



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF MEETING

# PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a meeting of the Planning and Regulatory Committee will be held on:-

**DATE:** Tuesday, 11 November 2008      **TIME:** 9.30 am  
**MEETING ROOM:** Council Chamber  
**VENUE:** Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to consider the business as set out herein and to take any necessary action connected therewith.

7 November 2008

Desiree Tukutama  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8815

### MEMBERSHIP:

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

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

(Quorum 5 members)

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(Meeting Room could be subject to change)

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 11 NOVEMBER 2008, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFLICTS OF INTEREST**

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



**4 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 7 October 2008

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

**Receive** the minutes of the meeting of the Planning and Regulatory Committee held on Tuesday, 7 October 2008, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 31 OCTOBER 2008)**

#### **GLOSSARY**

Planning and Regulatory Committee	(the Committee)
Rodney District Council	(RDC)
Waitakere City Council	(The Council)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Certificate of Acceptance	(COA)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Metropolitan Urban Limit	(MUL)
Carter Holt Harvey	(CHH)
Weathertight Homes Tribunal	(WHT)

#### **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.

#### **RECOMMENDATION**

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

**Receive** the Legal Update (As at 31 October 2008) report.

#### **COURT OF APPEAL**

**(Changed)** 1. **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 (CHH). CHH 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 CHH. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter is the resolution of costs. CHH has now directly contacted the Mayor's 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. CHH has not yet lodged a claim for costs and given the passage of time, a claim for costs now seems unlikely. This item will now be removed from the report.

**HIGH COURT**

**(New) 2. Waitakere City Council v Networth Developments Limited**

Waitakere City Council (the Council) has issued liquidation proceedings against Networth Developments Limited (Networth) for failing to comply with a statutory demand. Networth owes Council \$11,138.58 for unpaid consent application fees. The first call for this matter is on 19 December 2008.

**(Unchanged) 3. 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 Auckland Regional Council's) (ARC) to grant resource consent to a 15 lot subdivision and residential development on a non-notified basis at 2 properties which are situated back-to-back: 25 Kashmir Road and 47A Withers Road, Glen Eden; the properties are owned by 1 person and hereafter shall be referred to as 'the property'. The applicant, Ms Burgess, contends that in respect of the Council's decision there were adverse effects on her and the environment and therefore the resource consent ought to have been notified to permit her an opportunity to make submissions. The Council refutes that there were any adverse effects on Ms Burgess, her property or the environment and that the Council 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 452 metres squared. The property 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 2 day hearing in the week of 11 May 2009.

**(Changed) 4. Waitakere City Council v C P Brunel and the Cove Limited (December 2006)**

Council sought to acquire land under the Public Works Act 1981 (PWA) 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.

A costs Order has finally been issued. The Court ordered that costs in the Environment Court would lie where they fell, and the Council was awarded costs of \$10,000.00 in the High Court.

**(Unchanged) 5. C W Williams and others v Waitakere City Council (February 2006)**

The Council was served with 7 sets of proceedings under the PWA in the High Court claiming the Council breached its duty to offer back land on Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the PWA occurred prior to the offer back obligation coming into force and the PWA 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 s. 40 of the PWA. 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) 6. Mawhinney & 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 3 related appeals regarding purported applications for certificates of compliance and subdivision consents. The overall purpose of the application is to establish 77 dwellings on the subject site in the foothills environment. Mr Mawhinney has now filed lengthy submissions with the Court in support of his appeal. We are preparing submissions in reply. The matter has been set down for a 1 day hearing on 12 November 2008. Mr Mawhinney has been substituted as the first appellant in the proceedings (in the place of corporate entities which has been wound up or struck off), and will be personally liable for Council's costs in the event the appeal is unsuccessful.

**ENVIRONMENT COURT**

**(New) 7. Swanson Structure Plan Decisions (October 2008)**

The Council is waiting for 2 decisions on the draft Swanson Structure Plan decisions on whether to amend the policies for the Swanson Foothills in the District Plan, and on whether or not there should be a structure plan for the area. The Environment Court has issued a memorandum to the parties dated 13 October 2008. The memorandum advises that the drafting of the decision of the Court is 90% complete but due to the Court's commitments the decision will be delayed for approximately 2 months, and will likely be delivered by Christmas 2008.

**(Changed) 8. Community Waitakere Charitable Trust v Waitakere City Council (June 2008)**

This appeal opposes the 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. A notice of reply has been filed. A mediation date has been set for 13 November 2008.

**(Unchanged) 9. 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 hours of operation.

Mr Hsu has appealed the 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 s. 274 party seeking additional conditions of consent.

An evidence exchange timetable has been agreed and evidence is in the process of being exchanged. The matter is set down for a hearing in the week of 17 November 2008.

**(Unchanged) 10. Protect Piha Heritage Society Incorporated v Waitakere City Council and Auckland Regional Council Preserve Piha Limited v Waitakere City Council (March 2008)**

Protect Piha Heritage Society Incorporated (the appellant) has appealed the joint decision of the Council and the ARC to grant resource consent for the establishment of a café at Piha in a residential environment at 20 Seaview Road, Piha (the property). 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 the resource consent refused. In the alternative, the appellant would like: the consent to lapse in 2012 (and if unexercised for the consent to lapse in 2009); an archaeological report to be commissioned on the heritage status of the old post office that occupies the site; compliance conditions to ensure noise conditions are complied with; the café to operate 10.00 am to 5.00 pm, Monday to Saturday only and be closed on Sundays and public holidays; inside seating for only 35 persons be provided and no seating outside; no liquor to be consumed on site; no takeaways to be sold; no music to be played outside; and no odour to be emitted from the property at any time.

Preserve Piha Limited, (the applicant) who was the applicant for the consent has also appealed the conditions imposed on the consent by the Council. 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 12 s. 274 parties. They all support the granting of consent. The 2 s. 274 parties that opposed the grant of consent have withdrawn.

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. The Council and the applicant have exchanged evidence and the parties have almost completed exchange of rebuttal evidence. The matter has been set down for a hearing in the week of 10 November 2008.

**(Changed) 11. M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)**

This was an appeal by the applicants M and C Brickell, W Ashton and L Schwab under s. 121 of the Resource Management Act 1991 (RMA) against a decision of the Council to refuse to grant resource consent for a 7-lot subdivision at 54 to 56 Christian Road, Swanson. The Waitakere Ranges Protection Society Incorporated (WRPS Inc.) lodged applications with the Court in support of the Council as s. 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing was resumed on 23 May 2007. This was in order that the Court could hear the evidence of a witness for a s. 274 party that was not available during the March 2008 hearing.

The Court has now delivered its decision. The appeal was disallowed. Costs were reserved. The Council has submitted its costs application.

**(Unchanged) 12. Waitakere City Council v Rodney District Council (April 2007)**

An appeal and s. 274 notices were filed by the Council regarding decisions by Rodney District Council (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.

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

The Council's officers' have attended workshops and mediations on matters in which the Council has a s. 274 interest, and a number of Consent Orders have been made following these mediations in order to settle the appeal point. No orders for costs have been made. A small number of further mediations are scheduled to resolve those matters still outstanding.

**(Unchanged) 13. 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 ARC's decision to grant resource consents to the 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**

**(Changed) 14. London & Greenwich Trading Company Limited & Ors v Waitakere City Council (August 2008)**

This is a new proceeding lodged in the Environment Court by companies associated with Mr Mawhinney on 25 August 2008. It seeks to revoke a determination made by Council to defer 2 subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application has been made to the Court under s. 91(3) of the RMA. The applicant companies dispute the need for the further regional consents. Notice of opposition has been filed and a timetable for exchange of submissions and evidence put forward. We have filed an affidavit explaining the reasons for the deferral and Mr Mawhinney's reply is due by 31 October 2008. Council then has a further 4 weeks to file its evidence in reply. The matter is then to be referred to Judge Bollard for consideration.

**(Changed) 15. Perceptus Limited v Waitakere City Council (January 2008)**

These proceedings involve Mr Mawhinney seeking an enforcement order under s. 314 of the RMA directing the Council to give public notice on its decision to reserve control over "roads" under the subdivision rules. The Council amended the subdivision rules in 2001, and it is now opposing the application on substantive and procedural grounds. Evidence from Mr Mawhinney is now very overdue and is being followed up.

- (Unchanged)** 16. **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 3 appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under s. 358 of the RMA declining subdivision consents and certificates of compliance. The 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 which has sought costs from the unsuccessful appellants. A decision is awaited.

- (Unchanged)** 17. **Waitakere Resource Consents Limited v Waitakere City Council (December 2005)**

This is an appeal against a refusal to issue a certificate of compliance under s. 139 of the RMA. In essence, the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

The Council's strike out application was heard before Judge Whiting and Commissioner McConally on 6 and 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 by the Environment Court. The Council has also been granted costs. An application seeking costs has been lodged with the Court and a decision is awaited.

- (Unchanged)** 18. **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 (RMA 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 the Abacus case can be recommended.

### **Plan Change Hearings**

- (Changed)** 19. **Local Government (Auckland) Amendment Act Plan Change Appeals (September 2007)**

*A1-A3* A summary of appeals against Plan Changes 13 to 18 is set out in Annexure 1 at pages A1 to A3. The summary identifies the appellants and the plan changes appealed. There are currently 53 appeals lodged by 27 parties. Further reports will be provided as time goes by.

In addition to appeals on the Council's Plan Changes 13 to 18, the Council has filed its own appeals regarding some decisions of the ARC in respect of Change 6 to the Auckland Regional Policy Statement (ARPS). The Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with the 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 reporting that each Council had summarised the points of relief sought on each appeal and that the appellants and all s. 274 parties would be invited to comment on those summaries. As a result, on the same day, the Council wrote to all appellants and s. 274 parties who had appealed the Council's plan changes, asking them to review the manner in which the appeals had been summarised and to provide feedback to the Council by 18 April 2008. The appellants and s. 274 parties were informed that the Auckland territorial local authorities would then make any relevant amendments and report to the Court after 2 May 2008.

The appeals have been separated into topics, with 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 large format retail appellants, which are concerned with 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.

The Council communicated the position it has maintained since the appeals commenced which is 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 reported back to the Court again on 3 November 2008 that it had a draft consent order with the appellants in respect of the topic group MUL Appeal and that there was a possibility of settlement, if an agreement could be reached with the s. 274 parties. The Council proposed, and the Court has accepted, that an evidence exchange timetable is premature at this stage and that 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. The Council will report back to the Court on or before 19 December 2008.

In respect of all other appeals, the topics classified and referred to above as Commercial Appeals has been set down for a hearing, if it is necessary, in the early part of the second quarter of 2009. The Councils jointly were required to report back to the Court on 3 November 2008 as to progress made in resolving these appeals. This report has been provided, advising that the Councils had met with the appellants but that further time was required to work through the issues around the Regional Policy Statement. The Councils will report back to the Court on progress on these matters on or before 19 December 2008.

In respect of all other appeals to the Plan Changes, the Council reported back to the Court on 3 November 2008 that most appellants had been involved in discussions with the Council but further time was required to progress the resolution of these appeals and at some stage the parties may seek formal court assisted mediation and/or a hearing. The Council will provide the Court with a further progress report on or before 19 December 2008.

### **DISTRICT COURT**

**(New)** 20. **Abdul Hafeez – 32 Kauri Point Road, Laingholm (September 2008)**

Mr Hafeez has been charged with 2 offences under the Building Act 2004 (the Building Act). The first involves allegedly unauthorised building works consisting of the construction of two large timber decks without consent, and not in accordance with the Building Code. The second offence is that Mr Hafeez allegedly failed to comply with the Council's Notice to Fix. The informant laid informations on 26 September 2008 and the matter has a first call on 3 November 2008.

Mr Hafeez has previously been convicted under the RMA for contraventions on a different property. The Council's officers' are also investigating further breaches of the RMA on the current property. Mr Hafeez did not appear in Court. The matter has been adjourned to 1 December 2008.

**(New)** 21. **NZ Yachting Developments Limited & Ors – Buckley Avenue, Hobsonville (October 2008)**

This matter relates to the partial construction of a commercial building and the conversion of an aircraft hanger to a boat building facility by the above parties at the Hobsonville Airbase, all undertaken without Building Consent.

Informations have been laid in relation to the works which are alleged to be an offence pursuant to s. 40 of the Building Act.

We are waiting for an indication from the court of the first call date on the matter.

**(Changed)** 22. **GD and DM Knight – 834 West Coast Road, Oratia (September 2008)**

This matter relates to the alleged conversion of a garage and storage unit on the property to a minor household unit complete with bathroom facilities and a kitchen. No building consent was sought or granted for the conversion. Further, the owners had not sought resource consent for the minor household unit and the zoning does not allow for minor household units at this location.

The Council had previously advised the owners that the garage/storage shed was not to be used as a minor household unit and the owner's agent at the time of the previous building consent, Totalspan, had agreed in writing to this requirement.

The Council laid informations against the trustees of the trust which is the registered proprietor of the property for the alleged unauthorised building works under s. 40 of the Building Act and for breaches of the district of the District Plan. The matter has a first call of 3 November 2008.

The Knight's did not appear in Court. The matter has been transferred to the Auckland District Court to be heard by a Judge with an Environment Court warrant on 23 January 2009.

**(Changed)** 23. **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.

The matter had a first call of 2 September 2008; however an adjournment by the defendants' has been sought and granted and the matter was again called on 20 October 2008.

The company pleaded guilty and sentencing was set down for 1 December 2008.

**(Changed)** 24. **WA Cullen – 4 Kauri Point Road, Laingholm (April 2008)**

This prosecution concerned alleged unauthorised building work on the property including: internal alterations, the construction of 2 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. Mr Cullen pleaded guilty and sentencing took place on 16 October 2008. Mr Cullen was convicted and fined \$3,000.00 and the usual costs of \$130.00 Court costs, and \$226.00 solicitor's costs.

**(Unchanged) 25. M and S Naicker – 12 Cushla Place, Massey (April 2008)**

This matter relates to unauthorised building works allegedly undertaken by the Naickers that included: the enclosure of a basement under a conservatory to form a 2 bedroom unit and bathroom for use by the defendants' extended family. 1 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 were withdrawn.

**(Changed) 26. HQH Limited & Others – 193 McLeod Road, Henderson (Riverglade Parkways) (March 2008)**

Riverglade Parkways is a subdivision on McLeod Road, Henderson where the 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 entered guilty pleas on 2 September 2008. The matters have been set down for sentencing on 5 November 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.

Jamieson Foundations Limited, one of the contractors, pleaded guilty and was sentenced on 24 October 2008. A discharge without conviction pursuant to s. 106 of the Sentencing Act 2002 was sought and granted (due to the low culpability of the defendant and other mitigating factors), however \$7,000.00 in costs was granted to the Council.

The engineers, Wilton Joubert Limited, and its 2 directors were also charged and pleaded not-guilty to 14 charges each. The matter was heard on 28 and 29 October 2008 where the Court found all defendants guilty on all 14 charges. Convictions were entered and sentencing has been set down for 8 December 2008.

**(Changed) 27. 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 was granted retrospectively to 5 May 2008, the date the guilty plea was entered, and signed by Judge McElrea on 15 October 2008.

**(Unchanged) 28. 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 7 November 2008.

**(Changed) 29. 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.

The defendant pleaded guilty on 9 October 2008, prior to the commencement of the defended hearing. Sentencing took place on 10 October 2008 with the Judge reserving his decision. The defendant was given an opportunity to present further evidence to support the factors of mitigation addressed at the hearing, and will deliver his decision on 31 October 2008.

**(Unchanged) 30. 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 under s. 40 of the Building Act. A Certificate of Acceptance (“COA”) cannot be granted for the building works. The Council referred the matter to the Ministry of Health who undertook an environmental audit on the property and granted certification that excluded the deck/dining room until the Council confirmed that the works had been undertaken in accordance with a building consent, and a code compliance certificate for the works could be issued.

The 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 the Council’s instructions and a building consent to demolish the new parts of the deck and conservatory and reinstate in accordance with a building consent was granted on 11 August 2008.

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

The defendant appeared on 8 September 2008; however the Judge “recommended” that the matter be adjourned to a new fixture date due to several police fixtures on the same day. The parties were invited to either seek a new date for a hearing, or attempt to resolve the issues with a view to the informant indicating what quantum of fine would be sought. The defendant then pleaded guilty to 2 charges; those being under s. 40 (unauthorised building works) and s. 363 (failure to cease using the premises for public use after unauthorised building works were discovered) of the Building Act. The informant for its part, withdrew a third charge under s. 168 of the Building Act (failure to comply with council’s notice to fix), and the matter was set down for sentencing on 5 November 2008.

**(Changed)** 31. **P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)**

Charges were laid under the RMA and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 7 buildings on the property into sleep outs. The other charges of contraventions of the RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court and an out of court solution is being pursued in respect of issues under the RMA. The defendant applied for a determination from the Department of Building and Housing (DBH) in respect of the Council’s decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH appointed an investigator to look into this matter. That report has now been received by the Council along with a draft determination. The final determination accepts that there are 5 unauthorised sleep outs on the property, but that if the property owners did undertake certain works then 4 of the 5 could be building code compliant. Due to this finding and the prospect of the majority of buildings being made code compliant the property owner who is prosecuted sought from the Court and was granted time to undertake the requisite work in order to receive a lesser sentence. The matter is now due for sentencing on 19 February 2009.

**(Changed)** 32. **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 it is an indictable matter, and was scheduled to proceed on 15 June 2007. As a judge was not available, it was unable to proceed and was set down for a jury trial on 18 February 2008.

Mr Gordon 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 was adjourned to 30 June 2008 (then to 24 October 2008) to allow Mr Gordon to take steps to undertake works in accordance with Council’s requirements and an agreement as to sentence indication signed by the parties on 28 February 2008.

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 prosecution was also adjourned and will be dealt with at the sentencing.

The Council is required to undertake a further inspection of the property to ascertain compliance with the above matters. To date Mr Gordon has refused entry to the property, and has also refused to make any application for resource consent. A search warrant will be executed. Further to this, a Dangerous Building Notice has been issued pursuant to s.124 of the Building Act. This is because the dwelling is considered by the New Zealand Fire Service to be dangerous. Mr Gordon wishes to oppose the notice, and he has been advised to contact DBH if he wishes to seek a determination of the notice.

Meredith Connell advises that Mr Gordon's Amicus, Peter Kaye, will not be available at the sentencing. Sentencing was adjourned to 12 December 2008.

**(Changed) 33. R Brooky – 18 Silverstone Place, Henderson (April 2007)**

Charges were 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 further set down for 20 August 2007 for the defendant to plead. The defendant pleaded not-guilty.

The Court part-heard the matter on 19 June 2008. Although a new date was allocated for 22 October 2008 the Court had erred and not served the notes of evidence for the parties to review and respond, and therefore the Court at its own discretion adjourned the matter to 5 March 2009, the next available full date for the matter to be heard. The whole day is required because Mr Brooky is a lay litigant.

**(Changed) 34. S Hosaini - 71 Rosier Road, Glen Eden (May 2007)**

Charges were laid under the Building Act relating to undertaking building work without consent. The works involved the excavation of the basement to create a new area underneath the house to create 4 new rooms separated off by walls and included: new concrete slab; new exterior cladding; construction of block retaining wall installation of waste water drainage system; creation of bathroom facilities; as well as 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 a dispute on the facts. The Council and Mr Hosaini's solicitor are seeking to resolve the dispute. A new date has yet to be allocated.

**(Changed)** 35. **Leaky Building Claims**

Individual claims currently being handled as at 31 October 2008 are 21:

- High Court: 6 (including 3 multi unit claims)
- District Court: 2
- Weathertight Home Resolution Service (WHRS) 8 (including 1 multi unit)
- Weathertight Homes Tribunal (WHT) 5 (including 2 multi units claims – 1 of which is for only 2 units)

Existing large claims being handled since August 2008 are:

- The Council has been served with High Court proceedings on behalf of 58 unit owners in multi unit development at Westward Ho. The total amount claimed is in the order of \$11.6 million. The developer of this block was associated with Dorchester Finance. The other parties sued at this stage are BH Heron Ltd, and the architect Brent Hulena. The property at Westward Ho is one of the 8 multi unit developments referred to above. Claims in respect of that development registered with the WHRS total 120. While researching the files related to the current proceedings we have discovered that the subsequent stages of this development may have been inspected by, a building certifier. This may significantly alter the Council's risk profile in respect of claims by the owners of the other units in this development. RiskPool appears to have allocated this claim to the 2006/2007 fund year which is the fund year in respect of which there is a multi unit indemnity sub-limit of \$500,000. Although this claim is lodged in the High Court the applicants first lodged claims in the WHRS in 2005 so that there is an argument that this claim should be allocated to the 2005/2006 fund year (which has no indemnity sub-limit).
- In June 2008 we became aware of a multi unit claim in respect of the units known as Clearwater Cove Apartments at West Park Marina through the WHT. More detail of that claim has now emerged. The claim has been brought by the body corporate and by 14 of the 18 unit owners against the Council as local authority, and Fletcher Construction Ltd as builder. The claim is for an amount just a little under \$2 million. There are several curious features about this claim. Of the 14 owners suing, a substantial majority of these are interests associated with the Livi Family Trust. ("livi" is "lvil" spelt backwards. The settler of the trust was Mr Brent lvil. The majority of the claimants appear to have interests associated with the trust and/or Mr lvil.) The Livi Family Trust was the purchaser of the land from the Council and the developer of the complex. Fletcher Construction Ltd was engaged to build the units. A dispute arose on completion between the Livi Family Trust and Fletcher Construction Ltd which was settled. Fletcher Construction Ltd is now arguing that any claim against it is statute barred. If that argument succeeds the Council will be facing the claim alone. There are several technical defences available to the Council. (Some of the claimants appear to have purchased the units knowing that there were problems). This claim (at least to the extent that it is brought by interests associated with the Livi Family Trust) will be vigorously defended by the Council's insurers (Riskpool has accepted that this claim falls into the 2005/2006 fund year).

Three claims settled during October:

- 31 West Lynn Drive, Titirangi was settled at mediation. Two Respondents attended mediation, inclusive of the Council. It was an unusual case in that a Director of the building company bought the property back from the owner.
- 20 Piriti Drive, Te Atatu was settled prior to an adjudication hearing. The Council contributed \$50,000 to settlement.
- 38 Danica Esplanade, Te Atatu was settled at mediation on 13 October 2008. Council and Waitakere Properties Ltd each contributed \$15,000 to settlement.

Notification of 2 potential claims have been received this month:

- 69 San Valentino Drive. Report accepted by WHRS on 14 October 2008.
- 16 Beach Rd, Te Atatu. Report accepted by WHRS on 15 October 2008. It appears that a building inspector may have been involved and that Council may have no liability.

**Report prepared by:** Mary Davenport, Contract Solicitor.



## 6 **ENFORCEMENT AND PROSECUTION PROCESSES**

### **GLOSSARY**

Alternatives to Prosecution	(Alternatives Policy)
Building Act 2004	(BA)
Crown Law Office Prosecution Guidelines	(CLO Guidelines)
Local Government Act 2002	(LGA 02)
Meredith Connell Prosecution Procedures Review	(Meredith Connell PPR)
Draft Protocols for Site Visits for Field Staff	(Site Visits Protocols)
Significant Breaches Report	(SBR)
Resource Management Act 1991	(RMA)
Enforcement and Prosecution Procedures Policy:	
Resource Management Act and Building	(Prosecutions Policy)

### **EXECUTIVE SUMMARY**

The purpose of this report is to inform Councillors as to the nature of the Council's prosecution processes, in response to a request for a briefing on this issue.

This report sets out the manner in which prosecutions are initiated by the Council. It details the manner in which a decision to prosecute is made, what type of offences attract a recommendation for prosecution, the evidential threshold that must be reached prior to a prosecution being recommended, the delegations to Field Services and other departments (including Legal Services) relevant to prosecutions, and the handling of prosecution files.

This report is not concerned with processes around the issue of infringement offences for such matters as parking or littering.

The manner in which the Council's enforcement and prosecution processes work is generally sound and in compliance with Council's legal and statutory obligations, although some inconsistency in approach has been detected as a result of a cursory review undertaken while preparing this report. However the process relies on policies which in some cases have not been reviewed since 1999 and would therefore benefit from review and updating.

### **RECOMMENDATIONS**

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

1. **Receive** the Enforcement and Prosecution Processes report.
2. **Direct** the Chief Executive Officer to undertake a review of Council's enforcement and prosecution policies with a view to ensuring that they are relevant and accurate and consistently applied across the Council and report the outcome of that review back to the Planning and Regulatory Committee at the meeting to be held in March 2009.

### **BACKGROUND**

1. Territorial authorities have responsibility for ensuring compliance with various requirements under statutes, regulations and bylaws. There are 131 statutes which require compliance activity, but not all of those require regular action, if at all. The more common statutory provisions that the Council enforces are:
  - Resource Management Act 1991 (RMA) and the District Plan;
  - Building Act 2004 (BA);
  - Local Government Act 1974 including bylaws;
  - Local Government Act 2002 (LGA 02);
  - Dog Control Act 1996;
  - Fencing of Swimming Pools Act 1987;
  - Litter Act 1979;
  - Health Act 1956;
  - Land Transport Act 1998;
  - Reserves Act 1977;
  - Food Act 1981;
  - Food Hygiene Regulations 1974; and
  - Sale of Liquor Act 1989.
2. Most of the offences which the Council is required to enforce are strict liability offences. Issues such as the intention to commit an offence, or the requirement to prove a guilty mind (*mens rea*), are not relevant to the investigation of, prosecution of, or conviction for, a strict liability offence. Usually only 3 key issues need to be established:
  - Has an offence has been committed?
  - Who committed the offence?
  - Has enough evidence been lawfully collected to prove both of these matters?
3. Sometimes there may be a statutory defence available e.g. under s. 388 of the BA or s. 341 of the RMA. During the investigation of the offence a preliminary assessment will be made as to the availability of any such defence. If it is abundantly clear that a statutory defence is available the enforcement file will be closed at that point and although attempts to address remediation or other appropriate mitigation may continue. Otherwise the prosecution process will proceed, leaving it to the defendant to raise the defence and persuade the judge that the defence is available.

4. Once the 3 points above have been established the prosecution process can commence. This step is not inevitable since the commencement of any prosecution will be subject to the exercise of prosecutorial discretion, which will be discussed later in this report.
5. Although enforcement proceedings can take a variety of forms, the steps taken occur at the instigation of Council officers acting with delegated authority. That is because of the requirements of s. 39 of the LGA 02. That section is concerned with the fundamental governance principles of local government and requires, in s. 39(c) of the LGA 02, that “a local authority should ensure that, so far as is practicable, responsibility and processes for decision making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities”.
6. In a large and well resourced local authority such as Waitakere it is possible to have a clear separation between the regulatory arm of the Council and all other arms of Council, including the political arm. The purpose for that separation is clear: it removes any potential to infer that political expediency might be able to influence a prosecution outcome. This separation also provides a measure of protection to elected members who might otherwise become the subject of unnecessary harassment from ratepayers demanding that the member intervene in the enforcement process.
7. Decisions made by officers under delegated authority are susceptible to review, by way of judicial review, in the same way as any other Council decision. The decisions must be made with regard to usual decision-making principles under the LGA 02, having due regard to any relevant Council policies, statutory requirements and best prosecutorial practice.
8. In relation to this last point, about best practice, it is noted that there is an increasing frequency of Acts of Parliament which expressly direct the bodies with enforcement responsibility to ensure that enforcement does occur. An example of this is s. 10 of the Fencing of Swimming Pools Act 1987 which requires that “every territorial authority shall take all reasonable steps to ensure that this Act is complied with within its district.” Such language clearly creates a statutory obligation to ensure compliance. In some circumstances a breach of statutory duty can give rise to a claim in damages. In 2002 there was a well publicised drowning of an infant in a swimming pool in Parnell. Auckland City Council was sued and made an out-of-court settlement for an undisclosed (but reputed to be substantial) sum for breaching its statutory duty. Underlying any prosecution policy is the fundamental requirement to carefully balance:
  - the need to protect the health and safety of the public (which is usually the purpose of the statutory offence);
  - the protection of persons who are alleged to have committed offences from unwarranted investigation and prosecution; and
  - the protection of the interests of the ratepayer (since it is the ratepayer who has ultimate financial responsibility to fund the cost of the enforcement process over and above the value of any fines received).
9. The Council was one of the first local authorities in New Zealand to establish a dedicated enforcement team (Field Services), which occurred in 1988. Since that time the Field Services team has had an impeccable record of successful prosecutions and has been involved in several high profile prosecution cases which, in some cases following appeal to the High Court, has resulted in the establishment of precedents which are still used today as a basis for establishing best prosecution practice or appropriate levels of penalties for offences.

## DECISION MAKING

### Current Policies

A4-A78

10. The policies and procedures which currently influence prosecution practice in the Council are as follows:
  - The Crown Law Office Prosecution Guidelines (CLO Guidelines), a copy of which is attached at pages A4 to A21. Aspects of these guidelines have been built into the council's own policies but in a case where the answer to an issue from the Council's policies is unclear or equivocal, recourse is had to the CLO Guidelines for assistance
  - A report to the Environmental Management Committee in 1999 headed Enforcement and Prosecution Procedures Policy: Resource Management Act and Building (Prosecutions Policy), a copy of which is attached at pages A22 to A30. Prosecution practice has been adjusted since that time to reflect changes in the regulatory environment but has not been reviewed and formally revised since that date.
  - A report to the Environmental Management Committee in 2002 headed Alternatives to Prosecution (Alternatives Policy), a copy of which is attached at pages A31 to A34. The Alternatives Policy is a key document in the suite of Council policies relating to prosecution procedures. It sets out the terms upon which Council staff will consider "diversion" as an alternative to prosecution.
  - A report commissioned by the Chief Executive Officer in December 2003 from Meredith Connell (the Crown Solicitors for Auckland), reviewing the Council's prosecution procedures (Meredith Connell PPR), a copy of which is attached at pages A35 to A69. The majority of the recommendations at pages 30 to 32 of that report have been implemented. The Council's prosecutor who was previously located in the Field Services team relocated to the Legal Services team in June 2006 with the move to the new Civic building, in accordance with the recommendation at page 30 of the report. (There was inadequate space at Moselle Avenue to accommodate that change prior to that date.)
  - The Field Services Significant Breaches Report (SBR), which was revised to reflect the recommendations in the Meredith Connell PPR, a copy of which is attached at pages A70 to A73.
  - The Draft Protocols for Site Visits for Field Staff (Site Visits Protocols), as recorded in a memorandum dated 21 August 2006, a copy of which is attached at pages A74 to A78, were drafted. following a court decision which clarified the law in relation to such matters.
  
11. The CLO Guidelines, the Prosecution Policy, the Alternatives Policy and the Site Visits Protocols are generic in nature and apply to all of the Council's prosecution activities. The Prosecutions Policy and the SBR were written in the context of the RMA and the BA activities of the Field Services team. The other prosecution arms of Council (health, litter and dog control) do not appear to have developed similar rigour around their exercise of prosecutorial discretion. This is one matter which will need to be addressed in the proposed review. However, it is noted that generally speaking the high profile prosecutions are under the RMA and the BA so that additional rigour is justified in those areas in any event. The other matters to be addressed in the proposed review are the updating of these documents to reflect any changes in the law and the desirability of consolidation into a single enforcement and Prosecutions Policy.

### Prosecution Procedure

12. When a complaint is received, or a potential offence is detected by the Council through its own activities, the matter is recorded and referred to the relevant operational unit with responsibility for enforcement of the particular issue. (In the narrative which follows "Field Services" is used as a generic term referring to the relevant operational arm). The complaint is then investigated and the evidence is gathered (taking particular care to ensure that relevant requirements in that regard observed). In the course of investigation the persons suspected of committing the offence may be interviewed. If this occurs appropriate warnings are required to be given. Inevitably any suggestion that Council is investigating the prosecution of an offence which may carry the risk of the fine and/or imprisonment will cause stress. Field Services staff endeavour to conduct their investigations as sensitively as possible but the nature of the work carries with it a potential for complaint.
13. Once the investigation is complete, if the investigating officer is satisfied that there is a sufficient factual basis that an offence has been committed by a person identified during the investigation, which is supported by adequate evidence lawfully obtained, a SBR will be completed. The steps to this point will be completed exclusively by field staff. The involvement of the Field Services manager, or members of the Legal Services team, in the investigation should be kept to a minimum so that those officers are separated from the investigation stage of the enforcement process and do not end up having to become witnesses in the prosecution which might follow. It is however usual that specialist advice will be sought in cases of difficulty around the sufficiency of the evidence gathered to support the charge and/or in relation to the nature of the charge itself.
14. The SBR is a document which assists the investigating officer to exercise prosecutorial discretion and to weigh the public interest criteria which drive the proper exercise of that discretion. The exercise of this discretion is not a matter for the prosecutor. What is required is a consistent and transparent exercise of discretion in a manner which complies with the Council's statutory obligations in relation to the prosecution of offences and the Council's (Elected Members) broad policy directions in that regard (which cannot be inconsistent with those statutory obligations). Once the investigating officer has made a decision and completed the significant breaches report the matter is discussed with the Field Services manager, as the officer with delegated authority to authorise commencement of prosecution. This exercise will always involve a consideration of the suitability of the case for "diversion" under the Alternatives Policy.
15. Once the decision to prosecute has been made the file is referred to the prosecutor (in the Legal Services team) who will then review the file, review the evidence, confirm that the documents comply with procedures (e.g. that there is a completed SBR on the file signed by the Manager: Field Services) and confirm that prosecution is not clearly precluded by the existence of a statutory defence. The prosecutor will then draft the information, return it to the investigating officer for signature and arrange filing with the court for service.
16. As will be clear from this report the Council's prosecution process has been the subject of periodic review over the last decade, has been refined to a high degree, contains a number of suitable checks and balances. In general it operates in a very efficient, balanced and sensitive manner.

17. There will always be the odd case where a defendant believes that the officer in charge of the investigation has acted unfairly, the evidence is inadequate, prosecutorial discretion has been wrongly exercised and that “diversion” under the Alternatives Policy procedure should therefore be made available or that the particular offence is not sufficiently “important” to warrant prosecution. When complaints of that nature are received they can be referred either to the Issues Resolution Manager or to the review panel established in accordance with the recommendation 9 at page 32 of the Meredith Connell PPR. Although at first instance they are received by other areas of Council. That panel consists of (now) the Director: City Services, the Manager Assurance Services and the Legal Services Manager. The review panel has never had occasion to meet since its establishment in 2004.
18. If following a review of a case the review panel feels that the particular prosecution should be withdrawn then that action can be taken by the Director: City Services acting under his own delegated authority or he can direct the Field Services manager to do so. The other circumstances where a prosecution might be withdrawn arise when, following the laying of the information, new circumstances arise or new information becomes available which make continuing with the prosecution inappropriate. In that case, notwithstanding that the prosecutor has delegated authority to withdraw the charge (and on a rare occasion may need to exercise that authority in Court), it would be usual for the prosecutor to refer the matter to the Field Services Manager to make the decision to withdraw the charge. That action represents an exercise of prosecutorial discretion and, as noted above, there is a need for consistency of approach across all of the Council’s prosecution activities.

#### **Review of Existing Policies and Procedures**

19. The report is for the information of Elected Members and the only decision required to be taken requests a more detailed review of existing policies and procedures. The Council has obligations to investigate and enforce compliance with statutory obligations. That requirement means that there are no options available except to ensure that Council meets its statutory obligations and has appropriate policies and procedures to enable that to occur.

#### **STRATEGIC CONTEXT**

20. The strategic context for this report is the Council’s strategic platforms to ensure that Waitakere is a healthy and safe place and environmentally sustainable. The substantial majority of the statutory provisions which the Council is required to enforce are concerned with the health and safety of the public or the protection of the environment.

#### **CONSULTATION**

21. No external consultation is required. The review proposed by this report will require internal consultation with those units which have a role in the investigation and prosecution of offences.

#### **RESOURCES**

22. There are no resource issues arising out of this report. The proposed review can be undertaken within existing staff complement and workloads.

## IMPLEMENTATION ISSUES

23. There may be some implementation issues as a consequence of the review. However, those issues will be limited to the introduction of any new policy and associated staff training (if any) as a consequence of the adoption of a new policy. Once again it is anticipated that implementation issues will be able to be accommodated within existing staff complement and workloads.

**Report prepared by:** Denis Sheard, Legal Services Manager and Setareh Masoud-Ansari, Team Leader Legal: Regulatory.



## 7 DOG CONTROL ACT 1996, SECTION 10A - ANNUAL REPORT FOR THE YEAR ENDED 30 JUNE 2008

### GLOSSARY

Dog Control Act 1996 (the Act)

### EXECUTIVE SUMMARY

The purpose of this report is to seek approval from the Planning and Regulatory Committee to forward the Dog Control Act 1996, Section 10A - Annual Report for the year ended 30 June 2008 to the Department of Internal Affairs, and for public notice of the same to be published in accordance with Section 10A(3) of the Dog Control Act 1996 (the Act).

### RECOMMENDATIONS

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

1. **Receive** the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2008 report.
2. **Agree** that the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2008 be approved and sent to the Department of Internal Affairs within one month following the Planning and Regulatory Committee's meeting, 11 November 2008.
3. **Agree** that a public notice be issued advising that the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2008 report has been approved and is available for inspection at Animal Welfare, Libraries and the public counter at Waitakere Central in accordance with Section 10A(3) of the Dog Control Act 1996.

### BACKGROUND

1. The Act was amended in 2003 to require territorial authorities to report to the Department of Internal Affairs on the administration of its dog control policy and practices.

## DECISION MAKING

### Issues

2. The Annual Report on the administration of Waitakere's Dog Control Policy and dog control practices meets the requirements of Section 10A of the Act.
3. The registration of all dogs is central to good dog control. It is the owners of unregistered dogs who are more likely to trigger a requirement for the services of dog control whether it be a dog not under proper control, a dog attacking livestock, or a dog attacking a person. Random street checks are currently finding up to 15% of dogs in some streets are unknown and therefore unregistered. Enforcement action is followed up against all owners of the unregistered dogs.
4. As at the 30 June 2008 there were 13,603 registered dogs on the National Dog Database, an increase of 60 dogs over 12 months.
5. The field services roster provides additional field coverage from 4.00 pm to midnight and weekends from 8.00 am to 4.00 pm responding to all calls, and from midnight to 8 am responding to priority calls within 60 minutes. Previously only priority calls were attended after hours. General patrols are carried out during the extended hours and weekends.

### STRATEGIC CONTEXT

6. Dog control policy and practices is directly aligned with Council's strategic priority of a Safe City and Council's strategic platform of Strong Communities supporting the health and wellbeing of the City's residents.

### CONSULTATION

7. There is no requirement in the Act to consult the community prior to this report being approved. However the Act requires that a copy of this report be made available to the community within one month of the Planning and Regulatory Committee approving its content.

### RESOURCES

8. There are no resource issues arising from this report.

### IMPLEMENTATION ISSUES

A79-A86

9. Upon approval of the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2008 report (as attached at pages A79 to A86) a copy will be forwarded to the Department of Internal Affairs, a public notice advising approval of the report will be actioned and copies of the report made available for inspection at Animal Welfare, Libraries and the public counter.

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



## PART C - DISTRICT PLAN/STRUCTURE PLANS

### 8 PROPOSED PLAN CHANGE 29: COASTAL AMENITY STRIP

#### **GLOSSARY**

Resource Management Act 1991	(RMA)
Waitakere Ranges Heritage Area Act 2008	(WRHAA)
Local Area Plans	(LAPs)
Waitakere City Council	(WCC)
Waitakere City Council District Plan	(WCCDP)
New Zealand Coastal Policy Statement	(NZCPS)
Auckland Regional Policy Statement	(ARPS)
Planning and Regulatory Committee	(the Committee)
Plan Change 29	(Plan Change)
Long Term Council	
Community Plan and Annual Plan Committee	(LTCCP)

#### **EXECUTIVE SUMMARY**

This report seeks to gain approval from the Planning and Regulatory Committee (the Committee) for the notification of the proposed Plan Change 29 (Plan Change). The Plan Change seeks to assist with the preservation of coastal amenity through the enhanced protection of vegetation in the context of building location.

It is considered that the proposed amendments to the Waitakere City Council District Plan (WCCDP) controls for the locating of buildings in relation to vegetation, and vegetation alteration, will have a positive contribution to the preservation of amenity, particularly in the face of development pressure.

The proposed range of controls is similar to other controls in coastal locations of the region.

A87-A88

This report is in response to a range of work and investigation outlined in a report to the Committee in 2005 (the range of work is attached at pages A87 to A88, and a full copy of the report can be supplied on request). It is considered that the other matters raised within that report are more appropriately dealt with within the context of a WCCDP review or alternatively the Local Area Plans (LAPs) process that can occur under the Waitakere Ranges Heritage Area Act 2008 (WRHAA).

It is considered that the rules of this proposed Plan Change will meet the objectives of the WRHAA, and as such will not compromise any future work that may arise out of the LAPs process or the future WCCDP review.

The scope of proposed the Plan Change is limited to the West Coast, and the non-urbanised parts of the Manukau Coast. It is intended that further work will be undertaken to determine if the remainder of the Waitakere City Council (WCC) coastal areas would benefit from the introduction of the same or similar control.

#### **RECOMMENDATIONS**

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

1. **Receive** the Proposed Plan Change 29: Coastal Amenity Strip report.
2. **Agree** that Proposed Plan Change 29: Coastal Amenity Strip be publicly notified.

## BACKGROUND

A87-A88

1. The abovementioned 2005 report to the Planning and Regulatory Committee identified that the recent upsurge in built development had resulted in Piha taking on a more urbanised appearance. The community recognised that the coastal environment has a unique character that should be retained or in this instance not eroded any further. That report identified that a significant level of further investigative work was needed to be undertaken (as attached at pages A87 to A88).
2. In the interim it became evident from the development of the (then) Waitakere Ranges and Foothills Protection Bill that much of the work outlined in the 2005 report, with the exception of that outlined below, could not be easily isolated as a package of work. As such it would be more appropriately furthered through the LAPs process that would arise from the Ranges work, or alternatively as part of the upcoming WCCDP review.
3. However the landscape work that was identified as part of the further investigation in the 2005 report was completed as part of a series of studies on the Coastal Villages, with the 2 most relevant reports being:
  - Waitakere City's Coastal Villages Landscape Assessment - Part 1, Piha, December 2005; and
  - Waitakere City's Coastal Villages Landscape Assessment - Part 2, February 2008.
4. The above pieces of work "identified a number of areas where the particular landscape character of residential areas was strongly dependent on the existing tree cover, particularly pohutukawa trees. The assessment reports produced "*Waitakere City's Coastal Villages: Landscape Assessment: Part 1 Piha and Part 2*", identified that tree removal and modification in certain parts of the coastal villages could result in a rapid loss of natural character and amenity value. This could arise either as a result of additions or redevelopment of existing structures, or the construction of dwellings on currently vacant lots".
5. As a result of these findings, Melean Absolum Ltd were commissioned to undertake additional work to assist in determining whether further controls within the WCCDP would be appropriate. Specifically an assessment was required to:
  - identify the potential adverse effects which could arise; and
  - determine whether the existing WCCDP provisions are sufficient to provide appropriate protection to coastal vegetation and its contribution to coastal amenity.

A89-A108

6. The outcome of this piece of landscape work, a report entitled *Coastal Amenity Strip: Vegetation Protection* by Melean Absolum, (as attached at pages A89 to A108) is that it is considered that there is merit in the introduction of a package of measures that enhance the level of protection to vegetation, and ensure that the proposed location of buildings is given appropriate regard in the context of coastal character.

7. There has been a deliberate decision that this landscape work was pursued in isolation of a significant review or amendments of other built development controls. This was considered appropriate as the built development controls should be reviewed as a package, which is most likely to occur as part of the LAPs process, or as part of the future WCCDP review. It is also noted that this piece of work was undertaken on the understanding that the human environment zonings anticipate residential development in varying intensities according to the actual zonings of the sites i.e. coastal villages. It is not to be construed that any proposed additional controls are a method to lessen the numbers of dwellings being developed.

#### Identification

8. The earlier abovementioned reports identified that tree removal and modification in certain parts of the Coastal Villages could result in a rapid loss of the natural character and amenity value. This could arise as either a result of additions or redevelopment of existing structures, or the construction of dwellings on currently vacant lots.

A89-A108

9. More specifically the most recent report entitled *Coastal Amenity Strip: Vegetation Protection* (as attached at pages A89 to A108) identified that it was not just vegetation removal or alteration that could cause potential adverse effects to the coastal character; it was also unsympathetic built form, when viewed against the backdrop of the coastal vegetation of both singular trees and canopy formations.
10. It was considered appropriate to undertake a review of the controls of the WCCDP, to see what part the existing development controls, if any, were contributing to this situation, and if it was required that they be amended to address the concerns confirmed in the report.

#### Current Waitakere City Council District Plan provisions and the need for Plan Change 29

11. A review of the objectives and policies of the WCCDP has found that the policies clearly identify the outstanding landscapes of the City, and state that while the Coastal Villages did not form part of this landscape, it is recognised that they are still important in their own right, and because of their location adjacent to the outstanding landscapes. It is therefore considered that the policy context is satisfactory, with regard to amenity provisions.
12. However the review did identify 2 points of weakness within the rules. In the Human Environment rules, currently there are references to either *landscapes elements, or natural landscape*, within the assessment criteria for some activities. These are only being activated if that particular activity is being triggered for consent. It is considered that a separate activity rule covering a specified location is required related to amenity that will cover any built development over a certain size that has the potential to impact on the amenity of the coastal character.
13. As currently provided for in the Natural Environment rules in regard is given to amenity contribution in the instances of tree removal but not when working in the dripline of trees. In addition, working within the dripline of a tree is only a controlled activity, and officers have indicated that this constrains the most appropriate outcome from being achieved. It is considered that the rules are required to be strengthened in this area.

- A109-A166* 14. In summary, despite extensive provisions aimed at protecting amenity values provided by trees and other vegetation, the WCCDP rules do not require sufficient consideration of the potential impacts of development on vegetation, particularly that vegetation which is to remain on the site or on neighbouring sites and which will have a visual relationship with a proposed development. The proposed rules (as attached at pages A109 to A138 aim) for a greater consideration of the vegetation, and a greater integration to be achieved between built form and vegetation. This approach is consistent with the objectives of the WRHAA, and contributes towards the implementation the objectives of the WRHAA within the WCCDP. Further justification of the actual methodology is contained in the attached s. 32 report (attached at pages A139 to A166), however in terms of the new rules and how they are applied this is briefly outlined below.
15. The majority of the land studied consists of the Coastal Villages, Waitakere Ranges and Open Space (parks) zoning and the Auckland Centennial Memorial Park Land. Accordingly the following WCCDP Human and Natural areas would be impacted upon by proposed Plan Change:
- Human Environments: Coastal Villages, Waitakere Ranges, Open Space-new rule and assessment criteria, and Waitakere Ranges and Coastal Villages subdivision controls- new assessment criteria.
  - Natural Environment: Coastal Natural Area, Protected Natural Area, Managed Natural Area, Restoration Natural Area-Vegetation alteration rules and assessment criteria.
  - Special Areas of Te Henga, Wainamu and Bethells. The above zonings are the underlying zonings of these sites and by default are applicable to these special areas.
- A89-A108* 16. The extent of the area of concern is to be defined by a Coastal Amenity Strip (as attached at pages A89 to A108), correlating in most instances to the first ridgeline, when viewed from the coast/beach. The location of the Coastal Amenity Strip will be shown on the applicable natural area maps. The rule will be administered through the proposed new rule in the Human Environment controls, being Building Location: Coastal amenity strip, in the Human Environment Rules. The new rule will directly assess how the development is designed around vegetation and the impact of the building and vegetation to coastal character.
17. To complement the above proposed rule, the Natural Areas rules would be altered, to make works within the dripline of a tree a limited discretionary activity, rather than its current controlled status, and the assessment criteria within the vegetation alteration rules would be altered to take into account the cumulative effects of activities that may have adverse effects on a tree's health, and the future growth of the tree.
- A109-A138* 18. The proposed alteration of these controls would still recognise the existing tiered approach of the City to vegetation protection, with a greater level of protection being accorded to native vegetation over exotic vegetation. The text of these new controls in contained in the attachment at pages A109 to A138.

## DECISION MAKING

19. The Resource Management Act 1991 (RMA) requires that decisions in relation to Plan Changes must be assessed under s. 32 of the RMA which requires an analysis of costs and benefits of options. It is noted that the analysis required under s. 32 is similar to that undertaken under s. 78 of the Local Government Act.

20. There are a number of key statutory strategic documents that are particularly relevant to the consideration of the amenity issues in the coastal areas of the City. In summary this cascade of legislation (and non statutory strategic documents) gives a clear mandate for the protection of the coastal areas from inappropriate development.

### **The Resource Management Act 1991, Part 6; Matters of National Importance**

21. Part 6 of the RMA lists as a matter of national importance:

*“The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.”*

This creates the onus on regional and territorial authorities to make relevant objects, policies, and rules to achieve this outcome.

22. The purpose of the RMA as outlined in Part II of the RMA is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in s. 72 of the RMA is to assist Council to carry out its functions. Councils' functions are outlined in s. 31 of the RMA as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the RMA. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

### **New Zealand Coastal Policy Statement**

23. The purpose of the New Zealand Coastal Policy Statement (NZCPS) is to set out policies relating to the coastal environment in order to achieve the purpose and principles of the RMA. Under s. 55 of the RMA, councils are now required to “give effect to” the proposed NZCPS. This is a more robust obligation than was previously required under the RMA, which stated that council policies and plans not be ‘inconsistent with’ the NZCPS. The WRHAA also requires that “particular regard” be had to the NZCPS when considering resource consents (s.13).
24. The proposed (revised) NZCPS was notified by the Minister of Conservation's appointed Board of Inquiry on 8 March 2008. WCC has submitted to the proposed NZCPS, and has indicated general support of the more prescriptive approach to the integrated management of the coastal environment as proposed. However there was concern that as the proposed NZCPS becomes more directive there is a need to ensure the ‘1 size fits all’ approach recognises regional and local characteristics. To this end the Council seeks greater guidance so that the NZCPS can be consistently implemented as well as greater recognition of regional and local differences.

25. Statutory linkages to the WRHAA are to be noted as most of the coastal environment in Waitakere is within the Waitakere Ranges Heritage Area. In this area the NZCPS has an elevated status with respect to considering an application for resource consent for a discretionary or non-complying activity. A consent authority must have particular regard to the relevant provisions of any NZCPS (WRHAA s. 13 (1)(a)(ii)). In the original submission, WCC asked that the NZCPS appropriately reflect the purpose and objectives of the Waitakere Ranges Heritage Area Act in recognition of the dominant statute. However, since writing the submission, WCC has received legal advice which considers the WRHAA and the NZCPS to have equal weighting. WCC therefore requested to modify this aspect of its original submission, and seeks that the NZCPS is not inconsistent with the WRHAA.
26. Overall it is considered that the proposed Plan Change would give effect to both the Operative and Proposed NZCPS, in that the proposed Plan Change seeks to preserve the amenity of the coastal landscapes of the City, not just those regarded as outstanding, at the time that building or development occurs within the (specified) WCC environments.

### **Auckland Regional Policy Statement**

27. Section 75 of the RMA requires that a District Plan must give effect to a Regional Policy Statement. The Auckland Regional Policy Statement (ARPS) includes sections on the regional overview and strategic direction, heritage and the coastal environment, which are of particular relevance to this proposed Plan Change.
28. At the time of writing this report, due to the Local Government Auckland Amendment Act (LG(A)AA) process (Plan Change 6), various parts of the ARPS are under appeal, in particular Chapter 2 and the definitions, which both address matters around urban growth and the interrelationship with development in rural and coastal locations.
29. In addition the Heritage section of the ARPS, Chapter 6, which refers to landscapes and their protection, is also in the process of being reviewed. Both of these review processes have the potential to impact on any further work that is undertaken in relation to coastal areas, particularly if the work was to include changes to the WCC District Plan. Chapter 7, Coastal of the ARPS is also relevant and relates specifically to subdivision, use and development.
30. Heritage issues surrounding landscape quality and sensitivity to development are identified in Chapter 6 of the ARPS, where the Waitakere Ranges is identified within the Maps (2 and 3) as being a significant natural heritage area (landscape quality value of 6); and significant landscape sensitivity (landscape sensitivity value of 7 and 5). Specific policies (6.4.19 – Landscape) within the Heritage Chapter seek to control subdivision, use and development within those areas identified in Maps 2 and 3. The WCCDP identifies its own “outstanding landscapes” in Map 3.6(B) in Part 3 of the Policy Section, although it should be noted that many of the coastal village areas are not included.

### **Waitakere City Council District Plan**

31. The WCCDP identifies key issues, including Urban Consolidation; the Green Network; Landscape, Amenity Values and Neighbourhood, all of which are associated with management of development in the coastal areas of the City. Development within the coastal area, and in particular the Coastal Villages contributes to the strategic direction by providing options for where people live, by assisting in protecting the Waitakere Ranges and natural ecosystems associated with the Green Network, and also by seeking to protect the natural landscape characteristics.

32. The rules of the WCCDP have set out in a 2 tiered approach to manage the effects from land use activities. This has entailed assigning an appropriate Human Environment and Natural Area identification to all land within the City. These layers of land-use management form the basis for applying the policies and rules of the WCCDP. The Natural Area rules pertain to matters such as vegetation removal and earthworks. The Human Environment rules pertain to matters of bulk and location of buildings, and cover specifics such as density, height, yard setbacks and building coverage. The rules also cover non residential activities.
33. With regard to policy, Part 6 of the WCCDP recognises the need to reconcile *“the need to manage growth pressures and impact on sensitive resources, with the desire of residents to maintain the valued amenity of different parts of the City”*. It should be noted however (in 5.9 Issue - Effects on Outstanding Landscapes) that while WCC has its own outstanding landscapes, the Coastal villages have been excluded, *“Although (while) the villages themselves are not included within the landscape, they have a major impact on it.”*
34. Therefore the WCCDP policy has recognised that the residential area of the Coast is important on many levels, and accordingly the WCCDP should recognise and provide appropriate amenity assessments, through the two tiered rule system recognising the natural and human environments. It is considered that the Proposed Plan Change is consistent with the existing policies and objectives, and results in an additional method (Coastal Amenity Strip) in which to give effect to the policies and objectives of the WCCDP.

#### **Waitakere Ranges Heritage Area Act 2008**

35. The intention of the WRHAA is to give long-term protection to the important heritage features of the Waitakere Ranges, its foothills and coastal areas in the face of increasing pressures for subdivision and development. The WRHAA responds to growing concerns about the adverse cumulative effects that this growth pressure is having on the ecological, landscape, historic, traditional and cultural heritage of the area. The majority of the coastal area of the west coast falls within the area of the WRHAA.
36. The provisions proposed within the Plan Change seek to give effect to the WRHAA, such that future applicants, who propose buildings or subdivisions located within the Coastal Amenity Strip, will be required to give particular regard to amenity issues related to vegetation and coastal character in the placement of their proposed buildings/sites. It is considered that this proposed provision is important, as while the coastal villages for the most part are not considered as outstanding landscapes in the WCCDP and regional planning documents, they are regarded as an important part of the coastal environment that makes a major contribution to the City and its community. Their immediate proximity to the City's various outstanding landscapes requires that the development within these villages gives regard to amenity within the villages and their immediate surrounds, therefore ensuring that such development does not detract from the surrounding outstanding landscapes.

A139-A166

37. It is considered that this proposed control, would not compromise any future work that is likely to come out of the LAPs work, as it is consistent with the intention of the WRHAA, and serves to contribute to the enhancement of amenity in the Coastal area. The relationship of this piece of work with the WRHAA and how this work fulfils the objectives of the WRHAA (as required by s. 11 of the WRHAA) is outlined more fully in the attached s. 32 report (as attached at pages A139 to A166).

### Case Law

38. Relevant case law in this area relates to methods to determine the extent of coastal character. The most relevant case in this instance is *Northland Regional Planning Authority v Whangarei County Council A4828*. In that case the tribunal found that:

*“We therefore hold that the term “coastal environment” is an environment in which the coast is a significant part or element but clearly it is impossible to get an abstract definition which is capable of a simple and ready application to any given situation. What constitutes the coastal environment will vary from place to place and according from which a place is viewed. Where there are hills behind the coast, it will generally extend up to the dominant ridge behind the coast. (author emphasis) But where the land that is located behind the coast is generally flat there may be difficulty in defining the coastal environment”.*

39. Although the above cited case is an older case, which predates the RMA, it is still the generally accepted method of defining coastal influence.
40. The WCCDP provisions, both operative and proposed, are consistent with this methodology. It is noted in the instances where there are more minor ridges in the foreground view from the beach the dominant ridgeline has been used as the reference point.

### Consideration of Community Views

41. To date the community views that have been gathered are those listed below under the heading of Consultation. One of the consistent concerns was that native vegetation should be given greater regard than exotic vegetation and accordingly this has been specified in the proposed Plan Change. In addition greater clarity was sought about what was to be assessed, and as a result the tiered approach contained in the proposed Plan Change evolved. There has been interest that the Plan Change should not capture small works, hence the rule being activated when the proposed works are 10metres squared or greater. Obviously, should the Committee approve the Plan Change to be notified this will result in additional community views being obtained through the statutory submission process.

### Preferred Option

- A139-A166* 42. The attached s. 32 report (as attached at pages A139 to A166) outlines the other variants that were considered as an option for the additional method of assessing the amenity matters related to new development. However the conclusion reached is that the preferred method, being the Coastal Amenity Strip which is similar to that chosen by other councils within the Auckland Region, would ensure the most appropriate assessment took place to ensure that building and development did not detract from the amenity of the coastal environment.
- A109-A138* 43. The preferred option, (as attached at pages A109 to A138) is a combination of a new rule which includes a mapping addition, amendments of existing rules, and the inclusion of additional assessment criteria, to address the new matters and to ensure a more comprehensive assessment.

44. Specifically this includes:
- **New Rule:** Building Location: Coastal Amenity Strip, in the Coastal Villages, Waitakere Ranges, and Open Space Human environments. Relevant assessment criteria have been included.
  - **Amended Rule:** Vegetation Alteration Rule, in the Coastal, Managed, Protected, and Restoration Natural Areas. Specifically in the Coastal Natural Area, works within the dripline changes from a controlled to a limited discretionary assessment, and in all natural areas an additional assessment criteria is proposed to assess the cumulative impacts on the site of tree removal.
  - **Amended Rule:** Subdivision rule in Coastal Villages and Waitakere Ranges.
  - Additional assessment criteria proposed to give regard to coastal character.
  - **Interaction with large property management areas.** The proposed changes are not contrary to these rules.

A109-A138

45. A full copy of the text of the proposed WCCDP Change is attached (as attached at pages A109 to A138).

## STRATEGIC CONTEXT

### Long Term Council Community Plan

46. The Long Term Council Community Plan (LTCCP) identifies 9 strategic platforms or sustainability, of which the following 2 are most relevant to issues surrounding Coastal Villages: Urban and Rural Villages - options for living, working and playing. Although neither the terms urban or rural are explicit to coastal villages, this platform looks at the difference between the City's urban environment and the less urbanised areas. The LTCCP has a precautionary approach to development to enable sustainable development of the City under the Local Government Act 1974, recognising that more intensive development should be directed to the urban areas, maintaining the character of village communities. Development in the coastal villages is therefore expected to reflect and maintain a village's character, and not urbanise it with unsympathetic materials and intensified development patterns.
47. The Green Network is a key strategic platform set out in the LTCCP, and seeks to protect and restore the life supporting capacity of the environment. The Green Network strategy seeks to protect and enhance native plants, wildlife and ecosystems (of both land and water), and the high quality landscapes of the City on both public and private land. The strategy intends to (amongst other things) improve the linkages between the Waitakere Ranges and the Waitemata Harbour, through streams and ecological corridors. Development within this area has a direct impact on the Green Network.

### Approaches taken by other local authorities to the issue

48. A number of local authorities in the Auckland Region have adopted controls to manage the sensitive interface between the coastal area and the adjacent built environment. These amenity controls are an additional layer to the built form controls. These controls do vary slightly dependant on the context of the location, but all require that the location of the buildings on the subject site acknowledges the coastal character of their environment, and specified elements that contribute to that character.

49. The Hauraki Gulf Islands Plan (part of Auckland City) has had a control called the Coastal Amenity Strip for some time, which seeks to control the location of housing in relation to Pohutukawa, recognising the contribution of Pohutukawa to the coastal landscape. In other more urban areas these coastal amenity strips also exist, being Auckland City, on the Tamaki Drive, and in North Shore City. Both areas have a range of controls that make works related to building such as works in proximity of certain trees, removal and pruning to become subject to a more stringent level of scrutiny.

## CONSULTATION

50. Consultation has been ongoing during the development of this proposed Plan Change, with informal discussions occurring as early as 2005. In the middle of this year, as the mapping work had made good progress a wider round of consultation occurred. In general while many of the groups identified below were supportive of an additional layer of assessment in relation to coastal amenity, there were some concerns that the format proposed at that time could have been more specific, to give greater certainty to applicants. The current version of the proposed rule is intended to reflect the concerns as outlined below. The consultation leading up to the presentation of this report has included both internal and external parties.
51. The external parties have included officers at the following groups/organisations:
- Auckland Regional Council - Officers within the Coastal Policy, Policy Implementation, and Parks Policy teams have been consulted. In general, while officers have not seen the details of the specific rules, there is support for the enhanced protection of Coastal areas. The Parks team expressed concern that the additional rules did not make applications for the works that that they undertook within the parks onerous.
  - Piha Residents and Ratepayers - Ongoing discussions with this group, who give general endorsement to the notion of additional consideration of vegetation.
  - West Coast Liaison Group - This group while supporting additional assessment for amenity in coastal areas, and the location of the coastal amenity strip, did have some concerns; in particular that the control should be more specific, with regard to both vegetation and buildings. Some of the group suggested a more specific focus on the type of vegetation should be considered.
  - Ngati Whatua - A representative officer from Ngati Whatua expressed general support for the proposed Plan Change, however expressed concern that the initial expert report regarded exotic trees as contributing to amenity, and suggested that such regard was only given to native vegetation.
  - Te Kawerau A Maki - A representative from Te Kawerau A Maki expressed general support for the Plan Change, and the additional assessment for buildings in the coastal area. Approval was expressed that the proposed plan change has been amended to focus on native vegetation.
  - Watercare - Officer comment: As the proposed coastal amenity strip is located on the first ridge back from the coast, and affects activities on the coastal side of the ridge, this will result in the catchment area not being affected. However, Watercare would like to be advised of the continuing statutory process.

52. Internal consultation across WCC has occurred as follows:
- Consultation with Strategic Planning - the key concerns were the relationship between this piece of work and the WRHAA, and if this piece of work would compromise any future works that may arise out of the LAPs process, which is in the very early stages of planning. It was considered that an additional rule to give regard to amenity issues within coastal areas was aligned with the aspirations of the WRHAA. The location of the Coastal Amenity strip was amended in the Bethells area. Additional concerns included that not all applications would be assessed for amenity issues.
  - Consultation with Group Manager Consents, Manager: Resource Consents, Various senior resource consent planners, arborists, and landscape architect. These discussions centred on the existing rules and policy for the coastal areas, how these are administered, and what changes if any would be required to give a more stringent level of assessment to amenity matters.
  - The arborists identified that amenity consideration is only given to trees when they are to be cut down, and that the rules should be modified to recognise amenity issues when considering the placement of buildings. Concern was also expressed that works within the dripline of trees was only a controlled activity, and as such the best outcome was often not achieved.
  - There were concerns from the landscape architect that the rule as initially proposed sought to afford equal regard to exotic and native vegetation, which was considered as being inconsistent with the approach of the WCCDP to date which has given greater regard to native vegetation.
  - Consultation with Parks Planning: this Council unit gave general support for the notion that additional consideration is to be given to vegetation and coastal character, however concern was expressed as to how restrictive that this may be towards the undertaking of parks activities, that the proposed rule should be more specific in terms of vegetation, types of building activity and location that is being considered in relation to amenity issues.

## RESOURCES

53. The processing of plan changes which includes the development/amendment of WCCDP, is the core work of the Resource Management unit, and accordingly is covered by current budgets.

## IMPLEMENTATION ISSUES

54. This proposed Plan Change, if successful, will result in a new rule being introduced into the WCCDP and existing rules being amended. As with any new rules additional time will have to be taken by the relevant staff to explain the rules to applicants at the counter and as part of the application process. An information brochure will be developed as an additional instruction tool.
55. In terms of the profile of the new rule and the amendments to the existing rules, it is considered that in the event of the Plan Change being approved to progress through the statutory process, the actual act of notification will be invaluable both in terms of providing public input into the statutory process, and as a tool for advising potential users of the new requirement. As it is the individual resource consents that will implement this proposed new rule, and the amended rules, it is anticipated that the monitoring of each of the consents will capture any implementation matters as they arise.



## PART D - ENVIRONMENTAL MANAGEMENT

### 9 AUCKLAND REGIONAL POLICY STATEMENT REVIEW

#### GLOSSARY

Metropolitan Urban Limit	(MUL)
Local Government (Auckland) Amendment Act 2004	(LG(A)AA)
Auckland Regional Policy Statement	(ARPS)
Resource Management Act 1991	(RMA)
Waitakere Ranges Heritage Area Act 2008	(WRHAA)
Hauraki Gulf Marine Park Act 2000	(HGMPA)
Proposed Regional Plan: Air Land and Water	(PRP:ALW)
Auckland Sustainability Framework	(ASF)
Regional Futures Land Use Planning Exercise	(RFLUPE)
Auckland Regional Land Transport Strategy	(ARLTS)
Auckland Regional Growth Strategy	(ARGS)
Auckland Regional Council	(ARC)

#### EXECUTIVE SUMMARY

This report seeks endorsement to lodge a submission to the background document to the review of the Auckland Regional Policy Statement (ARPS). It is important that Waitakere engages fully in this process as the review of the ARPS will have a significant impact on the ability of Council to implement the Council's strategic direction and the community outcomes. The ARPS also sets the framework for growth management and planning across the region

#### RECOMMENDATIONS

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

1. **Receive** the Auckland Regional Policy Statement Review report.
2. **Agree** to endorse the submission tabled at the Planning and Regulatory Committee to the background document of the Auckland Regional Policy Statement Review.

#### BACKGROUND

1. The purpose of the ARPS is to provide an overview of the resource management issues, policies, and methods to achieve integrated management of the natural and physical resources for the whole region.
2. The ARPS must state:
  - the significant resource management issues for the region, iwi, and the board of a foreshore or seabed reserve;
  - objectives, policies, methods (but not rules), reasons, and environmental results anticipated;
  - procedures used to monitor the efficiency and effectiveness of policies and methods;
  - the process to deal with local and regional cross boundary issues; and
  - who has responsibility (local council or regional council) for control of the use of the land to mitigate natural hazards, hazardous substances, and the maintenance of indigenous biological diversity.

3. The ARPS was made operative in July 1999. Since that time the mandate of the Auckland Regional Council (ARC) has been broadened through changes to the Resource Management Act 1991 (RMA) and through the introduction of the Local Government (Auckland) Amendment Act 2004 (LG(A)AA). The LG(A)AA required the ARC (and local Councils) to align their planning documents with the Auckland Regional Growth Strategy (ARGS) to better integrate land use and transport planning. This resulted in changes to the strategic direction and transport chapters (ARPS Plan Change 6) to provide greater regional direction around urban containment, urban structure, urban design, land use and transport integration, and rural growth. These changes also gave greater certainty about where and when urban expansion and intensification would occur and included Waitakere's request to move the Metropolitan Urban Limit (MUL) at Massey North/Hobsonville (ARPS Plan Change 7). Plan changes 6 and 7 are subject to appeal including an appeal by the Council.
4. A number of other plan changes have also been notified since the ARPS was made operative. A number of these are still subject to appeal or hearing. They include Plan Change 8 - Landscape and Volcanic Features, Plan Change 9 - Hauraki Gulf Marine Park Act (now operative), Plan Change 10 - Natural Hazards, Plan Change 11 and 12 - Takanini MUL shift (awaiting decisions), Plan Change 13 Mangere Gateway MUL Shift (awaiting hearing).
5. In 2005 the RMA was altered to require that district plans, s. 75(3)(c) of the RMA and regional plans, s.65 (6) of the RMA must "give effect" to regional policy statements rather than the lesser requirement of "not being inconsistent with". This allows the ARPS to be more directive.
6. Section 6 of the RMA has also been amended to include new matters of national importance relating to the protection of historic heritage from inappropriate subdivision, use and development, and the protection of recognised customary activities. Energy use, renewable energy, and climate change are matters that councils need to consider when making decisions (pursuant to s.7).
7. A number of new national policy statements have also been recently released to direct the ARPS. These include the:
  - Proposed New Zealand Coastal Policy Statement (May 2008);
  - Proposed National Policy Statement for Freshwater Resources (July 2008);
  - National Policy Statement on Electricity Transmission (March 2008); and
  - Proposed Policy Statement for Renewable Electricity Generation (August 2008);
8. The ARPS also has to give effect to the Hauraki Gulf Marine Park Act 2000 (HGMPA) and the Waitakere Ranges Heritage Area Act 2008 (WRHAA). This has been achieved to some degree in response to submissions lodged by Waitakere to ARPS Plan Change 9 and ARPS Plan Change 6 respectively.
9. As reported in September 2008 to the Policy and Strategy Committee, a significant amount of work has been undertaken over the last 2 years between the ARC, Auckland Territorial Authorities, and key government agencies in trying to get to an agreed future land use scenario for the Auckland region. This work will continue in parallel to the consultation of the ARPS review so that modelling can inform the final notified version of the review of both the Auckland Regional Land Transport Strategy (ARLTS) and the ARPS by November 2009.

## DECISION MAKING

### Issues

#### Existing processes

10. As noted above, a number of ARPS plan changes are still progressing and are unlikely to be resolved prior to the proposed date for notification of the ARPS review in November 2009. This will to some degree undermine the work that is progressing in relation to these appeals as the ARPS Plan Change 6 (and any other unresolved appeal issues) and will be open to re-litigation as part of the review process. It is therefore important that this issue be raised in Waitakere's submission so that either appeal provisions can be ring fenced through the review, resources can be concentrated on resolving appeals sooner rather than later, and resources can be focused on the review itself.
11. Waitakere also has a number of outstanding appeals to the Proposed Regional Plan: Air Land and Water (PRP:ALW). The PRP:ALW is a regional plan that will have to "give effect" to the ARPS. Accordingly it is important that Waitakere's submission to the ARPS seeks policy alignment with the appeals to the PRP:ALW. Waitakere has also been involved in the Three Waters Regional Policy Project in conjunction with councils and water agencies throughout the region. This work should also be considered in the review of the ARPS.
12. A significant amount of city and regional resource has gone in to ensuring the regional strategic direction and local councils strategic directions are aligned (Auckland Sustainability Framework (ASF), One Plan, Regional Futures Land Use Planning Exercise (RFLUPE), and Auckland Regional Land Transport Strategy (ARLTS)). The review of the ARPS will influence the implementation of the region's strategic direction by establishing the statutory framework for regional and district plans. It is therefore particularly important that the ARPS is consistent with these regional strategic plans.

#### Content

*A167-A198*

13. The ARPS Background Document is attached at pages A167 to A198. This document sets out the proposed process for the review as follows:
  - Submissions due on background document 14 November 2008;
  - Draft ARPS notified March 2009; and
  - Final ARPS notified November 2009.
14. The background document sets out a number of resource management issues/challenges, outlines the current response (as detailed in the current ARPS), and suggests a potential approach to these issues to be considered as part of the ARPS review. The issues are outlined as follows:
  - Integration;
  - Matters of Significance to iwi;
  - Urban Environment;
  - Infrastructure;
  - Rural Environment;
  - Coastal Environment;
  - Heritage and Landscape;
  - Ecosystem Biodiversity;

- Land and Freshwater Management;
  - Energy;
  - Climate Change;
  - Natural Hazards;
  - Air Quality;
  - Minerals;
  - Hazardous Substances and Contaminated Sites; and
  - Waste Management.
15. A preliminary analysis of these issues and potential responses has highlighted a number of areas that could be improved or clarified for the notification of the draft ARPS review in March 2009. These include:
- Clarification over the process for rolling over ARPS Plan Change 6 provisions (including relevant appeals) and a plan for resolving other outstanding plan changes (Plan Changes 8, 9, 11, 12 and 13);
  - The need for alignment with the ASF, RFLUPE, the ARLTS and One Plan;
  - Agreement of the need to consider longer term growth timeframes – in Waitakere this is particularly relevant to the future of the wider Whenuapai area;
  - The alignment of regional plans with the ARPS, in particular the PRP:ALW to which Waitakere has a number of outstanding appeals and variation requests, notably those related to air quality management and its integration with land use plans;
  - The need for a more directive and collaborative approach to identifying key regional physical and social infrastructure and urban growth areas (including rural and coastal settlements) to ensure certainty of delivery and achievement of key strategic outcomes;
  - Alignment with the Three Waters Regional Policy Project that seeks greater regional direction on the need for water demand management, sustainable urban design, low impact design and greater integration between land use and water management;
  - Clearer policy direction on roles and responsibilities for the management of natural hazards, hazardous substances and contaminated sites;
  - Better recognition of the shortage of industrial land in the region coupled with the need to reduce travel distances and times for the regional workforce;
  - The need to maintain a transport chapter to ensure that land use and transport planning can be appropriately integrated within the ARPS along with consideration of a number of landuse options to jointly inform the development of the ARPS and ARLTS – particularly as the ARLTS is planned to be adopted prior to the notification of the ARPS and the ARPS Plan Change 6 scenario has not been developed with the New Zealand Transport Strategy targets in mind;
  - The need for monitoring and technical data to inform the review of the ARPS – It is unclear from the consultation information to what degree monitoring of the performance of the Operative ARPS has been undertaken to inform the review of the ARPS;
  - The need to consult directly with iwi and provide regional clarification on protection of taonga;
  - The need to update the appendices and maps to reflect the current situation – In particular the land use capability maps, the landscape, heritage, and natural features maps;
  - The need to give appropriate consideration to the WRHAA and the HGMPA;
  - Support for the ARPS to give appropriate guidance on matters of historic heritage, energy, and climate change; and

- The need for clear regional priorities for protection, restoration and biodiversity management, a coordinated approach to monitoring across the region, and acknowledgement of the role of community in achieving biodiversity outcomes (on public and private land).
16. This is not a comprehensive review of the background document. Due to timeframes a full review (including internal consultation) could not be completed prior to the writing of this agenda item. A full review will be completed and be presented at the meeting along with a draft submission for further consideration.

### Timeframes

17. While the ARC should be congratulated for undertaking a preliminary consultation process and a draft ARPS notification process prior to the formal plan change process in November 2009, this is a particularly tight timeframe for such a significant planning tool for the Auckland region and will place significant pressure on council staff across the region. The issues with the LG(A)AA and PRP:ALW appeals, highlighted above, indicate that the resolution of these appeals should be a priority before the notification of a ARPS review further complicates this process which is already before the Environment Court. The directive nature of the ARPS is supported but only in the sense that the RFLUPE, and potentially the review of the ARGS can be more fully developed and agreed by councils. The consultation documentation is also unclear as to when supporting technical work will be provided for review by key stakeholders. Taking the time to resolve these issues up front will mean a greater chance of regional alignment and subsequently less litigation and greater certainty at the end of the process. Accordingly it is recommended that the ARC delay the notification of the review of the ARPS until these matters have been adequately addressed.

### STRATEGIC CONTEXT

18. As noted the purpose of the ARPS is to achieve integrated management of the natural and physical resources of the whole region. District Plans and Regional plans have to “give effect” to the ARPS. More recently the scope of the ARPS has been expanded to cover issues such as urban structure and urban design. Consequently the ARPS will have a direct effect on the form and function of Waitakere and the wider region. This document will also potentially provide greater certainty for where and when regional social and physical infrastructure will be developed and associated investment targeted. On this basis the ARPS will have a significant impact on Waitakere’s community and strategic outcomes.
19. Key Community Outcomes which relate to the ARPS review are:
- The *Urban and Rural Villages* priority, which seeks to deliver thriving town centres and connected places;
  - The *Strong Economy* priority, which seeks to provide quality local employment for Waitakere City residents;
  - *Sustainable Environment Priority*, which seeks sustainable growth management with access to key resources and infrastructure;
  - The *Green Network* priority, which seeks to retain and enhance the qualities of the natural environment within the areas that are proposed to be urbanised, while seeking the relief of development pressure on the non-urban areas such as the Waitakere Ranges and foothills; and
  - The *Sustainable and Integrated Transport* priority, which seeks to deliver sustainable urban form integrated with passenger and other transport networks in a way that reduces vehicle trips, reduces the dependence on private motor vehicles, and supports alternative transportation modes such as public transport, walking and cycling.

20. The review of the ARPS is likely to be a significant way through the planning process by 2013. Consequently the ARPS review will have a significant influence on the review of the Waitakere District Plan that is due to be notified in 2013.

### CONSULTATION

21. Consultation with key staff is underway and ongoing at the time of writing this report. The document has been sent to staff in Strategic Planning, City Services, Eco Water and Community Wellbeing in areas that have expertise relevant to the particular issues identified in the background paper. A full copy of Council's submission will be presented at the Planning and Regulatory Committee which incorporates feedback from staff consultation.

### RESOURCES

22. Staff time and resourcing have been allocated to the review of the ARPS in the Annual Plan 2008/2009 and similar provision has been made in the draft budgets and activity plans for the Long Term Council Community Plan 2009-2019. The condensed timeframe for the review will create pressure on staff involved in related work streams.

### IMPLEMENTATION ISSUES

23. There are no short term implementation issues with the review of the ARPS although the timing of the review and condensed timeframes will create greater uncertainty for a number of existing appeal processes that Waitakere is currently involved in. It is important that the Council become fully engaged in this process as the ARPS will ultimately have a significant impact on the development of the 2013 District Plan review and any district plan changes following the notification of the ARPS review.

**Report prepared by:** Matt Heale, Team Leader: Sustainable Management.



## **PART E - NOTICES OF REQUIREMENT**

### **10 CLARK STREET EXTENSION ROADING DESIGNATION**

#### **GLOSSARY**

Land Transport New Zealand	(LTNZ)
Resource Management Act 1991	(RMA)
Transit Oriented Development Project	(TOD project)
Designation for the Clark Street Extension	(the Designation)

#### **EXECUTIVE SUMMARY**

The purpose of this report is to seek the Planning and Regulatory Committee's endorsement to establish a Designation for the Clark Street Extension (the Designation) as part of the New Lynn Transit Oriented Development Project (TOD project).

The Designation proposal is an integral part of a wider strategic project that seeks to improve the public transport and roading infrastructure to assist in achieving the overall intensification of the New Lynn Town centre.

## **RECOMMENDATIONS**

1. **Receive** the Clark Street Extension Rooding Designation report.
2. **Agree** that the Chief Executive Officer be authorised to lodge the Notice of Requirement for the proposed Designation for the Clark Street Extension.
3. **Direct** the Chief Executive Officer to work with ONTRACK to obtain written approval for the Designation for the Clark Street Extension to sit within the existing Railway designation.

## **BACKGROUND**

1. The concept for which preliminary design for stage 2 including Clark Street rooding plans have been developed was approved by Council in October 2007. This concept matches that in the Council's application, to Land Transport New Zealand (LTNZ) in July 2007, for a contribution to the funds needed for the detailed design of the TOD project. The concept includes the development of a Designation which would connect Clark Street over the Railway corridor and connect it with Great North Road. The Designation would seek to resolve many traffic conflicts and congestion within the wider New Lynn rooding network by providing a by-pass through the commercial core of New Lynn.
2. The reason for the Council's success in gaining LTNZ support is inherent in the integrated, multi-modal characteristic of the concept, which is expected to seed economic development and the integrity of the comprehensive assessments reported to LTNZ by Council.
3. This successful application relied not only on the benefit-to-cost ratios for passenger transport and other road users, but also on the effectiveness of the project in supporting the remainder of Land Transport Management Act 2003 objectives; economic development, safety and personal security, access and mobility, public health and environmental sustainability.
4. The Local Government (Auckland) Amendment Act 2004 required Council to address specific issues of intensification, urban amenity and management of the redevelopment of the New Lynn Town Centre through a specific plan change to the Waitakere City District Plan.
5. The detailed design, including that of the Designation, is consistent with the concept plan approved by the Council in October 2007 and approved for detailed design by Council. There would be a risk of stalling on a critical time line on which both Council and ONTRACK are joined, in any significant departure from the approved concept.
6. Care has been taken to minimise the impact of the TOD project on the existing town centre including the required land acquisition, subject to achieving the expectations of the Council and the New Zealand Transport Authority.

## DECISION MAKING

### Issues

#### Designation Process

- A199-A203*
7. Waitakere City Council is a 'requiring authority' under the Resource Management Act 1991 (RMA). This gives the Council the power to 'designate' land. A Designation is a provision in a District Plan that gives effect to a public work. The location of the Designation is shown on the plan at page A199 to A200 the scope of work is detailed in the attachment at pages A201 to A203.
  8. Section 168A of the RMA sets out the procedure that applies where the Council proposes to issue a notice of requirement for a Designation within its own district. The Council must publicly notify the requirement and call for submissions. After considering any submissions received within the statutory submission period, the Council would decide to either confirm the requirement, cancel the requirement, or modify the requirement to the extent that it considers appropriate. At this point, any person who lodged a submission would have the right to appeal to the Environment Court in respect of the Council's decision.
  9. Once the Designation is in place, it provides for the requiring authority to undertake the public work without the need to comply with any rules of the District Plan. In addition, the notice of requirement would prevent any action from landowners that would hinder the public work to which the Designation relates. Any subdivision or development of the land affected by the requirement could not proceed without the prior consent of the Council in its capacity as the requiring authority.

#### Underlying ONTRACK Designation

10. At the point in which the Council Designation would overlay the existing ONTRACK Designation, ONTRACK would have ultimate rights over this section as they are the existing requiring authority for that land. The Council Designation would be secondary to ONTRACK and the Council would be required to obtain a Deed of Grant from ONTRACK and written approval of ONTRACK before the commencement of construction of the Designation.
11. Because the Designation is located above the railway corridor the 2 designations will not be inherently in conflict with one another. It is likely however that a level of coordination will be required during construction to ensure that the operation of the rail corridor is not impeded during the construction phase.

#### Establishment of the Designation

12. The acquisition of the land on which the Designation would be constructed, and the subsequent formation of the Designation, could occur through several different mechanisms:
  - Council could invoke the provisions of the Public Works Act 1981 to obtain the land compulsorily. Construction of the road would be at Council's cost.
  - The owner of land that would be subject to the designation could apply to the Environment Court for an order that requires the Council to take the land. If this occurred, the owner would be compensated for the land at market value and the Council would fund and undertake the construction of the road.

- Council could acquire the land by mutual agreement, and form the road once the land had transferred into public ownership.

### Options Identified

13. Options for accommodating increased traffic flow in New Lynn are as follows:
- Option One - Do Nothing;
  - Option Two - Widen Totara Avenue;
  - Option Three - Designate the land required for the construction of the Clark Street extension and Designation.

### Assessment of Options for Clark Street Extension

#### Option One - Do Nothing

14. The do nothing option is not feasible. The double tracking and trenching of the railway line will mean that the existing Clark Street roundabout will not function efficiently in the future and that this intersection and surrounding roading network needs to be upgraded to allow for traffic signals to be installed to allow for traffic and buses to pass through it effectively. The upgrading of the road is needed to accommodate the increased traffic flows as a result of the State Highway 20 extension.

#### Option Two- Widen Totara Avenue

15. Option Two would provide a short-term solution with long-term consequences for the vitality of New Lynn. The majority of traffic is likely to be through traffic of approximately 30,000 vehicles per day. The widening of Totara Avenue would require removal of retail properties (including a Category 2 Heritage Building) on the south side of the street, effectively sterilising that section of Totara Avenue. The resulting land purchase costs of properties and leases along Totara Avenue could potentially have the same costs as constructing the Designation but would result in the loss of public realm in the centre and the demolition of the Heritage 2 building (Potters Post). The demolition of Potters Post would be a Publicly Notified consent process and is considered to be high risk. The increased traffic on Totara Avenue would make this a hostile environment for pedestrians, due to increased traffic flows, and its retail future is significantly diminished which would be in direct conflict to the Council's plans for the redevelopment of this precinct as the "Merchants Quarter" and commercial heart of New Lynn. Option two would be in direct conflict to the developed design which were approved by the Council in October 2008.

#### Option Three - Designate and Construct the Clark Street Designation

16. Option Three adds an additional road crossing over the rail trench via the Designation. Clark Street extension replaces Totara Avenue at the intersection with Great North Road and allows traffic to bypass the commercial core of New Lynn. By removing the through traffic function, Totara Avenue, can become a premier retail street and character area. This will result in a higher density of development and better appeal to commercial/ intensive business activity in the Merchants Quarter and on the Infratil site.
17. Traffic loads for Clark Street Designation dissipate into a good street network, and encourage better access and management of bus and cyclists to the rail and bus interchange.

### Consideration of Community Views

18. The RMA requires that the Notice of Requirement be publicly notified and that the Council when considering the application for the Notice of Requirement take account of these submissions in the assessment. It is through this process where the Council can illicit community views on the proposed designation.

### Preferred Option

19. This report recommends that the preferred option is Option Three and that the Committee approve the lodgement of the Notice of Requirement for the Clark Street Designation.

### STRATEGIC CONTEXT

20. The TOD project is identified as one of the Council's top five projects and represents a substantial investment in the Long Term Council Community Plan 2006-2016 and delivers on the following strategic platforms:

- Urban and Rural Villages;
- Strong Communities; and
- Integrated Transport and Communications.

21. The TOD project is aligned with a number of strategies:

- The Auckland Regional Growth Strategy, whereby New Lynn has been identified as a regional growth centre;
- Auckland Regional Land Transport Strategy;
- Council's: Transport Strategy 2006-2016;
- Growth Management Strategy; and
- Economic Development Strategy.

### CONSULTATION

22. The New Lynn Community has been involved in the future planning of New Lynn since the 1996 and 2005 planning Charrettes. The Designation and options for its location have been a consistent component of this planning work since 1996.
23. Over the last two years, the Council has undertaken a consultation programme with New Lynn landowners regarding the TOD project, and has held four public consultation meetings. A portfolio has been established with the responsibility of communications. Council officers have been working with the communications advisors from both ONTRACK and ARTA to manage consultation, the media and general public and to ensure that the views of the community are clearly expressed back to the Council.
24. Presentation boards showing information about the TOD project and the wider town centre are on display in the New Lynn Library and information about the project is available on the Council website.
25. Consultation has been held with the landowners directly affected by the Designation since the 2006 funding application was granted. Officers have met with Cambridge Clothing every three months to advance discussions on designs and to accommodate Cambridge clothing's access requirements for both private and heavy vehicles.

26. Council have also held 2 meetings specifically on the Designation for residents, local businesses and the wider public. These consultation meetings have related specifically to the designation process and the environmental effects which are likely to be generated by the project.
27. Consultation has been undertaken with ONTRACK regarding the Designation over the last 3 years. The Council have not yet obtained written approval from ONTRACK for the Clark Street extension however there is a dedicated work stream in place to progress this issue.

## RESOURCES

28. Funding for the Clark Street Designation has been allocated in the Long Term Council Community Plan 2006-2016 budget of the New Lynn TOD project.

## IMPLEMENTATION ISSUES

29. Staff will need to continue to negotiate with landowners including ONTRACK to determine a fair and appropriate resolution of the issues and preferred means of acquisition on each affected property, with a view to securing the construction of the Designation within an appropriate timeframe
30. The land located at 1A Rankin Avenue is owned by ONTRACK, as part of the Railway designation, and is already held for a public work. Thus, the Public Works Act 1981 as a means by which to acquire this parcel of land cannot be applied. Council will therefore need to look at other alternatives for acquiring this land including long term lease or land swap arrangements.

**Report prepared by:** Tony Miguel, Group Manager Asset Management and Caisey Marter, Strategic Advisor Urban Design and Development.



## PART F - REPORT OF THE SUBCOMMITTEE

### 11 SWIMMING POOL EXEMPTION SUBCOMMITTEE

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 25 SEPTEMBER 2008**

#### MATTERS CONSIDERED

*A204-A210*

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 A204 to A210.

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

**Receive** the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 25 September 2008.

WW Flaunty, QSM, JP

**CHAIRMAN**

