

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 12 AUGUST 2008,
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
4 CONFIRMATION OF MINUTES	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
5 LEGAL UPDATE(AS AT 31 JULY 2008)	2
<u>PART C - REPORT OF THE SUBCOMMITTEE</u>	15
6 SWIMMING POOL EXEMPTION SUBCOMMITTEE	15
<u>PART D - PUBLIC EXCLUDED MATTER</u>	16
7 NEGOTIATIONS ON LOCAL GOVERNMENT (AUCKLAND) AMENDMENT ACT PLAN CHANGE APPEALS	16

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 12 AUGUST 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 - Tuesday, 8 July 2008

RECOMMENDATION

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

Receive that the minutes of the meeting of the Planning and Regulatory Committee held on Tuesday, 8 July 2008, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 31 JULY 2008)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Ritchies Transport Holdings Limited	(Ritchie's)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Environmental Health Officer	(EHO)
Auckland Regional Public Health Service	(ARPHS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Notice to Fix	(NTF)
Certificate of Acceptance	(COA)
Building Act 2004	(the Building Act)
Metropolitan Urban Limit	(MUL)
Memorandum of Understanding	(MoU)

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 (the 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 31 July 2008) report.

COURT OF APPEAL

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt Harvey. Carter Holt Harvey 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 Harvey. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter was is resolution of costs. Carter Holt Harvey has now directly contacted the Mayors Office to discuss among other things; the costs of the High Court, and appeal hearings. The Mayor advised he did not wish to discuss legal matters and no further action has been taken. Carter Holt Harvey has not yet lodged a claim for costs.

Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process Council has made submissions on the supplementary order paper to the Waste Minimisation. The Waste Minimisation Bill now has a new definition of waste in line with that sought by Council. A further paper has been sent direct to the Ministers prior to the Bill's second reading on 18 June 2008.

HIGH COURT

(Unchanged) J E Burgess v Waitakere City Council and Auckland Regional Council (February 2008)

This is a judicial review of the Council's decision (as well as the ARC's) to grant consent to a 15 lot subdivision and residential development on a non-notified basis at a site situated on 25 Kashmir Road and 47A Withers Road, Glen Eden ("the property"). The applicant, Mr Burgess, contends that in respect of the Waitakere City decision there were adverse effects on her and the environment and therefore the consent ought to have been notified to permit her an opportunity to make submissions. The Council refutes that there were any adverse effects on Mr Burgess or the environment and that it correctly reached a decision not to notify the application. The property is situated in the Living Environment with no protection afforded to the vegetation on the property. Once the development is complete it will blend into the surrounding area with minimum lot sized of 452m². The vacant site has been a vacant site nominated for development for some 15 years. The parties have filed their statements of evidence but are continuing to pursue settlement discussions.

In the interim the property has been sold and the consent holder is seeking not to be involved in the review. It has given effect to that part of the consent relating to vegetation clearance. The matter has been allocated to the standard track proceedings and set down for a two-day hearing in the week of 11 May 2009.

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

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

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

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. A decision anticipated at the end of April 2008 has still not been secured.

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

Council has been served with seven sets of proceedings under the Public Works Act 1981 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 1981 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 of the Public Works Act 1981. A Court of Appeal hearing was held in April 2008 to hear Council's appeal against the High Court decision. A Judgment of the Court is awaited.

Substantive hearings involving Mr Mawhinney

(Changed) Perceptus Limited & Others v Waitakere City Council (May 2008)

An appeal by companies controlled by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three related appeals regarding purported applications for certificates of compliance and subdivision consents. Initial case management conferences have occurred. The Court has directed that:

- (a) Mr Mawhinney be substituted as appellant provided that he file an affidavit regarding his status as trustee;
- (b) Mr Mawhinney will be personally liable for any costs awarded against the appellants in this proceeding;
- (c) Timetable for filing of submissions and related documents; and
- (d) The allocation for a one-day hearing of this appeal on 12 November 2008.

ENVIRONMENT COURT

(Changed) Community Waitakere Charitable Trust v Waitakere City Council (June 2008)

This appeal opposes Council's decision to decline a resource consent application by the appellant to construct a new "Community Resource" building within the Tui Glen Reserve at Henderson. The matter has been placed on the Court's Standard Track, with general case management directions applying. It is likely that this matter will proceed to a Court-assisted mediation in the first instance. A notice of reply has been filed and it is expected that a mediation date will be allocated shortly.

(Changed) Ritchie's Transport Holding Limited v Waitakere City Council and Rex Campell (as section 274 party) (May 2008)

Ritchie's Transport Holding Limited (Ritchie's) appealed the Council's decision to grant consent on 23 April 2008. The appeal relates to the period of time for which consent has been granted to run bus depot operations at the site of 619 Swanson Road. The decision of the Council through Commissioners was to permit Ritchie's to continue operating from the site for 2 years with a higher level of activity. The appeal seeks to increase this time period to 3 years. No other parties have applied to join this appeal.

At the same time Ritchie's have applied to push the commencement date of the consent forward, instead of waiting for the appeal to be resolved. The Council has agreed to this and a draft order has been forwarded to the Court. This will mean that the abatement notice can be cancelled and the new consent will be the basis of monitoring.

Mr Campbell has joined as a section 274 party opposing the grant of the three year period being sought by Ritchies. The appeal is set down for a one-day mediation on 22 August 2008.

**(Changed) J Hsu v Waitakere City Council (April 2008)
Weddings Etc Limited v Waitakere City Council (April 2008)**

These appeals relate to the grant of consent for aspects of the operation of the function centre known as "Cassels"; including the extension of the hours of operation.

Mr Hsu has appealed Council's decision to grant consent in respect of noise issues. Weddings Etc Limited (applicant/consent holder) has appealed several conditions of consent. Mr Chapman has joined these appeals as a section 274 party seeking additional conditions of consent.

The matter has been placed on the Environment Court's standard track list and a timetable for evidence exchanged has been agreed. It is likely the matter will be heard before the end of 2008.

**(Unchanged) Protect Piha Heritage Society Incorporated v Waitakere City Council and Auckland Regional Council
Preserve Piha Limited v Waitakere City Council (March 2008)**

The appellant Protect Piha Heritage Society Incorporated has appealed the joint decision of the Council 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 to 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 are now 14 section 274 parties. The majority of these support the granting of consent.

These matters have been joined together by the Environment Court and standard track directions have been issued. Notices of reply have been served. The matter was before an Environment Court Commissioner for mediation on Monday 26 May 2008. Mediation was not successful and the matter is proceeding to a hearing, most likely in September 2008. An evidence exchange timetable has been agreed.

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

This is an appeal against Council's decision to grant resource consent for the subdivision of 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, the installation of underground power and telecommunications services, and the removal of certain specified buildings within six months of grant of consent. The appellant would like these conditions removed from the consent.

The parties attended mediation on 7 July 2008. The Council and the appellant agreed to resolve the appeal through a consent order being agreed on 7 July 2008. A draft of the consent order will be presented to the Committee next month for its consideration. Once the Committee accepts the terms proposed in the draft consent order, it will be referred to the Court.

(Changed) Waitakere City Council 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 Judge Priestley on 27 February 2008 and the appeal was dismissed, the Court finding that the Environment Court did not make an error of law, and any issues still at large were to be determined by the Environment Court. Costs were reserved.

The claim has now been settled, by a payment of \$500,000.00 plus GST. (The annual plan amount held to cover the settlement was \$800,000.00).

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

An appeal by the ARC and the Waitakere Ranges Protection Society Incorporated (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 Waitakere Ranges Protection Society Incorporated oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan.

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 issued its decision on 23 June 2008 by which it upheld the appeals by ARC and WRPS Inc and quashed the decision to grant consent. The Court noted, however, that a more “sensitive” application for subdivision might work. Ultimately, the Court found that the proposed subdivision was not consistent with relevant aspects of the Council’s District Plan. The Council accepted the Court’s decision. No appeal will be lodged.

(Unchanged) M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the Resource Management Act 1976 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 has 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 2007 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 may be dependent on the outcome of the Swanson Structure Plan. A decision is expected shortly in light of the recent issuing of the “Duncan appeal” (above).

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

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

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

Mr Britten has been granted resource consent to undertake the remedial works.

The contract commenced on Monday, 3 March 2008. The remedial works include: concrete fill, buttressing, and reinstatement of vegetation.

The works on the property have been completed and the enforcement proceedings have been withdrawn.

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

An appeal and section 274 notices were filed by WCC regarding decisions by Rodney District Council (RDC) on the Rodney 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.

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

Council's officers have attended workshops and mediations on matters regarding which Council has a section 274 interest. Further mediations are scheduled.

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

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

A Court assisted mediation occurred on 19 September 2007, at which agreement in principle was reached. The parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under section 116 Resource Management Act 1991 (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, and these changes have been accepted (which should occur shortly).

(Changed) Waitakere City Council v Auckland Regional Council, IMF v Auckland Regional Council, NZ Steel v Auckland Regional Council and Hahn and Others v Auckland City Council (August 2007)

This appeal concerns the ARC's decision to grant resource consents to Council for the discharge of stormwater and wastewater for the Hobsonville Peninsula, Waiarohia Stream, Totara Creek and New Lynn East catchments. The appeals seek changes to some of the consent conditions. Mediation and discussions/negotiations between the parties have occurred and revised consent conditions are being finalised with a view to resolution by consent.

Mawhinney Matters in the Environment Court

(Unchanged) Perceptus Limited v Waitakere City Council (January 2008)

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. Council is opposing the application on substantive and procedural grounds. Evidence from the Applicant is now overdue and is being followed up.

(Unchanged) Perceptus Limited and Swanson Heights Limited v Waitakere City Council, Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v Waitakere City Council (March 2006)

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under section 358 of the RMA declining subdivision consents and certificates of compliance. Council filed an application to strike out the appeals. A decision was released in April 2008 striking out this appeal and granting costs to the Council. Council has sought costs from the unsuccessful appellants. A decision is awaited.

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

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the 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 Council's 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 to 7 September 2007. Various aspects of Mr Mawhinney's appeal were abandoned during the hearing. A decision striking out all aspects of this appeal was released this month by the Environment Court. Council has also been granted costs. An application seeking costs has been lodged with the Court and a decision is awaited.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (Resource Management Act 886/98) have been concluded. Mr Mawhinney recently applied to reactivate this matter on the basis that it should be determined in advance of the completion of the Dilworth structure plan proceedings (which are part heard) seeking deferment of a decision for the Dilworth Structure Plan. A Joint Memorandum has been filed with the Court opposing these applications. The Court held a hearing on 9 July 2008 to consider the application and released an oral decision declining the application for priority. The Dilworth Structure Plan proceedings will now need to be completed before this case can be recommended.

Plan Change Hearings

Local Government (Auckland) Amendment Act Plan Change Appeals (September 2007)

(Changed)
A1-A3

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

In addition to appeals on Council's Plan Changes 13 to 18, Council has filed its own appeals regarding some decisions of the ARC in respect of 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 Council 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 or soon after 2 May 2008.

The appeals have been separated into topics by each Council having its own topic groups and the region as a whole creating a topic for Commercial Appeals which address the appeals by the five large format retail appellants as to whether retail should be located in city centres or corridors.

A judicial conference was held on 23 May 2008 where all parties, including the Councils, put forward their strategies for managing the appeals.

Council communicated the position it has maintained since the appeals commenced which was to expedite any hearings in relation to the Metropolitan Urban Limit (MUL) shift and Plan Changes 14 and 15. The Court accepted this position and the matter is set down for hearing, if one is needed, in late January – early February 2009. The Council was required to report back to the Court on 1 August as to whether any aspects of the appeals relating to the topic MUL issues have been settled and otherwise propose an evidence exchange timetable for a hearing in late January – early February 2009. The Council reported back that it had met with the appellants to the appeals in this topic group and that there was a possibility of settlement, if an agreement could be reached with the section 274 parties. The Council proposed and the Court has accepted that an evidence exchange timetable is premature at this stage and the Council and the parties to these appeals have a further month to negotiate a settlement or otherwise seek for the matter to be set down for mediation.

In respect of all other appeals, the topics classified and referred to above as Commercial Appeals has been set down for a hearing, if one is necessary, in the early part of the second quarter of 2009. The Councils jointly were required to report back to the Court on 31 July 2008 as to progress made in resolving these appeals. This report has been provided, detailing that the Councils had met with the appellants, but that further time was required to work through the issues.

In respect of all other appeals to the Council's Proposed Plan Change, the Council is to report back to the Court by 1 September 2008 as to the progress of resolving these appeals and at that stage the parties can seek formal court assisted mediation and/or a hearing.

DISTRICT COURT

(New) Enterprise Steel Properties Limited & Others – 12 North Candia Road, Swanson (July 2008)

The defendants in this case allegedly constructed a pole retaining wall with an overall length of 115 metres long and 4 metres high. The wall was constructed without building consent.

Council has laid informations and awaits a date from the Court for a first appearance.

(Changed) Albert Edward Gunn – 3 Dovey Place, Te Atatu (June 2008)

This matter relates to a current prosecution against the previous owner of the "Abbey Heights Rest Home."

It is alleged that Mr Gunn undertook the building works at the rest home. This information has only recently been received by Council.

Informations have been laid against Mr Gunn pursuant to section 40(1) of the Building Act. Mr Gunn has pleaded guilty. Sentencing has been set down for 6 August 2008.

(Unchanged) Albany Apartments Limited – 80 Clover Road, Henderson (June 2008)

Council has laid informations in relation to unauthorised earthworks on the property. The earthworks consisted of excavation, cut and fill and allegedly constitute a contravention of section 9 of the RMA.

Informations have been laid against the company, and its directors in respect of the breaches of the general natural area rules, and earthworks within a riparian margin area. The matter has a first call on 15 July 2008.

(Changed) Cullen and Ko – 4 Kauri Point Road, Laingholm (April 2008)

This prosecution concerns alleged unauthorised building work on the property including: internal alterations, the construction of two lean-to additions to form a bathroom and living room, a timber deck, the demolition of a garage, and construction of a utility shed. All work was undertaken without building consent. Informations have been laid with the Court. Mr Cullen has pleaded guilty and the matter has been set down for sentencing on 16 October 2008.

Ms Ko has yet to enter a plea and the matter has a further call over on 2 September 2008.

(Changed) M and S Naicker – 12 Cushla Place, Massey (April 2008)

This matter relates to unauthorised building works undertaken by the defendants that included: the enclosure of a basement under a conservatory to form a two bedroom unit and bathroom for use by the defendants' extended family. One bedroom has no natural light or ventilation.

The building works did not comply with the building code, and no building consent was sought or granted for the work undertaken.

Mr Naicker has pleaded guilty and the matter has been set down for sentencing on 7 November 2008. The informations against Mrs Naicker have been withdrawn.

(Changed) HQH Limited & 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. One contractor has pleaded guilty and sentencing has been set down for 24 October 2008.

HQH Limited, the company's director, and the project manager have yet to enter a plea. Their matters have been adjourned to 2 September 2008.

The remaining defendants have pleaded not guilty and the matters have been set down for defended hearings on 28-29 October and 24-24 November 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 defendant 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 defendant contravened Council's District Plan Citywide Maintenance of Land and Buildings amenities rule. The defendant did not comply with the abatement notice, namely she did not remove any of the specified articles and vehicles from the property in accordance with the abatement notice.

Sentencing was on 16 June 2008. The defendant was convicted and sentenced to 80 hours of community service. Council was awarded costs of \$500.00, and the Court ordered that an Enforcement Order be put in place to ensure the lawful removal of the miscellaneous chattels by 16 December 2008.

The Enforcement Order granted by the Court has been filed and we await its sealing and return from the Court.

(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, and did not comply with the building code.

The defendant pleaded guilty and sentencing took place on 15 July 2008. The Judge reserved his decision which will be delivered on 28 August 2008.

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

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

Council laid informations against various parties (including the developer company and a director) in respect of the unauthorised building works.

The company and Mr Kumar both entered guilty pleas on 15 July 2008. Sentencing has been set down for 31 October 2008.

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

Council 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 pleaded not-guilty to the charges, and a hearing date was allocated by the Court. The matter has been set down for 9 and 10 October 2008.

(Changed) Metlifecare Pinesong – 48-72 Avonleigh Road, Green Bay (July 2007)

Charges have been laid under the Building Act 2004 for building work undertaken without consent. The building work relates to a partial re-cladding of 20 houses owned and operated by Metlifecare Pinesong Limited as retirement village where the occupants have a lifetime lease of the properties. The building work was undertaken by Apsec Construction. Both parties are being prosecuted. The matter was set down for sentencing on 15 July 2008. The Court reserved its judgement and the parties will appear in Court on 18 August 2008 for the Court to deliver its decision.

(Changed) G Yuan – 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home known as “Abbey Heights Rest Home”. Ms Yuan had a conservatory built on an existing deck, retrofitted the existing deck to strengthen it for the conservatory, and installed a shower enclosure and vanity in the staff room, all without a building consent.

The deck area was converted to be used as the rest home’s dining room. The building is a building intended for public use and any building works undertaken required a building consent. A Certificate of Acceptance cannot be granted for the building works.

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

The defendant sold the business in late August 2007. The new owners were also 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 and are currently seeking a building consent to regularise the work. Council also referred the matter to the Ministry of Health who undertook an environmental audit on the property.

The defendant has pleaded not guilty. A hearing has been set down for 8 September 2008.

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

This matter is in relation to the unauthorised re-cladding in a Monotec exterior cladding system, of a minor household unit on the property. Council laid charges under the Building Act 2004 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.

Total fines of \$8750.00, plus costs of \$130.00 Court costs and \$226.00 solicitor's costs per defendant, were awarded by the Court. This was made up of the following:

Mr Bishop - Fined \$3750.00 and costs awarded;

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

Mr Kiff was sentenced on 1 August 2008 - Fined \$1000.00 and costs awarded.

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

Charges were laid under the RMA and Building Act 2004 in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. 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 been set down for sentencing on 24 October 2008.

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

This matter relates to breaches of the RMA and Building Act 2004. 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 2004 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; and
- Permit reasonable access by Council employees.

The Building Act 2004 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.

The following update has been provided after an appearance before the Judge on 24 April 2008:

Sonja Bury of Council has undertaken an inspection of the property. As at 17 April 2008, 4 cars remain including 1 truck wreck. The Judge has instructed Mr Gordan to remove the remaining wrecks.

Mr Gordan was to obtain a fire report. This has not been provided and a memorandum was filed with the Court accordingly. Mr Gordon did advise that he would provide the report by 5.00 pm, Tuesday 29 April 2008, however this was not done. Wednesday, 30 April 2008, the Court received a letter from Wormald, however this was inadequate as no assessment of the buildings' safety for ingress and egress had been done. Field Services are to follow up in relation to the dangerous building issues, and report back to the Crown.

An application for retrospective consent for earthworks has been lodged, and boundary adjustment application to address Council's concerns about the numbers of dwellings allowed on a lot. The boundary adjustment will address this, and looks likely to be granted.

Further reports are also required in relation to the contamination of the land.

Mr Gordan has also proposed an application for chalets to be built to house tenants on the property. The matter had a further Court date of 30 June 2008 for sentencing and we are awaiting a report from the Crown.

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

Charges have been laid under the Building Act 2004 for non-compliance with a notice to fix for work undertaken to re-clad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter was set down for 20 August 2007 for the defendant to plead. The defendant pleaded not-guilty.

The matter was set down for a one day hearing on 9 November with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November 2007, the Court had not allocated adequate time and considered that because Mr Brooky had not served summonses on his witnesses the Court ought to set the matter aside until 2008; particularly because Mr Brooky is a lay litigant. The Court part heard the matter on 19 June 2008 and we will be going back to finish the case on 22 October 2008.

(Changed) S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed. Mr Hosaini entered a guilty plea on 15 October 2007 with facts in dispute set for resolution between the parties by 28 April 2008. The facts appeared to have been resolved and Mr Hosaini was scheduled to be sentenced on 15 July 2008. However, at sentencing Mr Hosaini's solicitor advised the Court that there was in fact a dispute in facts. The Council and Mr Hosaini's solicitor are seeking to resolve the dispute and the matter is now set down for 30 September 2008.

Leaky Building Claims

(Changed) Claims statistics are as follows:

(a) Claims currently being handled are 32, comprising:

- High Court: 4
- District Court: 3
- WHRS/WHT 25

(b) Number of claims for Council as at 31 July 2008, which may include some building consents processed by building certifiers, was 338. This is the same as the number reported on 30 May 2008.

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

(d) One High Court claim relates to a property at 4 Keeling Road. This 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 \$1.7million 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 C - REPORT OF THE SUBCOMMITTEE

6 SWIMMING POOL EXEMPTION SUBCOMMITTEE

THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 24 JULY 2008

MATTERS CONSIDERED

A4-A8

The Swimming Pool Exemption 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 A4 to A8.

The Subcommittee Recommends:

That the Meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 24 July 2008, be received.

WW Flaunty, QSM, JP

CHAIRMAN



PART D - PUBLIC EXCLUDED MATTER

7 NEGOTIATIONS ON LOCAL GOVERNMENT (AUCKLAND) AMENDMENT ACT PLAN CHANGE APPEALS

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely Negotiations on Local Government (Auckland) Amendment Act Plan Change Appeals.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Negotiations on Local Government (Auckland) Amendment Act Plan Change Appeals	The withholding of information is necessary in order to: <ul style="list-style-type: none">• enable any local authority holding the information to carry on without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

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

- *The report contains information which if released could affect Council's negotiations.*

