



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, 9 December 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.

3 December 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, 9 DECEMBER 2008, COMMENCING AT 9.30 AM

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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, 9 DECEMBER 2008, COMMENCING AT 9.30 AM

PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

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

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

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



3 CONFLICTS OF INTEREST

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



4 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 11 November 2008
Monday, 17 November 2008
Monday, 24 November 2008

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

Receive the minutes of the meetings of the Planning and Regulatory Committee held on Tuesday, 11 November 2008, Monday, 17 November 2008 (Extraordinary) and Monday, 24 November 2008 (Hearing) as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 NOVEMBER 2008)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Rodney District Council	(RDC)
Waitakere City Council	(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)
Networth Developments Limited	(Networth)

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 30 November 2008) report.

HIGH COURT

***(Changed)* Waitakere City Council v Networth Developments Limited**

1. Waitakere City Council (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. The proceeding will be advertised shortly.

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

2. This is a judicial review of the Council's decision (as well as the Auckland Regional Council's decision) (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'.

3. 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.
4. 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) C W Williams and others v Waitakere City Council (February 2006)

5. The Council was served with 7 sets of proceedings under the Public Works Act 1991 (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.
6. 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. The Court of Appeal has recently released a Judgment upholding the High Court decision and dismissing Council's strike out application. The Judgment however contains some useful findings about the statutory requirements before offer back obligations under s. 40 of the (PWA) arise. The legal team has met and discussed strategy. A detailed report will be brought to the Council meeting as at the end of February 2009.

Substantive hearings involving Mr Mawhinney

(Changed) Mawhinney & Others v Waitakere City Council (May 2008)

7. An appeal by companies controlled by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out 3 related appeals (see also paragraph 14 below) 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 filed lengthy submissions with the Court in support of his appeal.
8. The case was heard on 12 and 14 November 2008 before Heath J. Mr Mawhinney was unable to persuade the Judge that the previous High Court rulings in the *Kitewaho* litigation were not determinative of the issues in this appeal, and on that basis, the appeal has been dismissed. We will be making an application for costs.

ENVIRONMENT COURT

(Unchanged) Swanson Structure Plan Decisions (October 2008)

9. 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) Community Waitakere Charitable Trust v Waitakere City Council (June 2008)

10. 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. Mediation took place on 21 November 2008. The position of the appellant has not changed significantly since the Council hearing, and a settlement was unable to be reached at mediation. The parties have agreed that they will have further discussions before Christmas (particularly relating to scale, amenity and traffic issues) to attempt to reach negotiated position. If these are unsuccessful, a timetable for exchange of submissions and evidence will be sought from the Court.

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

11. 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.
12. 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.
13. 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 8 December 2008.

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

14. 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.

15. 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 10am to 5pm, 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.
16. 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.
17. 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.
18. These matters were jointly heard in the weeks of Environment Court and standard track November 2008. The Court has reserved its decision with an indication that it may release its decision in February 2009.

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

19. 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.
20. The Court has now delivered its decision. The appeal was disallowed. Costs were reserved. The Council has submitted its costs application.

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

21. 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.
22. 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.
23. 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. There is a callover for these matters in the week of 8 December 2008.

(Unchanged) 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)

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

25. 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 was due by 31 October 2008. Mr Mawhinney is in breach of the Court timetable and has a final deadline to file his evidence by 19 December 2008.

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

26. 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 a final deadline of 19 December 2008 has been agreed (while reserving Council's position in respect of historic timetable breaches).
27. Council has put Mr Mawhinney and the Court on notice that an application to strike out the proceeding for want of prosecution will follow if Mr Mawhinney does not comply with the timetabling requirements.

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

28. 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.
29. A costs decision has been released by Judge Whiting. An 85% award of \$36,640.52 has been made against Perceptus Limited, Swanson Heights Limited, Waitakere Resource Consents Limited and London & Greenwich General Trading Company Limited in favour of Council. The award will carry interest at 7.5% from the date of decision (31 October 2008). Demand has been made and enforcement action will be commenced in the event that payment is not made promptly. The application to make Mr Mawhinney personally liable for these costs were unsuccessful. It is thought that the debtor will have no assets and be allowed to be wound up.

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

30. 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.
31. 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.
32. A costs decision has been released this month by Judge Whiting. An indemnity award of \$42,651 has been made against Waitakere Resource Consents Limited and successors in favour of the Council. The award carries interest at 7.5% from date of the decision (31 October 2008). Demand has been made and enforcement action will be taken in the event that payment is not made promptly. The application to make Mr Mawhinney personally liable for these costs were unsuccessful. It is thought that the debtor will have no assets and be allowed to be wound up.

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

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

Plan Change Hearings

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

- A1-A3*
34. A summary of appeals against Plan Changes 13 to 18 is set out in Annexure 1 attached 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.
 35. 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.

36. 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.
37. 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.
38. A judicial conference was held on 23 May 2008 where all parties, including the Councils put forward their strategies for managing the appeals.
39. 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.
40. In respect of all other appeals, the topics classified and referred to above as Commercial Appeals has been set down for a hearing, if 1 is necessary, in the early part of the second quarter of 2009. The Councils will report back to the Court on progress on these matters on or before 19 December 2008.
41. 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

***(Changed)* Abdul Hafeez – 32 Kauri Point Road, Laingholm (September 2008)**

42. Mr Hafeez has been charged with 2 offences under the Building Act 2004 (Building Act). The first involves allegedly unauthorised building works consisting of the construction of 2 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.

43. 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 appeared on 1 December 2008. The matter has been adjourned to 23 February 2009 and the Judge has directed that pleas are to be entered on this date.

(Changed) NZ Yachting Developments Limited & Ors – Buckley Avenue, Hobsonville (October 2008)

44. 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.
45. Informations have been laid in relation to the works which are alleged to be an offence pursuant to s. 40 of the Building Act.
46. A first call of the matter was on 1 December 2008 and has been adjourned to 23 February 2009.

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

47. 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.
48. 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.
49. 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 had a first call of 3 November 2008.
50. 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) Enterprise Steel Properties Limited & Others – 12 North Candia Road, Swanson (July 2008)

51. 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.
52. 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.
53. The company pleaded guilty and sentencing was set down for 1 December 2008. The company was convicted and sentenced to a fine of \$6,500.00 and Court costs of \$130.00, solicitors costs of \$226.00.

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

54. 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.
55. Informations have been laid against all of the parties involved. One contractor has pleaded not guilty and the matter went to a status hearing on 24 November 2008.
56. HQH Limited, the company's director, and the project manager entered guilty pleas on 2 September 2008, and were convicted and sentenced on 5 November 2008. A starting point fine of \$50,000.00 was set down for the company, while a starting point fine of \$25,000.00 was set down for Mr Ma. Actual fines were approximately \$34,000.00 plus the usual costs in respect of the company, and approximately \$17,000.00 plus costs in respect of Mr Ma.
57. 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.
58. 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 was set down for 8 December 2008.

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

59. 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.
60. 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.
61. 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.
62. 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.

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

63. This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store complex currently under construction at Henderson.
64. Council laid informations against various parties (including the developer company and a director) in respect of the unauthorised building works.

65. The company and Mr Kumar both entered guilty pleas on 15 July 2008. Sentencing was set down for 7 November 2008, and the Court reserved its decision.

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

66. 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.
67. 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.
68. The defendant then changed his plea to guilty at the commencement of the hearing. Sentencing took place on 10 October 2008 with the Judge reserving his decision. The defendant was given a further opportunity to present further evidence to support the factors of mitigation addressed at the hearing, and to support a discharge without conviction.
69. The decision was delivered on 7 November 2008 with the defendant being convicted and sentenced to a fine of \$1500.00 with the usual costs of \$130.00 Court costs, and \$226.00 solicitor's costs being awarded in favour of the Council.

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

70. 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.
71. 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.
72. 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.
73. 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. A building consent was granted in respect of the deck and conservatory on 11 September 2008.

74. The defendant appeared on 8 September 2008 for a defended hearing of the matter. 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 of the Building Act (failure to cease using the premises for public use after unauthorised building works were discovered). 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, and the defendant was convicted and sentenced to a fine of \$7,000.00 plus \$130.00 Court costs, and \$226.00 solicitor's costs.

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

75. 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.
76. 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) Graham W Gordon - 159A Scenic Drive, Titirangi (October 2005)

77. 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.
78. 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.
79. At the next appearance, Mr Gordon changed his plea to guilty on 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, and the matter was set down for sentencing.
80. 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.

81. The works subject to the sentence indication included:
- 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.
82. The Building Act prosecution was also adjourned and will be dealt with at the sentencing.
83. The Council was required to undertake a further inspection of the property to ascertain compliance with the above matters. Mr Gordon refused entry to the property, and refused to make any application for resource consent. A search warrant was 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 NZ Fire Service to be dangerous. Mr Gordon wished to oppose the notice, and he has been advised to contact DBH to seek a determination of the notice.
84. Meredith Connell advises that Mr Gordon's Amicus, Peter Kaye, was not be available at the sentencing and it was further adjourned to 12 December 2008.

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

85. 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.
86. 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) S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

87. 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 in 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) Leaky Building Claims

88. Individual claims currently being handled as at 28 November 2008 are 20:

- High Court: 7 (including 4 multi unit claims)
- District Court: 1
- Weathertight Home Resolution Service (WHRS) 7 (including 1 multi unit)
- WHT 5 (including 2 multi units claims – 1 of which is for only 2 units)

89. 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 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 "Ivil" spelt backwards. The settler of the trust was Mr Brent Ivil. The majority of the claimants appear to have interests associated with the trust and/or Mr Ivil.) 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).

90. Two claims settled during November:
- 23 Roy Maloney Drive, Henderson settled at a Judicial Settlement Conference at the Waitakere District Court on the 20 November 2008. Only the Claimants, the alleged Builder who appeared to be effectively insolvent, and the Council attended. The Council contributed \$50,000 to the settlement.
 - 151B Colwill Road, Massey settled at mediation on the 27 November 2008. The Council contributed \$47,832.33 to the settlement.
91. One claim, and one notice of a potential claim, was received this month:
- The claim received is an 85 unit High Court claim in respect of 10 Crown Lynn Place, New Lynn. The Statement of Claim dated 7 November 2008 does not quantify the claim except for general damages, which are pleaded at \$2,575,000. An important aspect of the claim is that many of the owners of the units do not appear to be owner occupiers. The validity of these owner's claims may be affected by appeals going to the Court of Appeal which address the fundamental issue as to whether the Council has a duty of care to commercial owners of residential property.
 - 15 Lockington Avenue, Henderson is a single claim although not a standalone property. It is one of 69 built under a single consent. An application for a report was accepted by the WHRS on 5 November 2008. It appears that a private building certifier was involved and the Council's exposure is therefore likely to be limited or non-existent.

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 PARTIAL REMOVAL OF DESIGNATION ME18 - HENDERSON PRIMARY SCHOOL

GLOSSARY

Resource Management Act 1991	(the Act)
Minister of Education	(the Minister)
Waitakere City Operative District Plan	(the Plan)

EXECUTIVE SUMMARY

The Minister of Education (the Minister) has given notice under s.182 of the Resource Management Act 1991 (the Act) of a partial removal of the Henderson Primary School designation in the Waitakere City Operative District Plan (the Plan). The designation is to be uplifted from a narrow strip of land adjacent to Great North Road. The reason for partial uplift of the designation is to facilitate widening of Great North Road.

The Act requires that the Plan be amended to give effect to the partial uplifting of the designation without further formality, unless the Council is of the opinion that the effect of partially uplifting the designation would be more than minor. The author of this report is of the opinion that no effects will arise from partially uplifting the designation. Therefore it is recommended that the Plan be amended without further formality.

RECOMMENDATIONS

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

1. **Receive** the Partial Removal Of Designation ME18 - Henderson Primary School report.
2. **Agree** that the Waitakere City Operative District Plan be amended to partially uplift designation ME18 - Henderson Primary School.

BACKGROUND

A4

1. Great North Road is being widened adjacent to Henderson Primary School. A narrow strip of Crown (Ministry of Education) land will become road reserve. The part of the designation to be uplifted is shown in the attachment at page A4. Partial uplifting of the Ministry of Education designation for the school is a necessary administrative consequence of the vesting of the land as road.

DECISION MAKING

Issues

2. The Council needs to decide whether to partially uplift designation ME18 under s.182(2), or alternatively, oppose the partial uplift of the designation under s.182(5) of the Act.

Options Identified

3. The options are limited to those set out in paragraph 2 above. There is no "do nothing option" in this context.

Assessment of Options

A5-A8

4. The Minister has given notice of a partial uplifting of designation ME18 in the Plan. This designation provides for the Henderson Primary School. It is sited at the intersection of Vitasovich and Great North Road. Copies of the notice and property details are attached at pages A5 to A8.
5. Great North Road is being widened in this location and a small area of land at the northern area of the school site will become road reserve. A partial uplift of the school designation is necessary for these works.
6. The Act states:

[182 Removal of designation:

(1) If a requiring authority no longer wants a designation or part of a designation, it shall give notice in the prescribed form to -

(a) The territorial authority concerned; and

(b) Every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and

(c) Every other person who, in the opinion of the requiring authority, is likely to be affected by the designation.

(2) As soon as reasonably practicable after receiving a notice under subsection (1), the territorial authority shall, without further formality, amend its district plan accordingly.

- (3) *The provisions of Schedule 1 shall not apply to any removal of a designation or part of a designation under this section.*
- (4) *This section shall apply, with all necessary modifications, to a notice by a territorial authority to withdraw its own designation or part of a designation within its own district.*
- (5) *Notwithstanding subsections (2) to (4), where a territorial authority considers the effect of the removal of part of a designation on the remaining designation is more than minor, it may, within 20 working days of receipt of the notice under subsection (1), decline to remove that part of the designation.*
- (6) *A requiring authority may object, under section 357, to any decision to decline removal of part of a designation under subsection (5).]*

7. The area of the designation to be uplifted is minor and will not adversely affect the use of the remaining designation for education purposes. Partial uplift of the designation also provides a public benefit by facilitating upgrading of Great North Road. Therefore it is appropriate to amend the Plan without further formality to partially uplift the designation

Consideration of Community Views

8. The only parties who could be affected by partial uplift of the designation are the Minister and potential school users. Ministerial approval has been provided in the form of the appended notice, and as the area of designation to be uplifted is minor, future use of the school by the community will not be affected. No further consideration of community views is necessary.

Preferred Option

9. The preferred option is to amend the Plan to partially uplift the designation.

STRATEGIC CONTEXT

10. The extent of the partial uplift of the designation is minor and has no strategic implications.

CONSULTATION

11. The procedures set in s.182 of the Act preclude external consultation. The partial uplifting of the designation is supported by Transport Assets.

RESOURCES

12. No resources other than a minor amount of staff time are required.

IMPLEMENTATION ISSUES

13. There are no issues involved in implementing the decision.

Report prepared by: Christopher Turbott, Senior Planner - Policy Implementation.



7 NORTHSIDE DRIVE ROADING DESIGNATION

GLOSSARY

Resource Management Act 1991	(RMA)
Designation for Northside Drive	(the Designation)
Northern Growth Strategic Area	(NorSGA)
Waitakere City Council's	(Council)

EXECUTIVE SUMMARY

The purpose of this report is to seek the Planning and Regulatory Committee's approval to designate land for the construction of Northside Drive (the Designation) as part of the infrastructure required to enable development of the Northern Strategic Growth Area (NorSGA) and lodge a Notice of Requirement for that purpose.

A9 The Designation proposal is an integral part of a wider strategic project that seeks to provide multi-modal transport infrastructure to assist in achieving Council's objectives for NorSGA. The proposed Designation is shown on the plan in the attachment at page A9.

RECOMMENDATIONS

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

1. **Receive** the Northside Drive Roading Designation report.
2. **Agree** that the Chief Executive Officer be authorised to lodge a Notice of Requirement for the land purchase and construction of Northside Drive.

BACKGROUND

1. Council has a work programme in place to plan for changes to the Metropolitan Urban Limit and associated district plan changes to enable development of NorSGA.
2. The Local Government (Auckland) Amendment Act 2004 requires Council to address specific issues of intensification, urban amenity and management of the redevelopment of NorSGA through a specific plan change to the Waitakere City District Plan.
3. As part of this programme, Council has completed concept planning and feasibility planning for the infrastructure required to facilitate development of NorSGA.
4. The work programme for construction of infrastructure envisages that physical works will be started in the 2009/2010 construction season. In order to meet this timeline, it is necessary to secure land and land rights associated with infrastructure.
5. The detailed design, including that of the Designation, is consistent with Council's strategic planning and district plan changes previously approved by Council.

DECISION MAKING

Issues

Designation Process

- A9
6. 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 in the attachment at page A9.

7. 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 will 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 lodges a submission would have the right to appeal to the Environment Court in respect of the Council's decision.
8. 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.

Establishment of the Designation

9. 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 1991 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

10. Two options have been identified, as follows:
 - Option 1 - Council to purchase the land required for Northside Drive; or
 - Option 2 - follow the Designation process under the RMA.

Assessment of Options

11. Option 1 commits Council to purchasing the land. In this instance this is a complicated issue due to multiple ownership and the lengthy timeline required to resolve Public Works Act 1991 issues.
12. Option 2 is considered to be more effective as it protects the road corridor while enabling sufficient time to work through the RMA processes and issues.

Consideration of Community Views

13. The RMA requires that a 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 that the Council can illicit community views on the proposed Designation.

Preferred Option

14. The recommended option is for the Council to proceed with the Designation process under the RMA.

STRATEGIC CONTEXT

15. The NorSGA project is identified as one of the Council's top 5 projects and represents a substantial investment in the Long Term Council Community Plan 2006-2016 and delivers on the following strategic platforms:
 - a. Urban and Rural Villages;
 - b. Strong Communities; and
 - c. Integrated Transport and Communications.
16. The NorSGA project is aligned with a number of strategies:
 - a. The Auckland Regional Growth Strategy;
 - b. Auckland Regional Land Transport Strategy;
 - c. Council's: Transport Strategy 2006-2016;
 - d. Growth Management Strategy; and
 - e. Economic Development Strategy.

CONSULTATION

17. Community consultation has been undertaken as part of the statutory requirement to prepare the District Plan changes. As part of this process workshops and meetings have been held with the landowners.
18. Further consultation will be carried out with affected landowners.

RESOURCES

19. Funding for the Designation has been provided for in the Annual Plan 2009/2010.

IMPLEMENTATION ISSUES

20. Staff will continue to negotiate with landowners to determine a fair and appropriate resolution of the issues, with a view to securing the Designation within an appropriate timeframe.
21. A report will be provided to the Planning and Regulatory Committee at an appropriate time to provide an update on progress and any risks that may arise.

Report prepared by: Tony Miguel, Deputy Director: City Services.



PART D - ENVIRONMENTAL MANAGEMENT

8 KAURI COLLAR ROT IN WAITAKERE UPDATE

GLOSSARY

Auckland Regional Council	(ARC)
Ministry of Agriculture and Forestry Biosecurity New Zealand	(MAFBNZ)
Department of Conservation	(DOC)
Kauri Collar Rot/ <i>Phytophthora</i>	(KCR)

EXECUTIVE SUMMARY

Kauri Collar Rot (KCR) is becoming a prevalent disease within Waitakere populations of kauri trees, causing death. The disease is caused by a 'fungus-like' organism called *Phytophthora taxon agathis*. The majority of trees infected within the Auckland region are in the Waitakere ranges, with some infestations on Great Barrier Island.

An interagency group has been formed between Ministry of Agriculture and Forestry Biosecurity New Zealand (MAFBNZ), the Department of Conservation (DOC) and the Auckland Regional Council (ARC). MAFBNZ is taking the lead on how to deal with the organism, and has declared the disease an 'Unwanted Organism' enabling action to be taken under the Biosecurity Act 1993.

MAFBNZ are developing a Containment Strategy for KCR and will determine which agencies are responsible for undertaking which actions. In the Auckland region, the ARC are the delegates responsible for implementing the Biosecurity Act 1993. Waitakere City Council will be consulted by the interagency group at a later stage to discuss implementation of the Containment Strategy.

RECOMMENDATION

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

Receive the Kauri Collar Rot in Waitakere Update report.

BACKGROUND

1. *Phytophthora taxon agathis* or KCR was first reported on the Maungaroa Ridge Track near Piha in 2006. It was initially thought that this form of *Phytophthora* was similar to previously recorded infections in the late 1970's, however in April 2008 it was confirmed that this is a new organism and only affects kauri trees.
2. Upon this discovery the ARC quickly developed more information on the disease, as well as quarantine measures to prevent its spread. KCR has 2 forms, an infectious phase and a spore phase. The infectious phase is very susceptible to stressors like dry, heat and ultraviolet light, and can only survive on a live host. It is motile and moves in water. The spore phase is highly resistant to stressors and can survive for an unknown period of time in soil.
3. The spore phase poses the highest risk as anyone tramping in an infected area can pick up spore-infected soil on shoes and transport it across the City. The spores, however are susceptible to disinfectant, and the major form of quarantine control to date is boot and equipment washing and sterilisation.

DECISION MAKING

4. In October 2008 MAFBNZ declared that KCR is an "Unwanted Organism", enabling quarantine and containment actions to be taken under the Biosecurity Act 1993. In this regard, KCR may be managed in the same way that Dutch elm disease was managed in previous years.

5. MAFBNZ, DOC and ARC have created an interagency team to deal with the disease. MAFBNZ is taking the lead in all decisions, and are currently developing a Containment Strategy. This strategy will define what all the actions are that need to be taken, and which agencies will be required to carry out each task.
6. ARC is already taking action to contain the disease within the vicinity of known infected trees. These locations are Cascades, Maungaroa Ridge, Piha, Huia and Karekare. The actions that ARC have taken so far include:
 - Boot and equipment washing for all staff and contractors when working in the Waitakere Ranges Regional Park or within infection zones;
 - Asking all park visitors to follow the same protocols;
 - Development of information fact sheets web site updates;
 - Training of local authority and DOC staff into identifying signs of infection;
 - Undertaking research into the host specificity of the disease;
 - Surveying of all known kauri stands in Auckland;
 - Research into different control methods; and
 - Managing private land owner requests for information and site visits.
7. It is impossible to eradicate the disease, so action will be taken to contain the spread of the disease and reduce the total number of kauri trees that may become infected. There is a potential that should no or inappropriate action be taken many of the kauri trees in Waitakere may die.
8. There is a considerable amount of information that is not known about the disease, however MAFBNZ can provide resources to enable more research to be conducted, and efficient containment programmes to be rolled out.

Issues

Waitakere City Council Actions to Date

9. A Rural Road Survey has been undertaken and has identified thirteen kauri trees on roadsides that are dead or dying. The causes of these deaths are unknown but may relate to KCR.
10. ARC staff has met with Parks staff and Councillors to provide updates on the disease, and staff are working closely and sharing information. The current recommendation from the ARC is to wait for MAFBNZ to develop the Containment Strategy which will determine what actions can be taken.
11. Council's current arborist contractor Treescape are also actively working with the ARC and already have a registered quarantine facility where diseased trees can be removed to and treated.

Potential Actions Required

12. It is likely that Waitakere City Council will be requested to undertake surveys of all its parks with areas of native bush and kauri stands to determine the presence of disease symptoms. If diseased trees are identified, Waitakere City Council may be required to fell the trees and either leave them to rot on site or remove them safely to a quarantine facility for treatment.
13. Waitakere City Council may be requested to ensure all its contractors and staff undertake the same quarantine measures as ARC, and that limitations and/ or special considerations are given through tree removal consents within the Regulatory Consents team

STRATEGIC CONTEXT

14. This disease could seriously affect the natural heritage of the city, and alter the look and ecosystem of the Waitakere Ranges. The City's unique vegetation and outlook could be drastically changed should it lose all of its kauri trees.
15. The Containment Strategy may require Council to re-prioritise Parks maintenance contracts, staff resource and budgets, in order to implement and meet the required actions.

CONSULTATION

16. The ARC is keeping in close contact with staff within Council, and are undertaking regular presentations to all Councils in the region to provide updates of progress. To date MAFBNZ have not contacted Waitakere City Council staff.

RESOURCES

17. Through the decision to define KCR as an "Unwanted Organism", there is now a potential for MAFBNZ to provide resources to enable landowners to implement quarantine measures. At this stage it is unknown what the measures may be and what the likely cost of surveying or control might be.
18. Council currently holds a budget of \$10,000 a year to implement Biosecurity risk measures.

IMPLEMENTATION ISSUES

19. There are no implementation issues identified at this time.

Report prepared by: Danielle Hancock, Parks Ecology and Policy Coordinator.



PART E - REPORT OF THE SUBCOMMITTEE

9 KAY ROAD BALEFILL SITE MANAGEMENT COMMITTEE

THE MANAGEMENT COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON TUESDAY, 4 NOVEMBER 2008.

MATTERS CONSIDERED

A10-A11

The Management Committee 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 A10 to A11.

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

Receive the meeting report of the Kay Road Balefill Site Management Committee held on Tuesday, 4 November 2008.

I Hutchinson
CHAIRMAN



10 **SWIMMING POOL EXEMPTION SUBCOMMITTEE**

THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 30 OCTOBER 2008.

MATTERS CONSIDERED

A12-A18

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 A12 to A18.

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

Receive the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 30 October 2008.

WW Flaunty, QSM, JP
CHAIRMAN



PART F - PUBLIC EXCLUDED MATTER

11 **LANDSLIP AT 19 CHURCH STREET, SWANSON**

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely, Landslip At 19 Church Street, Swanson.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Landslip At 19 Church Street, Swanson.	The withholding of information is necessary in order to: <ul style="list-style-type: none">• Maintain legal professional privilege.	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

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

- The report contains information which if released could affect the Council's ability to maintain legal professional privilege.

