laid against all of the parties involved. The matter has been set down for a first call at the District Court on Monday, 28 April 2008.

(Changed) 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.

The matter has been adjourned to 5 May 2008 for pleas to be entered.

(Changed) 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 matter has been adjourned to 5 May 2008 for pleas to be entered.

(Changed) 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.

The building works were not in accordance with a building consent.

Council filed informations on 30 January 2008. The matter has been adjourned to 28 April 2008 for defendant to seek legal advice before entering a plea.

(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.

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

Further informations have been laid against the developer company and a director.

All defendants are to appear at the Waitakere District Court on 28 April 2008 for the first call.

(Changed) GM Garland – 82 Woodlands Park, Titirangi (November 2007)

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

The defendant has pleaded not-guilty to the charges. The matter has been set down for a status hearing for the Court to determine timetable orders on 10 June 2008.

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

Charges have been laid under the Building Act 2004 (the Building Act) 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.

(Unchanged) 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 35m² carport on the site. The works were undertaken without building consent, and charges were laid under Section 40 of the Building Act.

A Certificate of Acceptance (COA) has been granted by Council for the building works. The charges were withdrawn against Mrs Axmann, and Mr Axmann pleaded guilty to Section 40(1) charges on 18 February 2008.

Sentencing has been set down for 31 March 2008.

(Changed) 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 requested a hearing in relation to the infringement notices.

Mr Fermah appeared on 10 March 2008 and withdrew the Notice of Hearing for both infringement notices. The Court ordered that Mr Fermah pay:

- \$300.00 per infringement notice; and
- \$226.00 Solicitors costs per infringement notice; and
- \$ 30.00 Court costs per infringement notice.

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

This matter is in relation to the felling of between 18 - 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 charges were withdrawn against Ms Lyons and Mr Poulton pleaded guilty. Sentencing has been set down for 4 April 2008.

(Unchanged) 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 NTF 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 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.

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.

The owner pleaded guilty and appeared on 28 February 2008 for sentencing. The builder also pleaded guilty and appeared on the same date.

The matters were heard together, and the parties were convicted and sentenced as follows:

Mr Bishop - Fined \$3750.00 and costs which included \$226.00 solicitors costs and \$130.00 Court costs; and

Mr Jordan - Fined \$4000.00 and costs as above.

The plastering company appeared on 17 December 2007, and pleaded not guilty to the charges. 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 the 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 in the last week of April.

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

This matter relates to breaches of the RMA and the 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 6,000m² (approximately 200m² 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 the matter has been set down for a hearing on 15 June 2008.

(Unchanged) R Brooky – 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act 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 with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November, the Court had not allocated adequate time and 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 19 June 2008.

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

Charges have been laid under the Building Act 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 entered not-guilty pleas. These matters are set down for a half day hearing on 9 April 2008, however, if the Court determined to hear other matters ahead of this one, a new date will be set down on 9 April 2008.

Leaky Building Claims

(Unchanged) Claims statistics are as follows:

- (a) Claims currently being handled are 30.
- High Court: 3
 - District Court: 3
 - Weathertight Home Resolution Service (WHRS)/WHT 24
- (b) Number of claims for Waitakere City as at 30 March 2008, which may include some consents processed by building certifiers, was 338. This is the same as the number reported on 29 February 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.

Report prepared by: Mary Davenport, Contract Solicitor.



PART D - ENVIRONMENTAL MANAGEMENT

7 RANUI RAIL STABLING PROJECT

GLOSSARY

| | |
|---------------------------------------|--------|
| Auckland Regional Transport Authority | (ARTA) |
| Outline Plan of Works | (OPW) |
| Resource Management Act 1991 | (RMA) |

EXECUTIVE SUMMARY

The Auckland Regional Transport Authority (ARTA) is planning to construct a rail stabling facility in the vicinity of the Paremuka Reserve. This facility is to store and clean the interiors of up to 11 trains overnight close to where they enter service in the morning. This will significantly reduce rail operating costs and unnecessary dead-running of trains. It is an essential pre-requisite for the planned introduction of 10-minute peak train frequencies in 2010 and to allow six-car trains to be introduced on the western line to cope with heavy peak demand.

Members of the Ranui and Western Heights communities, along with some Elected Members, have raised concerns about the location and impacts of the planned facility. A delegation of residents presented their concerns at a joint section of the 5 March 2008 meetings of the Henderson and Massey Community Boards.

The Massey Community Board resolved as follows:

“That the Chief Executive Officer be requested to bring back an urgent report to the Massey and Henderson Community Board’s April meetings, investigating the circumstances under which the site of the proposed rail maintenance depot at Paremuka Reserve, opposite Hilwell Drive, was selected.”

(268/2008)

The Henderson Community Board resolved as follows:

“That the Chief Executive Officer be requested to bring back an urgent report to the Massey and Henderson Community Board’s April meetings, investigating the circumstances under which the site of the proposed rail maintenance depot at Paremuka Reserve, opposite Hilwell Drive, was selected.”

(245/2008)

Council officers have discussed these concerns with ARTA and this report details the advice provided by ARTA on these issues.

ARTA will make a presentation on the project to the Committee at the meeting and will be available to answer questions from Committee Members.

This report is for the Committee’s information only as the project lies within the designated rail corridor. The final decision on any request for conditions on the Outline Plan of Works (OPW) for the projects falls with the regulatory arm of the Council.

RECOMMENDATION

It is recommended that the Planning and Regulatory Committee resolve to:

Receive the Ranui Rail Stabling Project report.

BACKGROUND

1. In any urban rail network, there is a requirement that trains be stored overnight and cleaned between the time when the train comes out of service in the evening and when it next re-enters service. In order to maximise operational efficiency and to reduce dead-running of trains, it is highly desirable to have train stabling facilities as close as possible to the point that trains enter service in the morning. At present, trains are stored at Westfield and Papakura overnight.
2. The following rolling stock expansion for the Auckland urban rail fleet is currently taking place: Five existing three-car trains are being lengthened to four-car trains; three new four-car trains and six new six-car trains are being refurbished from former British Mark II bodies. However, there is no overnight stabling space available for these newly refurbished trains when they enter service.
3. ARTA is most of the way through a distributed stabling project to provide stabling facilities for these trains to position trains optimally on the urban rail network. ARTA has identified stabling sites at Pukekohe, Papakura, Tamaki Drive and Ranui as well as the existing train stabling facility at Westfield.
4. The stabling site at Ranui is required to store trains that will go in to service at Swanson, Waitakere and Helensville. At present these trains move to and from Westfield and their respective start and finish points either very late in the evening or from 4am in the morning. With the establishment of the Ranui stabling site, this out-of-service positioning of trains will no longer be required.

5. The stabling site is also required to enable six-car trains to operate on the western rail line to address train overcrowding issues. Staff travelling by train to work report that existing trains starting at Waitakere in the morning peak now have standing room only from Ranui Station. ARTA is planning to introduce six-car trains on the western line first as the double-tracking project means that all stations in Waitakere (except Waitakere Station) will have platform lengths able to accommodate these trains.
6. If the Ranui rail stabling site was not to be established, ARTA would simply not be able to implement 10-minute peak train frequencies on the western line from 2010, and would not be able to operate six-car trains on the western line to address current train overcrowding and future increases in demand generated by the completion of double-tracking and the New Lynn rail trench project. This is because there would be nowhere to store the trains needed for these service improvements. This would not optimally exploit the benefits of the Government's \$600 million investment in upgrading the Auckland urban rail network, nor ARTA's heavy investments in rolling stock and more frequent train services.

DECISION MAKING

7. The Ranui rail stabling project is, apart from one site being acquired by ONTRACK for access, entirely within the designated rail corridor. This means that no resource consent process is required for the project, apart from (for the site required for access). However, an OPW must be lodged with the Council, outlining the proposed works and detailing measures to remedy, mitigate or avoid any adverse environmental effects. As ONTRACK is the requiring authority under the Resource Management Act 1991 (RMA) for the western rail line designation, it is ONTRACK that will be submitting the OPW to the Council on ARTA's behalf. ARTA has advised the Council that it is intended that ONTRACK will submit the OPW in the first half of April.
8. The RMA gives the Council 20 working days to process an OPW with the ability to request conditions of the requiring authority. However, there is no obligation on the requiring authority, in this case ONTRACK, to accept any conditions requested. If ONTRACK were to refuse to accept any (or all) conditions requested by the Council, the Council's only legal recourse would be to appeal to the Environment Court. This would put the Council in the unusual position of having to appeal its own conditions in an attempt to make them legally enforceable. There is a major risk of delay with this option, which could well threaten the ability to be able to provide the train services needed to meet the growing passenger demand on the western line.
9. Previous experience with OPWs submitted to the Council by ONTRACK and ARTA is that those agencies treat any conditions requested by the Council and agreed by themselves to have the same effect as if they were a condition of a resource consent. This includes remedying any non-compliance with OPW conditions identified by the Council's environmental monitoring staff.
10. While the RMA provides a very tight 20-day timetable for processing OPWs, experience with other local authorities is that ONTRACK and ARTA will seek to reach agreement with councils on conditions, even if this means agreeing to extensions in the processing time or even resubmitting OPWs to address concerns raised.
11. There have been discussions with the Council's resource consents staff to alert them that an OPW for this project is soon to be submitted and to alert them to concerns that have been raised about the project. However, the final decision on any conditions that may be requested in the OPW is a matter for the regulatory arm of the Council to take.

Issues

12. Concerns raised by members of the community and some Elected Members relate to the use of the site for other than the stated purpose; visual; noise and lighting impacts. As well, the process gone through to select the site has been questioned. A discussion on the site selection process is contained in the “options identified” and “assessment of options” sections of this report.
13. Concern has been expressed that the site might be used for train maintenance or to repair disabled trains. ARTA has advised that the site is intended exclusively for the overnight storage and interior cleaning of trains. The only building on site will provide train crew facilities, including toilets, a kitchen and a mess area. ARTA acknowledges that disabled trains may be towed to this area in order to clear any line blockages as quickly as possible. However, disabled trains would later be towed to Westfield, which is the only location on the Auckland rail network able to carry out train maintenance.
14. Noise impacts are a significant potential impact of this project. This is because trains generally come out of service in the evening and re-enter service early in the morning. The Auckland rail network is currently operated by diesel traction. Diesel locomotives and diesel multiple units need to be started up and to idle for 15 minutes in order to charge the air brake reservoirs. This is absolutely essential for safe train operation. Once the urban rail network is electrified, currently set down for completion in 2013, this issue will be much reduced as diesel trains will only be required for services to and from Waitakere and Helensville, beyond the end of the electrified network at Swanson. In order to address the noise issues, a Noise Management Plan will be submitted to the Council, based on similar plans filed with Papakura and Franklin District Councils for train stabling facilities in Papakura and Pukekohe respectively. The Noise Management Plan will seek to ensure that standards for decibel levels beyond the boundary of the rail corridor are not exceeded. These levels are lower at late evening and early morning hours when trains will be starting up. Note that there is often an additional buffer between the rail corridor boundary and sensitive noise receivers such as residential properties. The Noise Management Plan may include elements such as noise buffering through planted mounds if necessary and the sequential starting-up of trains in such a manner as to minimise noise with trains starting up being shielded from the nearest residents by trains not yet in service. The trains closest to people’s homes will be last to be started up.
15. Western Heights residents have expressed concerns about the visual impact of the facility on the Paremuka Reserve. The nature of the site means that the train stabling will be below the level of the mainline rail track. This means that the visual impact of the facility will be substantially less than that of the existing rail line for Western Heights residents. The facility will generally be empty during weekday daytime hours and only partly full during weekend daytime hours. At night, some lights and trains will be visible but there is very little visual impact during the day when the Paremuka Reserve is mostly used. ARTA advises that lighting will be carefully managed to target the lights at the trains in order to minimise light spill. ARTA has advised that the facility will be monitored from Britomart by CCTV cameras and any graffiti will be promptly removed. Roving security patrols on the rail network will also be tasked with addressing any anti-social behaviour issues related to the facility.

Options Identified

16. ARTA went through a site selection process for this project. This process identified the following sites: West of Christian Road; between Swanson Station and O'Neills Road; and Bruce McLaren Road, and the preferred site by the Paremuka Reserve.

Assessment of Options

17. **Do Nothing** - This option would mean that there would not be enough trains to provide ten-minute peak train frequencies nor to run six-car trains to cater for growing demand on the western line. It would also mean that refurbished trains either being manufactured or on order would not be able to be stored anywhere on the Auckland urban rail network overnight.
18. **West of Christian Road** - This option was ruled out as the location of the Swanson Tunnel reduces the useable space for a stabling facility. A facility at this location would be on a sharp bend, making train storage more space-intensive as trains parked on a corner occupy more space than trains parked in a straight line. This is due to straight carriages overhanging the curve in the track.
19. **Between Swanson Station and O'Neills Road** - This option was ruled out as the track gradient of 1 in 67 at this point is much steeper than the safety requirement to have trains stored on a maximum 1 in 250 gradient. This is an essential safety requirement to avoid the risk of a runaway train due to air brake leakage. Trains would need to be stored on both sides of the track and would be much closer to residential properties than the preferred option. The track layout would only have single-ended access. This would increase the risk of a disabled train causing major service disruptions across the network as any train parked behind it would not be able to get out.
20. **Bruce McLaren Road** - This site was eliminated from further consideration as it was not large enough space to accommodate the number of trains that need to be stabled overnight.
21. **Preferred Option: Ranui Rail Stabling Site** - The rail corridor is very wide at this site and is further away from residential properties than the other sites. The topography of the area works to reduce its visual and noise impacts. Noise bunds installed by ONTRACK for the Ranui landfill site means that noise buffering is already in place for residents on the Ranui side of the stabling site. The site has sufficient space for a double-ended layout of stabling sidings and for all sidings to be on one side of the track. It is less than six minutes running time to Swanson Station and 12 minutes running time to Waitakere Station where trains enter service in the morning.

Consideration of Community Views

22. ARTA held a community open day on the project in Ranui in March 2008 which was advertised at railway stations, on the ARTA website and publicised to the Ranui community. ARTA and ONTRACK staff were present to discuss the project and to hear any concerns raised.
23. Some members of the community presented their concerns about the project to the Massey and Henderson Community Boards at the public forum section of the Board meetings that took place on Wednesday, 5 March 2008.

STRATEGIC CONTEXT

24. The double-tracking of the western rail line will have a strong positive influence on nearly all of the Council's strategic platforms, being integrated transport and communications; urban and rural villages; strong innovative economy; green network; strong communities; and sustainable energy and clean air.
25. Well-located train stabling facilities contribute to these strategic platforms by facilitating the increase in frequency of peak train service and allowing longer trains to be operated on the western rail line. It also has a significant environmental benefit by reducing unnecessary out-of-service train positioning.

Preferred Option

26. ARTA's preferred option for the western line rail stabling facility is at Ranui for the reasons outlined in paragraph 21.

CONSULTATION

27. As a result of concerns raised by members of the Western Heights and Ranui communities and by some Elected Members, officers have consulted with ARTA in order to be able to respond to the concerns raised.
28. The Council's resource consents team has also been briefed on this issue.
29. Any consultation with Maori needed for this project is the responsibility of ARTA.

RESOURCES

30. As this project is being delivered by ARTA, no other resources other than staff time are required. Resource consent and building consent staff time, costs are recovered from the applicant.

IMPLEMENTATION ISSUES

31. The implementation of this project is the responsibility of ARTA.

Report prepared by: Darren Davis, Senior Strategic Advisor: Transport.



8 EXPRESSION OF INTEREST TO TAKE PART IN THE VOLUNTARY IMPLEMENTATION PROGRAMME OF THE DOMESTIC FOOD REVIEW

GLOSSARY

| | |
|--|-----------|
| Domestic Food Review | (DFR) |
| Food Control Plan | (FCP) |
| Food Hygiene Regulations 1974 | (FHR74) |
| Food Safety Programme | (FSP) |
| Hazard Analysis Critical Control Point | (HACCP) |
| Memorandum of Understanding for the Auckland Regional Cluster Group in the joint Implementation of the Proposed Food Act | (MOU) |
| New Zealand Food Safety Authority | (NZFSA) |
| Off The Peg Food Control Plan | (OTP-FCP) |
| Public Health Unit | (PHU) |
| Territorial Authority | (TA) |
| Voluntary Implementation Programme | (VIP) |

EXECUTIVE SUMMARY

The purpose of this report is to advise the Planning and Regulatory Committee of the Domestic Food Review (DFR) undertaken by the New Zealand Food Safety Authority (NZFSA) and seek the Committee's recommendation to indicate to the NZFSA an expression of interest from the Council to take part in the Voluntary Implementation Programme (VIP), and its recommendation for the Chief Executive Officer to sign a Memorandum of Understanding for the Council to join the Auckland Regional Cluster Group in the joint Implementation of the proposed Food Act 2008 (MOU).

The NZFSA has been carrying out a review of existing domestic food legislation (the Domestic Food Review) over the past five years. As a result of the DFR the NZFSA planned to have a new Food Act passed by Parliament for enactment by 1 July 2008. However the legislative process has taken longer than the NZFSA anticipated and therefore the expected enactment date will not be met.

Consequently the NZFSA is seeking expressions of interest from all Territorial Authorities (TA's) to join the VIP that will see the major changes that were proposed in the new Food Act, put in place for at least 12 months or until the new Food Act comes into force.

In order to efficiently facilitate the VIP the NZFSA is also promoting the establishment of Regional Cluster Groups of neighbouring TA's, with the aim that these cluster groups will work collaboratively to meet the needs of the VIP and the new Food Act which will follow. To this end a Memorandum of Understanding establishing an Auckland Regional Cluster Group, comprised of; Waitakere City Council, Auckland City Council, North Shore City Council, Rodney District Council, Manukau City Council, Franklin District Council and Papakura District Council; is proposed.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Expression of Interest to take part in the Voluntary Implementation Programme of the Domestic Food Review report.
2. **Agree** that the Council expresses an interest to take part in the Voluntary Implementation Programme of the domestic food review proposed by the New Zealand Food Safety Authority.
3. **Agree** that the Chief Executive Officer sign the Memorandum of Understanding for the Auckland Regional Cluster Group for the Joint Implementation of the Proposed Food Act 2008.

BACKGROUND

1. Since 2003 the NZFSA has been conducting a major review of New Zealand's domestic food laws in order to address inequities in the way the food industry is regulated across the country, clarify the roles of the regulators (NZFSA, PHU's and TA's), and stem the continued rise in the number of reported foodborne illnesses.
2. In November 2006 the Government approved the NZFSA's package of recommendations designed to update and streamline food regulation. In practical terms, this gave the NZFSA the mandate to: develop a new Food Act, introduce a range of risk-based tools designed to help food operators manage food safety and suitability, and develop education and training requirements for food operators.

3. Currently the regulatory control of the manufacture, sale and supply of food is spread over 3 agencies: central government through the NZFSA, regionally through Public Health Units (PHU) in the 12 District Health Boards, and across the 74 TA's at local government level.
4. Food operations that fall within the gambit of the Food Hygiene Regulations 1974 (FHR74) are licensed and inspected by TA's and may be subject to TA Bylaws prescribing the grading of these premises.
5. Food operations that fall outside the FHR74 include premises that have been exempted from compliance with the FHR74 through being granted a food safety programme (FSP) under the Food Act 1981 by the NZFSA. These premises are regulated by the local PHU on behalf of the NZFSA and are subject to independent third party audit by approved auditors. Premises with a FSP are not licensed or inspected by TA's and are not subject to food grading by the TA. Any food complaints about these premises are investigated and actioned by the local PHU.
6. The DFR identified a number of problems with the current arrangements, such as: regulatory accountability, public confusion as to responsibilities, national consistency, coherence and seamlessness of the overall food regulatory regime.
7. Consequently in order to address the aims and issues raised by the DFR, the NZSFA drafted a new Food Act, which would have revoked and replaced the current Food Act 1981 and FHR74, and would pull together all the various aspects of food safety legislation under one coherent legislative framework.
8. However, with the proposed new Food Act failing to meet its planned start date, the NZFSA has proposed to utilise the existing provisions in the current Food Act 1981 to permit the implementation of the main provisions proposed in the new Food Act on a voluntary basis (the VIP).
9. A significant change proposed by the new Food Act was to shift away from the prescriptive licensing and inspection regime of the FHR74 towards Food Control Plans (FCP's) which would also introduce 'food suitability' into the food regulation framework.
10. FCP's and FSP's are management plans that describe how an operator will produce safe and suitable food. FCP's incorporate good operating practise and Hazard Analysis Critical Control Point (HACCP) and are science and risk based. FCP's are a vast improvement on the prescriptive and outdated requirements of the FHR74 as they provide a greater assurance that safe and suitable food is being consistently produced.
11. Food suitability covers aesthetic defects and matters such as ensuring the product does not contain anything offensive, unexpected or unusual, and does not directly relate to food safety, but generally excludes quality issues (e.g. floury apples). Food suitability would also require food to be in a condition in which the composition, labelling, identification and condition are appropriate for its intended use.
12. The intention of the proposed new Food Act was that all food operators would be required to adopt the appropriate FCP within a defined transition period. The NZFSA would develop and provide free of charge pre-approved FCP's, termed Off the Peg Food Control Plans (OTP-FCP), that any food business could adopt if they were appropriate to their business. TA's would receive applications and register all OTP-FCP's located in their district, and have exclusive rights to undertake the verification of those OTP-FCP's. Any FCP's that deviated from the OTP-FCP would be termed custom made FCP's, which would require evaluation and registration by the NZFSA. The verification of custom made FCP's would be contestable.

13. With the failure of the proposed new Food Act to meet its planned implementation date, the NZFSA proposes to utilise the existing provisions of the Food Act 1981, that allows for FSP's, to roll out FCP's on a voluntary basis (the VIP).
14. The NZFSA proposes that the VIP will work as follows:
 - TA's will provide an expression of interest to participate in the VIP. Neighbouring TA's will form regional cluster groups to facilitate the VIP and the implementation of the new Food Act when it comes into force;
 - The Food Act 1981 provides that food premises with an approved FSP be exempt from the provisions of the FHR74. The NZFSA will deem that OTP-FCP's will constitute a FSP under the Food Act 1981;
 - Various food sectors will be advised of the VIP through representative groups and chains, trade magazines, NZFSA publications and by TA's;
 - Participating TA's will accept applications from food businesses for an OTP-FCP's as pre-evaluated, and register them as a FSP, subject to the completion of the appropriate registration. Some minor assessment is expected to be required in order to ensure that the OTP-FCP covers the scope of the business. Any changes to the OTP-FCP beyond acceptable variations would be forwarded to the NZFSA for approval and registration as a custom made FCP;
 - Environmental health officers of participating TA's, on completion of training provided by the NZFSA, would be warranted as a Food Act Officer under the Food Act 1981 and will therefore will be able to undertake compliance and enforcement actions against OTP-FCP's that their TA registers;
 - TA's will be able to carry out the required verification of the OTP-FCP;
 - TA's would apply their registration fee for approval of OTP-FCP's and may set appropriate fees for their verification service.

DECISION MAKING

Issues

15. The NZSFA expects the VIP to begin around mid-2008. To date Auckland City Council, North Shore City Council, Manukau City Council, Rodney District Council, Franklin District Council and Papakura District Council, have all expressed an interest to participate in the VIP and to sign on to the Memorandum of Understanding for the Auckland Regional Cluster Group in the joint Implementation of the Proposed Food Act.
16. Any food premise that applies for and is granted an OTP-FCP will fall outside the Council's Food Safety Bylaw and will not have to display a food grading certificate.
17. Such exemption from the Council's food grading scheme currently occurs with any food premise that has been granted an FSP by the NZFSA. There are 58 premises within the City that currently possess a FSP and therefore fall outside the scope of the Council's food grading scheme.
18. The ability for any food premise to apply for OTP-FCP, and therefore fall outside the Council's food grading scheme, will not depend on the Council participating in the VIP. If the Council decides to not participate in the VIP any food premise may apply directly to the NZFSA (via the Auckland District Health Board PHU) for an OTP-FCP, as currently occurs with applications for FSP's. The PHU may register the OTP-FCP and that premise will be exempt from the FHR74 and the Councils food grading scheme.

19. The NZFSA has indicated that it will look at providing a certificate, similar in design and format to a food grading certificate that will recognise an operator's participation in the VIP, and thereby act as a replacement for a food grading certificate.
20. The Council's environmental health team estimates that the uptake of OTP-FCP's by food premises within the City during the VIP will not be significant. The option for premises to be exempt from Council regulation through gaining a FSP has been available since 1997, yet the vast majority of food premises have not gone down this path. The principal reasons for this low uptake, is that FSP's have always been a voluntary option and proved in practice, to be quite complex, very technical and costly for a food business to maintain. OTP-FCP's have attempted to overcome the high costs normally associated with FSP's by being pre-approved by the NZFSA, template based and free. The environmental health team is hopeful that it will be able to encourage up to 20 food premises to apply for an OTP-FCP, if the Council participates in the VIP.
21. A large number of advantages arise to the Council from participation in the VIP, particularly the following:
 - i. It will allow the Council to gather data on the actual impact that FCP's will have on the Council in terms of; resources, costs, training, databases, systems, and processes. Such real data will provide a significant basis from which the Council could formulate any submission it might wish to make on the proposed new Food Act when that Act is put out for public consultation by the Government.
 - ii. It will allow the Council's environmental health team to test systems and processes to ensure that they are capable of handling the needs and requirements of FCP's in a 'test' environment.
 - iii. Valuable specialised training will be provided for the Council's environmental health officers by the NZFSA to upgrade their skills and enable them to be recognised as auditors (verifiers), Food Act Officers, and deal with food suitability matters. Such enhanced competencies will mean that they will be ready and qualified when the proposed new Food Act is finally implemented.
22. Food premises that choose to take part in the VIP will gain the advantage of having an OTP-FCP up and running prior to OTP-FCP's becoming a mandatory requirement, and gaining the benefit of receiving more focussed assistance during the VIP.
23. Further advantages are gained by the Council committing to the MOU. All TA's in the Auckland Region will be faced with the same issues in respect of implementing OTP-FCP's, and therefore by working together as part of an MOU the common problems in relation to training, consistency and interpretation that arise, can be shared, discussed and solved on a regional basis. Additionally, all TA's will be faced with the challenge of achieving accreditation as a verification agency, in order to undertake verifications under the new proposed Food Act. It is anticipated that by working as part of an MOU, meeting the requirements for accreditation can be collaboratively worked through and more readily achieved by each member of the MOU. A copy of the MOU is attached at pages A4 to A13.

A4-A13

Options Identified

24. **Option 1** - The Council expresses an interest to participate in the VIP and joins the Auckland Regional Cluster Group.
25. **Option 2** - The Council does not express an interest to participate the VIP and does not join the Auckland Regional Cluster Group (the status quo).

26. **Option 3** - The Council expresses an interest to participate in the VIP and does not join the Auckland Regional Cluster Group.
27. **Option 4** - The Council does not express an interest to participate in the VIP and joins the Auckland Regional Cluster Group.

Assessment of Options

Option 1 - Participate in the VIP and sign the MOU

28. This option has significant benefits for the Council. It will allow the food business community the option to experience the change to FCP's and provide the Council with a "soft" run in period during which the Council will gain vital data on how it might adjust to the needs of a full change over to FCP's and provide information on the Council's capacity to meet the needs of FCP's. The free specialised training that the NZFSA intends to provide to TA's that participate in the VIP will be invaluable in the development of the Council's environmental health officers. Such training may not be readily available after the VIP ends and the new proposed Food Act is enacted. A commitment by the Council to the MOU will have the advantage of gaining access to the combined resources, experience, skills and knowledge of our neighbouring TA's as we work collaboratively towards a mutual goal of successfully implementing the VIP and working towards accreditation as a verification agency in anticipation of the proposed new Food Act.
29. The risk associated with this option is that the number of premises that might apply for an OTP-FCP is outside the control of the Council and therefore the Council could receive applications for OTP-FCP's beyond its current resource capabilities. Although this eventuality is estimated to be very unlikely, the VIP has the flexibility to allow, by mutual agreement, other agencies to assist. For instance, as part of the MOU, the Council could receive practical assistance from other members of the MOU to process OTP-FCP applications and vice-versa.
30. A further risk is the loss of confidence in the Council's food grading system that might arise when a number of premises that are granted an OTP-FCP, are not displaying a grading certificate. This particular issue would arise regardless of whether the Council chooses this option or not and has been looked at by the NZFSA who propose to develop a replacement certificate for those premises that take part in the VIP.
31. Based on an optimistic estimate of 20 premises applying for an OTP-FCP during the VIP, no significant impact on the current resources of the Council's environmental health team is predicted.

Option 2 - Do not participate in the VIP and do not sign the MOU

32. This option is the status quo. By not participating in the VIP and the MOU the Council will not gain any of the anticipated benefits that participation in the VIP and MOU would bring.

Option 3 - Participate in the VIP and do not sign the MOU

33. This option would bring the benefits anticipated to arise from being part of the VIP but would limit the benefits that arise from regional collaboration in an issue that applies across the region and nationally. By not participating in the MOU the Council would need to work through the task of gaining accreditation as a verification agency in isolation.

Option 4 – Do not participate in the VIP and sign the MOU

34. This option is probably untenable to other members of the MOU as in order to be a fully contributing member of the MOU the Council would need the practical experience of being part of the VIP.
35. The following table highlights some of the wider issues:

| | | Social | Economic | Environment | Cultural |
|----------|---------------|---|---|-------------|------------------------|
| Option 1 | Disadvantages | Food premises without a grading certificate | | | |
| | Advantages | Soft introduction of FCP's | Real data on the cost of implementing FCP's | | Regional collaboration |
| Option 2 | Disadvantages | Food premises without a grading certificate | No data on the cost of implementing FCP's | | |
| | Advantages | The status quo | | | |
| Option 3 | Disadvantages | Food premises without a grading certificate | | | |
| | Advantages | | Real data on the cost of implementing FCP's | | |
| Option 4 | Disadvantages | Food premises without a grading certificate | No data on the cost of implementing FCP's | | |
| | Advantages | | | | Regional collaboration |

Consideration of Community Views

36. The NZFSA has published discussion documents on the DFR and has sought submission from industry, target groups and the general public at various times on those discussion documents. Industry, TA's and the general public will have an opportunity for their views on the DFR to be heard when the proposed new Food Act is put out for public consultation in anticipation of the Food Act being passed by Parliament.

STRATEGIC CONTEXT

37. The Long Term Council Community Plan 2006-2016 sets a service level with respect to the Council's inspection and enforcement services, that all food premises will be inspected each year and graded accordingly. With the implementation of FCP's, the Council will still inspect (verify) all food premises that it registers for an OTP-FCP. Food grading will not be applicable to these premises but the NZFSA has indicated its intention to develop a national grading system that will apply to all FCP's.

Preferred Option

38. The preferred option is for the Council to express an interest and take part in the VIP, and commit to participation in the Auckland Regional Cluster Group through the Chief Executive Officer signing off on the MOU. The advantages of this option far outweigh the risks the option may present to the Council.

CONSULTATION

39. Consultation has been undertaken with Council's Legal Services Section, the NZFSA, the Auckland City Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council, and Franklin District Council.

RESOURCES

40. No additional resources are required for the VIP or MOU in the 2008/2009 Annual Plan. It is anticipated that OTP-FCP's and the verification of the same will be a self funding activity.

IMPLEMENTATION ISSUES

41. The preferred option should not present any significant implementation issues.

Report prepared by: Alan Ahmu, Team Manager Environmental Compliance.



9 ALTERATION OF EXISTING RAILWAY DESIGNATION IN NEW LYNN TOWN CENTRE

GLOSSARY

Resource Management Act 1991 (RMA)
Waitakere City Council (WCC)

EXECUTIVE SUMMARY

The purpose of the report is to seek confirmation of the Planning and Regulatory Committee's agreement to an alteration of the current Railway Designation, NZR1, in the vicinity of the New Lynn Town Centre. The alteration will extend the designation in order to provide for the trenching of the double tracking of the train lines.

The report outlines that approval is sought under Section 181(3) of the Resource Management Act 1991 (RMA), that the alteration to the designation is minor, has land owner approvals and accordingly can be approved to proceed on a non notified basis.

The reporting officer considers that the extent of the proposed alteration is minor, and the Requiring Authority has obtained the landowner approval from Waitakere City Council (WCC) and is in the process of obtaining the written approval of Cambridge Clothing, with whom it has an agreement to purchase the affected land. The Cambridge Clothing written approval will be tabled at the meeting.

RECOMMENDATIONS

It is recommended that Planning and Regulatory Committee resolve to:

1. **Receive** the Alteration of Existing Railway Designation in New Lynn Town Centre, report.
2. **Agree** to advise ONTRACK New Zealand Railway Corporation that it confirms the alteration to designation NZR1.
3. **Approve** that designation NZR1 within the District Plan be amended, in accordance with the plans being : 111545-LP-501 Rev A, 111545-LP -502 Rev B, 111545-LP -503 Rev A, 111545-LP -504 Rev A, 111545-LP-507 Rev A, 111545-LP-510 Rev A, 111545-LP-511 Rev A, contained in the ONTRACK New Zealand Railway Corporation report: Alteration to a Designation under Section 181(3) of the Resource Management Act 1991:Dart 6 (New Lynn).

BACKGROUND

1. New Zealand Railways Corporation, trading as ONTRACK is a 'requiring authority' under the RMA, which gives it the power to 'designate' land for public works. It is important to note that the Council does not have the power to grant or refuse consent to the designation alteration. Rather, it is the requiring authority who are the decision making body in respect of a designation, and the Council only has the ability to make requests and recommendations to the requiring authority.
2. The existing designation NZR1 encompasses the entire railway line from New Lynn to Waitakere Township. ONTRACK has a programme of projects to be completed to Develop Auckland Rail Transport. The Western line track duplication is one of the four key elements to upgrade Auckland's railways.
3. In 2006 the government announced that it would fund a rail trench at New Lynn. The track would be doubled tracked and lowered by approximately 8m (at the lowest point) in an open cut trench following the existing rail alignment between Portage Road and New Lynn. The trench will enable current level crossings to be replaced by overbridges (four in total).
- A14* 4. The design and construction of the trench is such that in five locations (as shown on Map 111545-LP-507, attached at page A14) the works cannot occur within the existing designation. Accordingly the designating authority is requesting a minor alteration/s to the designation to accommodate the proposed works.
- A14* 5. It is proposed to alter the designation within the New Lynn town centre area, in the following manner (as shown on map 11545-LP-507 at page A14);
- A15-A16* 6. **Area A** - (shown as A1 and A2, on the maps at pages A15 to A16) This area is located on the northern side of the railway corridor, with the slither of the proposed addition being 2m at its widest point, extending a distance of approximately 230m. This land is currently within two certificates of title with one portion owned by Cambridge Clothing (area A1), the area of this land being 198m², with an agreement to purchase with ONTRACK. The other portion is owned by WCC (area A2), being 195m² in area.

7. **Area B** - This area is located on the southern side of the railway corridor, with this slither being at the widest 2.4m and extends approximately 70m. The area of this land is 135m². This land is owned by WCC.
8. **Area C** - This area is located on the northern side of the railway corridor, and physically joins area D (see below). This area is 1m at its widest point and extends for approximately 35m, with an overall area of 28m². This land is owned by WCC.
9. **Area D** - This land is located on the northern side of the railway corridor, and is 39m in length and between 3m and 6m in width, with a total area of 236m². This area is located within the road reserve and is owned by WCC.
10. **Area E** - This land is located on the southern side of the railway corridor, and is 42m in length and is 6m in width, with a total area of 193m². This area is located within the road reserve and is owned by WCC.
11. **Area F** - This land is located on the northern side of the railway corridor, and is 300m in length and is 3m at its maximum width, with a total area of 719m². This area is located within the road reserve and is owned by WCC.
- A14-A35 12. A full copy of ONTRACK'S application and maps are attached at pages A14 to A35.

DECISION MAKING

13. The proposed double tracking and the trenching of the rail line within the New Lynn town centre is an important priority in the development of New Lynn and Waitakere City.
- A20 14. The proposed alteration to the designation will allow the double tracking and trenching works to occur within a railway designation. The alternative was that the designating authority could have undertaken the works through resource consent for the area outside the designation, however as the works to take place within the area of the proposed alteration are integral to the rail structure, (see vertical and horizontal cross sections on map 111545-LP-511 attached at page A20) it was a more appropriate option to seek to alter the designation.

Issues

Statutory Process

15. Once a designation is in place, the RMA provides a relatively simple procedure for making minor alterations. Section 181(3) of the RMA states as follows:

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

- (a) *The alteration-*
 - (i) *Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
 - (ii) *Involves only minor changes or adjustments to the boundaries of the designation or requirement; and*
- (b) *Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*

(c) *Both the territorial authority and the requiring authority agree with the alteration- and sections 168 to 179 shall not apply to any such alteration.”*

16. Provided that the proposed alteration complies with the matters set out in Section 181(3) (a), (b) and (c), the designation in the District Plan can be amended without further formality.
17. The information provided by ONTRACK in support of the designation alteration proposal addresses all the relevant issues. Council officers are satisfied that the correct procedure has been followed in relation to the proposal.
18. The alteration is minor in terms of its environmental effects for the following reason:

The extent of the alteration of the designation

19. The actual physical area of the alteration of the designation is small when compared to the actual area of the existing designation. In addition at the widest point the alteration is 6m, and tapering. The bigger extensions are located within the road reserve of Totara Avenue and in proximity of the roundabout. These roads in the long term will have an improved level of functioning, with the improvement of the track being below ground level. Matters such as the required earthworks are assessed by the Outline Plan of Works applications that are lodged by the Requiring Authority.

Tree removal

20. The alteration to the designation will result in the removal of street trees from WCC land on the southern side of Totara Avenue. Other trees will be removed however these are on the existing designation.
- A23-A29 21. A resource consent was sought by the Requiring Authority for these works, and has been approved, with landowner approval being given for the removal of the trees growing within the road reserve, namely an Italian cypress, row of 13 Sheoke and a Camphor laurel. Six pohutakawa trees are to be relocated to Olympic Park off Portage Rd. (See attached resource consent at pages A23 to A29).

Functioning of Totara Avenue

- A20 22. The alteration of the designation in the vicinity of Totara Avenue will not affect the functioning of Totara Avenue in the long term, although in the short term the works to install the trench will result in various changes to the roading system in New Lynn as traffic is diverted or roads become one way to accommodate the works. In the short term Totara Avenue will become one way to accommodate works. In the long term the road will resume its current function. However some of the road that will still be owned by WCC will be located over the rail trench (see horizontal and vertical alignments on Map 111545-LP-511, attached at page A20).

Landowner Approvals

23. WCC has provided a written approval.
- A15 24. ONTRACK has an agreement to purchase the slither of land (see map attached at page A15) from the Cambridge Clothing company. However, Cambridge Clothing is still the legal owner of the land, and it is their written approval that is required for the purposes of this application. Procedural matters have resulted in ONTRACK New Zealand Railway Corporation, not being able to table this landowners approval until the time of the Committee meeting.

25. No other parties are considered to be affected by the proposed realignment.
26. Upon the tabling of the outstanding landowner approval the proposed alteration will comply with all three matters set out in Section 181(3) (a), (b) and (c).

STRATEGIC CONTEXT

27. The proposed double tracking and trenching of the rail line in New Lynn has become an important priority for future development of the City.
28. The double tracking and trenching of the line will make a significant contribution to the successful regeneration and intensification of New Lynn, as anticipated by the Local Government (Auckland) Amendment Act 2004 and Plan Change 17.

CONSULTATION

29. ONTRACK undertaken consultation with the affected landowners and their approvals have been obtained/will be tabled at the meeting.

RESOURCES

30. No resources are required other than staff time involved in amending the map sheet of the plan and distributing copies to District Plan holders.

Report prepared by: Carolyn McAlley, Senior Planner: Policy Implementation.



10 UPDATE ON NATIONAL POLICY STATEMENTS AND NATIONAL ENVIRONMENTAL STANDARDS DEVELOPED UNDER THE RESOURCE MANAGEMENT ACT 1991

GLOSSARY

| | |
|---|------------|
| National Policy Statement on Electricity Transmission | (NPS:ET) |
| Resource Management Act 1991 | (RMA) |
| National Environmental Standard | (NES) |
| National Policy Statement | (NPS) |
| Ministry for the Environment | (MfE) |
| Electrical Safety Distances Code of Practice | (NZECP:34) |
| National Environmental Standard for Telecommunications Facilities | (NES:TF) |
| New Zealand Energy Efficiency and Conservation Strategy | (NZEES) |
| New Zealand Energy Strategy | (NZES) |

EXECUTIVE SUMMARY

The purpose of this report is to inform the Planning and Regulatory Committee of the recent passing into regulation of the National Policy Statement on Electricity Transmission (NPS:ET). This follows consideration of submissions (including Council's) by a Board of Inquiry, and outlines the implications for Council in its role as a consent authority under the Resource Management Act 1991 (RMA).

The report also informs the Committee of the current status of other National Environmental Standards (NES) and National Policy Statements (NPS) which Council has submitted on.

In addition there are other national level documents under the RMA currently under development or consideration by the Ministry for the Environment (MfE) These national level documents may have future implications for Waitakere, and may be the subject of further reports proposing submissions or plan changes.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Update on National Policy Statement on Electricity Transmission and status of various other national regulations under the Resource Management Act 1991 report.
2. **Agree** to Ratify the Waitakere City Council Submission to the Proposed National Environmental Standards for Electricity Transmission.

BACKGROUND

1. NPS and NES are regulations promulgated pursuant to the RMA, and are intended to provide 'environmental bottoms lines' or national consistency in approach to the sustainable management of matters of national significance.
2. NPS provide the national policy framework for consideration of a particular matter of national significance (note that the term 'national *significance*' distinguishes these issues from the 'matters of national *importance*' as listed in Section 6 RMA) via the statement of objectives and policies, while a NPS will generally contain more technical details regarding the specifics of a standard, method or requirement regarding any issue.
3. NPS and NES are powerful tools, sitting at the top of the document hierarchy under the RMA, whereby each level must 'give effect' to the level above, thereby ensuring a 'cascade' of consistency from national, to regional, to local. As well as requiring or resulting in changes to regional and district planning documents, the regulations have immediate effect from commencement date by being 'had regard to' by decision makers when considering applications for consents under the RMA.
4. However, until recently, a lack of national level guidance has resulted in a plethora of local approaches to nationally similar issues, resulting in large variations across local authority boundaries in the manner in which common issues are managed under the RMA. The Government has pledged to improve the implementation of the RMA and has made a number of amendments to the RMA (particularly the amendments of 2003 and 2005) in order to better achieve this end, as well as committing to providing a greater level of national guidance and assistance, both via regulatory and non-regulatory mechanisms.
5. A number of NPS and NES are well advanced and have been submitted on by the Council. Those to which Council has made submissions are covered in Part 1 of this background.
6. Those which are known to be under development, but have yet to be released for comment are covered in Part 2.

PART 1: SUBMISSIONS OR COMMENTS MADE

National Policy Statement on Electricity Transmission

7. At its meeting of 20 June 2007, this Committee resolved (Resolution 1119/2007) to delegate to the Chairman of the Planning and Regulatory Committee, authority to approve the lodgement of a detailed submission to the Board of Inquiry on the Proposed National Policy Statement on Electricity Transmission (NPS:ET). Following the resolution, and having regard to the comments of the Committee, the submission was duly lodged on 22 June 2007.
 - (i) That the Submission on Proposed National Policy Statement on Electricity Transmission report be received.
 - (ii) That delegated authority be given to the Chairman of the Planning and Regulatory Committee to approve the lodgement of a Waitakere City Council submission to the Board of Enquiry on the Proposed National Policy Statement on Electricity Transmission.
8. Council officers (the Strategic Advisor: Sustainable Management and the Group Manager: Long Term, Urban, and Environmental Strategy), following discussions with the Chairman of this Committee, presented oral submissions supporting the original submission to the Board of Inquiry in Auckland on 27 August 2007.
9. Following presentation and consideration of all oral and written submissions, the Board made its recommendation on the NPS:ET to the Minister for the Environment. This recommendation included a number of significant changes from the notified version, including the adoption of many of Waitakere's submission points, in particular:
 - Removal of the proposed use of the non-participatory C16 process to implement the NPS:ET (a standard plan change process within a 4 year timeframe is now provided);
 - Stronger direction regarding the management of adverse effects of the network particularly in avoiding effects on town centres, outstanding natural landscapes, and areas of high recreational or amenity value and sensitive activities;
 - Rewording and clarification of all policies to provide clarity and certainty;
 - Addition of policies regarding long term strategic planning for transmission assets;
 - Separation of (new) policies regarding the management of the effects of third parties on the network from policies regarding the management of effects of the network on third parties.
10. These changes were intended to address the identified shortcomings in the drafting and resulting effect of the NPS:ET and improve the ability of the document to deliver its stated objective.
11. The Minister and Cabinet approved the NPS:ET to be drafted into regulation for approval by the Governor General, and the NPS:ET has since been published in the *Gazette* on 13 March 2008. The NPS:ET will now come into force 28 days following this date, being 10 April 2008.
12. The NPS:ET is attached at pages A36 to A39.

13. The NPS:ET sets out a single objective and 14 policies to enable the management of effects of the Electricity Transmission Network (Transpower owned or operated infrastructure) under the RMA.
14. The objective is

“To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

 - *Managing the adverse effects of the network; and*
 - *Managing the adverse effects of other activities on the network.”*
15. The RMA sets out the process by which a NPS is given effect via regional and local planning documents, allowing some discretion to be written in to the NPS regarding the timing and process of plan changes required. The NPS:ET directs that *“local authorities give effect to its provisions in plans made under the Resource Management Act 1991 by initiating a plan change or review within four years of its approval”*.
16. In contrast to the district plan change process which provides a four year deadline, Section 104(1) of the RMA directs consent authorities when considering any submission or application for resource consent to have regard to any relevant provisions of *“(b)(i) a national policy statement”*. Consequently the NPS:ET has immediate effect on any consents not granted prior to 10 April 2008.
17. MfE indicates that they will be providing guidance to local authorities and the general public on the NPS:ET (and NES:ET once passed into regulation) via their website, but possibly also by way of workshops and training. As the first NPS promulgated under the RMA for quite some time, (other than the New Zealand Coastal Policy Statement), Council officers, practitioners and the public have no experience with the implementation of a NPS. Legal Services, Resource Management and Sustainable Development Teams will also be providing guidance to the Consents Team, other interested staff and the public.
18. The main initial effect of the NPS:ET for Waitakere will be the application of *Policy 10*, which relates to the management of the adverse effects of third parties on the transmission network. This will apply to activities such as new development (additions, rebuilds) and subdivision providing for new development in proximity to the transmission network. *Policy 11* outlines that local authorities will need to liaise with Transpower regarding the identification of an appropriate ‘buffer corridor’, within which ‘sensitive activities’ would not be granted consent. Current practice suggests this would be about 20m either side of the centreline of the line, but this varies depending on line height, span and electrical loadings.
19. The Operative Waitakere District Plan already indicates the location of existing transmission lines on the Human Environment maps. The presence of transmission lines is also routinely noted on Project Information Memoranda (or PIMs, issued under the Building Act 2004), Land Information Memoranda (or LIMs issued under the Local Government Official Information and Meetings Act 1987) and resource consent documentation. This has resulted in an existing high awareness of transmission lines amongst Council officers and the public, although previously Waitakere has not had any legal mechanism to ensure development addressed the presence of the lines. Compliance with the New Zealand Electrical Safety Distances Code of Practice (NZECP:34) is, and remains mandatory, but it is the responsibility of the applicant to ensure compliance. (Note: The proposed NES for Activities Affecting Transmission contains a proposal to incorporate a table of safe distances based on NZECP:34).

20. Potential future upgrades of existing infrastructure and new transmission infrastructure through Waitakere and the rest of the country will be assessed having regard to the NPS:ET, any relevant NES and the regional and district plan.
21. The NPS:ET notes that upgrades should be an opportunity for a reduction in existing adverse effects (Policy 6), and that upgrades or new builds should avoid adverse effects on town centres (Policy 7) and rural areas (Policy 8) and in particular, areas of high recreation, landscape or amenity value (Policies 7 and 8).

National Environmental Standards for Electricity Transmission

22. Two National Environmental Standards (NES) have also been proposed for the technical details of managing (i) the effects of Transmission Activities, but also (ii) Activities that effect the Transmission Network.
23. Council Officer's made a submission on these NES's in reference to the approved Council submission on the NPS:ET, on 4 December 2007.

A40-A98

24. A copy of the Officer Submission is attached at pages A40 to A98.
25. The two NPS:ET are intended as a high level policy framework, where the NES's will provide technical details on how to implement some of the NPS:ET policies (such as appropriate buffer distances). These transmission NES's are expected to be in force prior to the four year plan change or review commencement deadline imposed in the NPS:ET.
26. This report seeks that the officer submission be ratified.

National Environmental Standards for Telecommunications Facilities

27. Council has also submitted on a Proposed National Environmental Standard for Telecommunication Facilities (NES:TF), following the Planning and Regulatory Committee meeting of 7 August 2007 and in accordance with Resolution 3228/2007:
 - (i) That the Submission to Proposed National Environmental Standards for Telecommunications Facilities report be received.
 - (ii) That the Chief Executive Officer be given delegated authority to approve the draft submission to Proposed National Environmental Standards for Telecommunications Facilities once it is finalised.
 - (iii) That the Chief Executive Officer also be given delegated authority to approve any further submissions or appearances (with the exception of legal proceedings) in relation to progressing the content and intent of the finalised submission to the Proposed National Environmental Standards for Telecommunications Facilities.
28. Council's submission focussed on the workability of the standards to enable rollout of infrastructure in line with the Integrated Transport and Communications Strategic Platform, but also better to protect the receiving environment.
29. The majority of Council's submission points have been reflected in changes to the proposed standards. These changes include:
 - Strengthened links to district plan provisions where specific values such as amenity, landscape, or heritage have been identified as a local issue;

- Reducing the potential for street clutter through increased minimum separation distances between cabinets and promotion of co-location or sharing of facilities;
 - Aligning the noise standards with the latest Standards New Zealand Noise assessment and measuring standards (being NZS 6801: 2008 and NZS 6802: 2008);
 - Future proofing the standards by not specifying specific types of panel antennas and including allowances for dish antennas;
 - Limiting extensions to existing roadside structures to one extension only - to prevent incremental height creep.
30. In February 2008, Cabinet decided that the revised NES:TF should proceed and that regulations should be drafted to give effect to the standards. In essence, the standards state:
- Any activity (such as a mobile phone transmitter) that emits radio-frequency fields would be a permitted activity provided it complies with the existing New Zealand Standard (NZS2772.1:1999 Radio-frequency Fields Part 1: Maximum Exposure Levels 3kHz-300GHz);
 - The installation of telecommunications equipment cabinets along roads or in the road reserve would be a permitted activity, subject to specified limitations on their size and location (including location relative to other cabinets);
 - Noise emitting from telecommunications equipment cabinets located alongside roads or in the road reserve would be a permitted activity, subject to specified noise limits (i.e. compliance with the latest New Zealand Standard);
 - The installation of masts and antennas on existing structures alongside roads or in the road reserve would be a permitted activity, subject to specified limitations to height and size.
31. The NES:TF has now been sent for drafting into regulation and is expected to be in force in the second half of 2008.
32. Note that a rule in a district plan or condition on a resource consent may be more restrictive than a NES only where the NES expressly allows it, but a rule or resource consent may not be more lenient than a NES. Existing use provisions apply to previously granted consents and existing activities. An NES effectively overrides any existing district plan rule, and it is implied (though not explicitly stated) that the plan would be amended as soon as practicable to remove any inconsistencies with the NES.
- A99-A102 33. A copy of the Cabinet approved NES:TF is attached at pages A99 to A102. (Note that legal drafting into regulation may slightly alter the wording of the Cabinet approved NES).
34. The NES:TF does not affect Council's role as a Road Controlling Authority, under which Road Opening Notices are issued and 'reasonable conditions' may be imposed under the Telecommunications Act 1999. National level guidance on the management of telecommunications infrastructure in the road reserve in the form of a Code of Practice for Road Controlling Authorities is also expected from Government within the next year.

National Policy Statement for Renewable Energy

35. In October 2007, staff from the Ministry for the Environment sent an open letter to the Chief Executive Officer seeking Waitakere's initial views on the question "What should be included in a possible National Policy Statement on Electricity Transmission?" The development of a NPS on Renewable Generation forms part of a whole-of-government approach to addressing sustainability in the Electricity sector, as foreshadowed by the New Zealand Energy Efficiency and Conservation Strategy (NZECS) and New Zealand Energy Strategy (NZES), of which the NPS:ET and NES:ET are also part.
- A103-A107 36. Following internal staff discussion, an Officer response was provided on 9 November 2007 which included reference to the Council approved *Waitakere Climate Change Plan of Action* and the Sustainable Energy and Clean Air Strategic Platform. A copy of the officer response is attached at pages A103 to A107.
37. In summary, the officer response suggested that while large scale renewable energy generation should be enabled as much as possible, it was not appropriately enabled in all locations (such as the Ranges); but that any restrictions on 'post meter' domestic scale devices (such as solar hot water heaters) should be minimised to better encourage the uptake of these technologies.
38. This work is now being lead by the Ministry of Economic Development, and their website indicates this has been placed on hold "*pending the release of the NZECS*".
39. The NZECS was released in December 2007 and once a proposed NPS on Renewable Energy is released (probably in late 2008 at the earliest), a further report seeking this Committee's input into an official Council submission on the proposed document will be provided.

PART 2: NATIONAL REGULATIONS KNOWN TO BE IN DEVELOPMENT:

40. A number of NPS and NES are known to be under development, or have been recommended to be developed by Reference Groups. Those known to the authors are listed below:
- National Policy Statement on Electricity Generation;
 - National Policy Statement on Flood Management;
 - National Policy Statement on Freshwater Management;
 - National Environmental Standards on Ecological Flows and Water Levels;
 - National Environmental Standards for Onsite Wastewater Systems;
 - National Environmental Standards for Management of Contaminated Land;
 - Proposed New Zealand Coastal Policy Statement 2008.
41. Each of these probable regulations may have significant implications for the sustainable management of matters of national significance in Waitakere.
42. A report seeking the Committees input and approval of submissions to these regulations will be provided as each regulation is available and released for comment.
43. Note that the Proposed New Zealand Coastal Policy Statement 2008 has recently been released for comment (March 2008) and will shortly be the subject of a future agenda item.

44. Note that a discussion document regarding the Proposed National Environmental Standards on Ecological Flows and Water Levels has been released for comment (1 April 2007) and may be the subject of a future agenda item.
45. In some cases, due to a combination of a short submission period, the timing of this committee's meetings and the agenda reporting requirements, submissions may not be able to be approved by this Committee prior to lodgement.
46. These submissions are lead by the Sustainable Management Team in the Strategic Group, in conjunction with the specialist team or unit which the notified regulation most closely affects. Waitakere has been successful in having amendments to the regulations in a manner favourable to Waitakere's position to date, reflected in changes between the proposed and 'operative' versions of these regulations on which a submission has been made.

DECISION MAKING

47. This report is provided for the Committee's information, reporting on the outcome of statutory processes undertaken under the auspices of the RMA, and as a result of previous Committee resolutions. It also highlights forthcoming national regulation pursuant to the RMA for the Committee's information, which may be the subject of further more detailed reports. As such, it is not considered that the report requires a 'significant' decision, and there are no issues or options to consider.

STRATEGIC CONTEXT

48. The sustainable management of Waitakere as outlined in the Operative District Plan, and the achievement of the four wellbeings in the manner outlined in the Long Term Council Community Plan has the potential to be affected by the passing of the national regulations outlined above.
49. The NPS:ET, NES:ET and NPS on Renewable Energy have particular relevance to the Sustainable Energy and Clean Air Strategic Platform.
50. With respect to national regulations, issues regarding the effects of the regulation on the four wellbeings have been considered at the national level through consultation and consideration by the Minister for the Environment, other Elected Members in Cabinet and their officials. This included Regulatory Impact Assessments, s32 RMA Cost Benefit analyses and consideration of submissions. The conclusion for national level intervention under the RMA must be (for the regulation to be approved) that the net benefits to the national good outweigh adverse effects (if any) on local issues.
51. The relevant national regulations impact on the Waitakere specific strategic context has been (or will be) outlined in the NPS or NES specific agenda item.

CONSULTATION

52. Consultation has been undertaken between the Sustainable Management Team of the Strategy Unit (who have undertaken the submission process in the Strategy Unit's role as a advocate for Waitakere at the national and regional policy levels), the Resource Management Section of Regulatory and Community Services Unit (who are responsible for implementing Council policy via the District Plan) and the Resource Consents Team of City Services Unit (who are responsible for implementing the District Plan) on the recent passing into regulation of the NPS:ET and implications thereof.

53. External consultation, including with iwi groups, industry representatives and interest groups has been undertaken by MfE as per the requirements of the RMA, under the development of each NPS or NES.
54. Where a change to the Waitakere Operative District Plan is required, consultation will be undertaken in accordance with the provisions of the RMA. The extent and nature of this consultation will be outlined in a future agenda item regarding the plan change.

RESOURCES

55. This report requires no resources to implement, as it provides information for the Committee on the outcome of past resolutions, and highlights matters of possible future interest for the Committee's information.
56. This report highlights the recent promulgation of regulations under the RMA, requiring decision makers to have regard to the provisions when making decisions on applications under the RMA.
57. Sustainable Management, Resource Management and Legal Services staff will be providing guidance and assistance to the Council, staff and the public as required, in addition to any guidance and training to be made available by MfE.
58. This forms part of the normal work programme of each of the units involved and does not require additional budget.

IMPLEMENTATION ISSUES

59. The NPS:ET imposes a four year deadline (from 13 March 2008) for implementing plan changes or commencing plan reviews to give effect to its provisions.
60. The NPS:ET is required to be had regard to by decision makers on resource consents from 10 April 2008. This will impact on all consents yet to be granted prior to this date, which must consider the NPS. In a practical sense this will only impact on developments in proximity to existing transmission lines, which are generally already directed to Transpower for comment due to the lines being clearly indicated on the Human Environment Maps and a resulting high awareness of the transmission network amongst the Consents Team and applicants.
61. The NPS:ET is a matter to be had regard to by a consent authority when considering whether to grant applications for resource consent, subdivision and designation from 10 April 2008.
62. Two complementary NES's, one for Electricity Transmission Activities and one for Activities Sensitive to Electricity Transmission are currently being considered in light of submissions and that these are anticipated to be available and in force well prior to the four year plan change deadline set by the NPS:ET.
63. NES's have the unique ability to supersede district plan provisions – therefore, the extent and nature of any district plan change required to give effect to the NPS:ET is dependent on the scope and detail of the two complementary (but still proposed) NES:ET.

64. A plan change (if required) to give effect to the NPS:ET (and complementary NES's) will be the subject of a further report to the appropriate Committee in due course, and may be able to be incorporated into the Operative District Plan review process which must be commenced prior to 27 March 2013 (being 10 years following the District Plan's declared operative date).
65. A number of NES and NPS are known to be under consideration by Government, several of which are expected to be released for comment this calendar year. Further Agenda Items seeking the Committee's input and approval for the lodgement of submissions, and other actions as appropriate, will be presented in due course as each document is released for comment.

Report prepared by: Kyle Balderston, Strategic Advisor: Sustainable Management and Eryn Shields, Principal Planner.



PART E - REPORT OF THE SUBCOMMITTEE

11 SWIMMING POOL EXEMPTION COMMITTEE

THE SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 11 MARCH 2008.

MATTERS CONSIDERED

A108-A112

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 A108 to A112.

The Subcommittee Recommends:

That the Meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 11 March 2008 be received.

WW Flaunty, QSM, JP

CHAIRMAN

