



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, 10 February 2009 **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.

4 February 2009

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)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

(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,
10 FEBRUARY 2009, 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, 10 FEBRUARY 2009, 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, 9 December 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, 9 December 2008, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 31 JANUARY 2009)

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.) |
| Weathertight Homes Tribunal | (WHT) |
| Protect Piha Heritage Society Incorporated | (PPHS Inc.) |
| Swanson Structure Plan | (SSP) |
| Building Act 2004 | (Building Act) |
| Public Works Act 1981 | (PWA) |
| Sentencing Act 2002 | (Sentencing Act) |
| Summary Proceedings Act 1957 | (Summary Proceedings Act) |
| Metropolitan Urban Limit | (MUL) |
| Minor Household Unit | (MHU) |
| Networth Developments Limited | (Networth) |
| National Trading Company | (NTC) |

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 January 2009) report.

HIGH COURT

(New)

Wilton Joubert Limited & AR Wilton v Waitakere City Council (December 2008)

1. Waitakere City Council (Council) has received a Notice of Appeal in relation to the Court's decision on this matter. The Appellants' are an engineering company and its director, a professional registered engineer. They were found guilty in the District Court of undertaking building works without a building consent in breach of the Building Act 2004 (Building Act). The building works constituted the inspection of 14 foundations laid in accordance with the engineer's designs, but not in accordance with a building consent.
2. The matter went to sentencing on 8 December 2008 where all parties were discharged without conviction pursuant to s. 106 of the Sentencing Act 2002 (Sentencing Act), and an award of costs was made in favour of Council of \$10,000.00 per defendant.

3. An appeal was filed on 24 December 2008 and questions the Judge's findings at the hearing, and his imposition of a costs award. Both decisions are appealed on points of fact and law and the appeal has been lodged pursuant to the Summary Proceedings Act 1957 (Summary Proceedings Act).
4. Council is awaiting further information from the Court regarding timetables and hearing dates.

(Changed)

Waitakere City Council v Networth Developments Limited (November 2008)

5. 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 was on 19 December 2008. The proceeding will be advertised shortly.

(Unchanged)

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

6. 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'.
7. 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.
8. 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)

9. The Council was served with seven 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.

10. 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 plaintiff's are in the process of responding to Council's application for further and better particulars of the claim. Once the particulars are received, Council will need to file statements of defence. Discovery of documents is also well advanced. We are also currently considering whether the limitation defences to the claims and Senior Counsel has been asked to give advice on this point.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

11. An appeal by companies controlled by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three 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.
12. 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. Mr Mawhinney has filed an application for leave to appeal against the decision which is to be heard on 19 February 2009. We are preparing papers in opposition to the leave application and also applying for costs against Mr Mawhinney in respect of the proceedings to date.

ENVIRONMENT COURT

(Changed)

Swanson Structure Plan Decisions (October 2008)

13. The Court has delivered its decision on the Swanson Structure Plan (SSP) and it was received by the Council's lawyers, Simpson Grierson, on 23 January 2009. A more comprehensive report will be provided to the Committee in due course, but in the meantime, the general decision is as follows:
 - There will be a Swanson Structure Plan;
 - The total number of potential new lots is 52 (a little less than half of the number supported by Council, which was significantly less than the number of additional lots sought by the landowners);
 - That subdivision beyond the provision in the SSP should be a prohibited activity; and
 - The Council has been directed to prepare a final version of the SSP along with the rules and policies that give effect to its decision by 31 July 2009, with amended provisions to be submitted three months thereafter.

(Changed)

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

14. 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 agreed to have further discussions before Christmas (relating to scale, amenity and traffic issues) in an attempt to reach a negotiated position.
15. On 15 December 2008 the Appellant wrote to withdraw this appeal. A decision has been made not to pursue costs against the Appellant given its reliance upon the Council, amongst others, for its funding, and the unique circumstances of the Council's support for relocation to the Tui Glen site.

(Changed)

J Hsu v Waitakere City Council (April 2008)

Weddings Etc Limited v Waitakere City Council (April 2008)

16. 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.
17. Mr Hsu appealed the Council's decision to grant consent in respect of noise issues. Weddings Etc Limited (applicant/consent holder) appealed several conditions of consent. Mr Chapman joined these appeals as a s. 274 party seeking additional conditions of consent.
18. An evidence exchange timetable has been agreed, and evidence is in the process of being exchanged. The matter was set down for a hearing in early 2009, and we are awaiting further directions from the Court.

(Unchanged)

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

19. Protect Piha Heritage Society Incorporated (PPHS Inc.), the appellant, 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 wanted to see the joint decision of the Councils cancelled and the resource consent refused.
20. In the alternative the appellant wanted: 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 am to 5 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.
21. Preserve Piha Limited, the applicant for the consent also appealed the conditions imposed on the consent by the Council. Specifically the applicant opposed 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.

22. There are 12 s. 274 parties. They all support the granting of consent. The two s. 274 parties that opposed the grant of consent have withdrawn.
23. These matters were set down for standard track file management, and were jointly heard in the Environment Court in November 2008. The Court reserved its decision with an indication that it may release its decision at the earliest in February 2009.

(Unchanged)

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

24. 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 in order that the Court could hear the evidence of a witness for a s. 274 party that was not available during the March 2007 hearing.
25. The Court has now delivered its decision. The appeal was disallowed. Costs were reserved. The Council submitted its costs application and the Court in Auckland have forwarded the application to Judge Jackson, (who ordinarily sits in Christchurch) for a decision. As His Honour is currently involved in a large hearing, we are expecting the decision on costs sometime after the conclusion of that matter.

(Changed)

Waitakere City Council v Rodney District Council (April 2007)

26. 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.
27. 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.
28. 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 points. No orders for costs have been made. A small number of further mediations are scheduled to resolve those matters still outstanding. There was a callover for all outstanding appeals in the Court last month, and timetable directions made on all matters. There has also been significant progress of resolution of various appeals and the withdrawal by one significant appellant (Scott & Putt).

(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)

29. 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

30. There are a number of matters being dealt with currently relating to Mr Mawhinney's companies. The matters are addressed below at paragraphs 31-39 of this report. The current statuses of Mr Mawhinney's companies below on the Companies Register are:

- London & Greenwich Trading Company Limited - Struck off;
- Perceptus Limited - Struck off;
- Waitakere Resource Consents Limited - In the process of being struck-off, however the Council's lawyers have filed an objection to this with the Companies Office.

The Council is considering dropping the objection because then Mr Mawhinney would be forced to substitute himself as the plaintiff for these matters, or face the Court striking out the matters. A substitution of plaintiffs would be opposed unless Mr Mawhinney substituted himself as the plaintiff.

(Changed)

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

31. This was a proceeding lodged in the Environment Court by three corporations associated with Mr Mawhinney on 25 August 2008. The companies are London and Greenwich Trading Limited, Perceptus Limited, and Waitakere Resource Consents Limited. It sought to revoke a determination made by Council to defer two subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application was 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 was 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 had a final deadline to file his evidence by 19 December 2008. Council was finally served with submissions and exhibits by Mr Mawhinney on 12 January 2009. The Council has requested 4 weeks from the Court in order to file a reply.

(Changed)

Waitakere Resource Consents Limited (formerly on this report as Perceptus Limited) v Waitakere City Council (January 2008)

32. 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).
33. 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. Mr Mawhinney advised the Court on 16 January 2009 that he has no further evidence to file other than that which was originally filed, namely submissions and affidavit evidence. Further, he has advised the Court that he would like the opportunity to reply to Council's submissions. The Council's lawyers have filed a memorandum with the Court on 27 January 2009 requesting the standard four weeks to respond to Mr Mawhinney's memorandum.

(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)

34. These three appeals were 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.
35. A costs decision was released by Judge Whiting as follows: An 85% award of \$36,640.52 was 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 carries interest at 7.5% from the date of decision (31 October 2008). Demand has been made. The applications to make Mr Mawhinney personally liable for these costs were unsuccessful. It is thought that the debtors will have no assets and will be allowed to be wound up. A statutory demand will be served on Waitakere Resource Consents Limited. The other Mawhinney companies are already struck off or in liquidation.

(Changed)

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

36. This was 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.
37. 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.
38. A costs decision was released by Judge Whiting in December 2008. An indemnity award of \$42,651 was 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 statutory demand will be served on the Company. The application to make Mr Mawhinney personally liable for these costs were unsuccessful. It is thought that the debtor will have no assets and will be allowed to be wound up. Council also objected to the Registrar of Companies from removing Waitakere Resource Consents Limited from the Register as the Company has not complied with its statutory obligations to file annual returns.

(Unchanged)

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

39. 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*
40. 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 53 appeals lodged by 27 parties. Further reports will be provided as time goes by.
 41. 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.
 42. 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.
 43. 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.
 44. A judicial conference was held on 23 May 2008 where all parties, including the Councils put forward their strategies for managing the appeals.
 45. 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 was set down for hearing, if one was needed, in late January - early February 2009. In the interim the Council has resolved the appeals against the MUL and that appeal as well as the points of appeal by the National Trading Company (NTC) seeking to have Plan Changes 14 and 15 cancelled has been withdrawn. In addition, the Council and the NTC have submitted a draft consent order to resolve additional points of appeal raised by the NTC in respect of plan changes 14 and 15. No s 274 party has signed the memorandum in respect of the consent order, although all s 274 parties have been provided a copy of the draft consent order and the Council has been in discussions with the s 274 parties since October 2008. All of the s 274 parties have until 30 January 2009 to file a memorandum stating their position on the Draft consent order.
 46. In respect of all other appeals, the topics classified and referred to above as Commercial Appeals has been set down for mediation in the first two week of March 2009. Depending on the outcome of the mediation the matter could be heard in the second quarter of 2009. The Council has until 3 April 2009 to file a progress report.

DISTRICT COURT

(New) Trustee Management Services Limited & OAAIP Investments Limited - 10-16 Pohutukawa Road, Whenuapai (December 2008)

47. The parties are trustees of the above property. The individual trustees have been charged under s. 338 of the RMA for a contravention of s. 9 of the RMA namely that they allegedly permitted the conversion of a Minor Household Unit (MHU) into a second residential dwelling on the property by increasing the size of the MHU to 96m², 30m² over the permitted Ground Floor Area under the rules of the District Plan for that location.
48. One of the defendants, Mr Dean Thompson, has twice previously been prosecuted for similar offences.
49. Informations were filed at the Court in December and we are awaiting confirmation of service of the summonses. First call for this matter is 23 February 2009.

(New) GD Philpott & SL Wright - 28 Metcalfe Road, Ranui (December 2008)

50. Council issued an Abatement Notice in December 2008 requiring the above parties to remove all cars and other items from the property. The activity constitutes a contravention of Rule 1.1(b) of the Maintenance and Condition of Land and Buildings rules of the Citywide Rules section of the District Plan. Such activities are non-complying in that "*Land which due to inadequate maintenance, or the presence of structures or vehicles or other materials or storage of materials or property detracts from amenity values or neighbourhood character*". The current activity at the property is non-complying and would require resource consent. No resource consent was sought by the Appellants for this activity.
51. The parties have appealed Council's Abatement Notice. The Court made directions that the Appellants' were required to file an affidavit in support of the application to stay the Abatement Notice by 12 December 2008. The Appellant's failed to do so.
52. The Council filed a Motion for Strike-out on 19 December 2008 on the basis that the appeal discloses no reasonable or relevant case; and/or that the Appeal involves an abuse of the process of the Environment Court.
53. A tentative date has been advised by the Court for this to be heard in early March 2009. While Council was content for the matter to be dealt with on the basis of written submissions without a hearing, the appellant, Mr Philpott, requested a hearing.

(Unchanged) Abdul Hafeez - 32 Kauri Point Road, Laingholm (September 2008)

54. Mr Hafeez has been charged with two offences under the Building Act 2004 (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.
55. 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.

(Unchanged)

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

56. This matter relates to the partial construction of a commercial building and the conversion of an aircraft hanger to a boat building facility allegedly by the above parties at the Hobsonville Airbase, all undertaken without Building Consent.
57. Informations have been laid in relation to the works which are alleged to be an offence pursuant to s. 40 of the Building Act.
58. A first call of the matter was on 1 December 2008 and has been adjourned to 23 February 2009. A formal review of the prosecution decisions is being undertaken at the direction of the Chief Executive Officer that review will be finalised in the week beginning 9 February 2009.

(Changed)

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

59. 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.
60. 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.
61. 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.
62. The matter was transferred to the Auckland District Court to be heard by a Judge with an Environment Court warrant on 23 January 2009. The parties appeared and entered pleas of not-guilty. The matter has now been set down for a defended hearing on 16 and 17 June 2009. The parties will be representing themselves.

(Changed)

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

63. 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.
64. 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.
65. 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.

66. 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.
67. The engineers, Wilton Joubert Limited, and its two 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. The parties have now appealed both the findings of the Court and the award of costs. This has been listed in this report as the first item of High Court matters at paragraph 1-4 above.

(Unchanged)

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

68. 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.
69. 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.
70. 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.
71. 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)

72. This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store complex currently under construction at Henderson.
73. Council laid informations against various parties (including the developer company and a director) in respect of the unauthorised building works.
74. The company and Mr Kumar both entered guilty pleas on 15 July 2008. Sentencing was set down for 7 November 2008, and the Court will deliver its decision on 6 March 2009.

(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 has yet to be allocated a date for sentencing on although it is tentatively set down for 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. Sentencing was further adjourned to 12 December 2008 at which date Mr Gordon was sentenced to 3 months Home Detention, notwithstanding the previous Judge's indication that imprisonment would be the likelihood.

85. The Building Act charges have been set down for a future fixture. Mr Gordon did not accept Council's offer that on the basis that he plead guilty to some of the charges, Council would withdraw the other charges. The matter will go to a hearing if not guilty pleas are entered.

(Changed)

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

86. 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.
87. 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)

88. 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

TOTAL CURRENT CLAIMS

89. There were 21 actual claims currently being handled as at 31 December 2008:

- High Court: 8 (including 4 multi unit claims)
- District Court: 1
- WHRS 7 (including 1 multi unit)
- WHT 5 (including 2 multi units claims – 1 of which is for only 2 units)

CLAIMS SETTLED

January 2008

- Bocage Lane settled on 26 January 2009 at mediation for a total payment of \$235,000.00. The Council contributed \$50,000.00 to the settlement.

December 2008

90. No claims settled during December 2008.

November 2008

91. 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.

CLAIMS RECEIVED

December 2008

92. One claim and one notice of a potential claim were received in December 2008:
- The claim received is a High Court action in respect of 78 Central Park Drive, Massey which houses the Auckland Christian Mandarin Church. The Statement of Claim dated 19 December 2008, does not attempt to quantify the claim except for costs of repair, which are estimated to be not less than \$400,000. An important aspect of the claim is that it seeks to argue that a territorial authority owes a duty of care to the owners of non-residential property where the alleged negligence has compromised health and safety aspects of the building. This argument, which has floodgate potential, has never been definitively tested in the Courts.
 - The potential claim relates to a property at 12/17 Harbour View Road, Te Atatu Peninsula. This is one of 31 units built in 6 blocks under the same consent.
93. However, it appears that the development was under the control of private certifiers, and it therefore seems unlikely that this will mature into a full claim against the Council.

November 2008

94. One claim, and one notice of a potential claim, was received in November 2008:
- 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.

LARGE CLAIMS SINCE AUGUST 2008

- The Council was served with High Court proceedings on behalf of 58 unit owners in a 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 Limited, 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 Limited 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 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 Limited was engaged to build the units. A dispute arose on completion between the Livi Family Trust and Fletcher Construction Limited 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).

Report prepared by: Mary Davenport, Contract Solicitor.



6 GAMBLING VENUE POLICY

GLOSSARY

| | |
|-----------------------------------|--------------------|
| Gambling Venue Policy | (the policy) |
| Draft Gambling Venue Policy | (the draft policy) |
| Planning and Regulatory Committee | (the Committee) |
| New Zealand Racing Board Venue | (TAB) |

EXECUTIVE SUMMARY

The purpose of this report is to present all documents relevant to the Gambling Venue Policy (the policy) review for approval by the Planning and Regulatory Committee (the Committee) prior to being sent out for public consultation.

The Gambling Act 2003 requires that councils review their Gambling Venue policies at least every three years. These policies relate to the control of “pokie” machines, which are referred to as Class 4 gambling. This is the only aspect of gambling over which local authorities have any control. A report was presented to the Committee on 10 June 2008 which set out the relevant policy options for the control of class 4 gambling. The report also outlined that the review of the policy and any new policies must be subject to public consultation. The process for consultation is that which is set out in the Local Government Act 2002. The Council is required to use the special consultative procedure in the review of the policy.

Following consideration of the options on controlling class 4 gambling, the Committee determined that the sinking lid policy was the most appropriate option for controlling class 4 gambling in the City. However, this decision was rescinded and replaced at the 8 July 2008 Committee meeting. The Committee determined that putting two options to the community was more favourable. Those options were the existing status quo policy which is based on a cap of 501 machines in the City and the sinking lid policy.

Officers were asked to re-write the policies for consultation so as to provide the community with an opportunity to consider both policies. This has led to two comparative policies and to an amended Statement of Proposal for Waitakere City’s draft Gambling Policy for consultation. The Committee agreed to determine its final position on the policy after consultation with the community.

A process and timeframe for consultation (February-April) to allow for public submissions and hearings is outlined. It is anticipated that the policy will be adopted and implemented by June 2009.

RECOMMENDATIONS

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

1. **Receive** the Gambling Venue Policy report.
2. **Agree** to endorse the attached documents including the Statement of Proposal for Waitakere City Council’s draft Gambling Policy for public consultation.

BACKGROUND

1. Waitakere City Council’s policy is currently under review in accordance with the Gambling Act 2003, which requires each territorial local authority to review its policy every three years.
2. A full report on the policy options and the status of Class 4 gambling venues and machines in Waitakere (including two preferred policy options for controlling these) was presented to the Committee on 10 June 2008.
3. Since the report in June 2008 was presented, the current policy cap of 38 gambling venues and 501 machines has provisionally been reached with consents granted by the Council for a further two gambling venues with an additional 18 machines. A further two applications for the remaining one venue and 6 machines are pending.
4. At the 10 June 2008 meeting the Committee decided to support the sinking lid policy option for controlling the number of Class 4 gambling venues and machines in the City to be included in the draft policy. The Committee also agreed that this preferred option could be changed, if appropriate, following public consultation and public hearings.

5. At the 8 July 2008 Committee meeting the 10 June 2008 policy option decision was rescinded and replaced by the inclusion of two preferred options in the Statement of Proposal for the draft policy to go out for consultation. This decision was made to allow for community feedback on which option they considered to be most suitable. The Committee resolved as follows:

Agree that the community be consulted on whether to include in the Gambling Venue Policy:

- a. *Maintaining the status quo of the current cap on venue and machine numbers as stated in the existing policy, or*
- b. *Including a sinking lid policy, where the cap on venue and machine numbers as stated in the existing policy will reduce each time a venue closes and no new venues be permitted.*

Agree that the Council determine its position on the Gambling Venue Policy after consultation with the community.

939/2008

6. It is a requirement of the Gambling Act that the special consultative procedure as set out in the Local Government Act 2002 is applied if the Council intends to change the policy. Any proposed changes are required to be included in the information made available for the public consultation process which includes a 31 day consultation period for written/online submissions with provision for verbal submissions at public hearings. This will take place during February-April 2009.
7. Information sessions for councillors, community boards, Te Taumata Runanga, Waitakere Pacific Board, Waitakere Ethnic Board and other key stakeholders (gambling industry and interest groups) on the draft policy will also be held during this period as required.
8. Submissions and feedback will be analysed and a final policy drafted for a decision by the Committee in May 2009.
- A4-A94 9. Accompanying documents have been prepared for the information pack: A copy of this information pack is attached at pages A4 to A94 and includes:

- Summary of information;
- Statement of proposal for Waitakere City's draft Gambling Policy;
- A copy of the existing 2004 policy;
- Separate copies of the proposed draft policies based on the two options:
 - a) Status quo Capped Policy;
 - b) Sinking Lid Policy;
- Social impact assessment;
- Submission form.

DECISION MAKING

Issues

Timetable for consultation

10. The timetable for consultation is tight if Council wishes to avoid consulting during the busy Long Term Community Council Plan hearings period. Consultation could begin on 16 February 2009.

Documents for consultation

11. All of the attached documents including the draft policy are part of the information pack for public consultation. Relevant documents have been checked by the legal services team. The initiation of the public consultation process is subject to the Committee's approval of the information pack.
12. Both policy options cover Class 4 gambling venues that are currently or would be licensed, for this purpose e.g. Clubs, Trusts or New Zealand Racing Board venues (TABs). As required by the Racing Act 2003 the policy options would also cover new TAB venues without "pokie" machines.

Policy options and possible impacts of new Electronic Monitoring System

13. Player information displays (that 'pop up' on the gambling machines every 30 minutes of continuous play) are required by the Department of Internal Affairs to be mandatory for all licensed venues from 1 July 2009. It is possible that the cost of the upgrading required may affect some smaller organisations which may decide to relinquish their existing licenses with a resulting reduction in venues and machines.

STRATEGIC CONTEXT

14. Policy decisions regarding the regulation of gambling venues must have regard to all effects that gambling can have on the community, whether these are positive or negative. Harms that are associated with gambling are extensive and include social and economic costs to families and communities, whereas benefits such as entertainment value and socialising can be difficult to quantify.
15. Given the range of impacts that gambling may have, a number of the Council's strategic priorities will be of relevance to the review, particularly those that cover the areas of community safety, economic development, and the health and wellbeing of individuals and communities.

CONSULTATION

16. Legal Services, the Compliance and Inspections Team, Public Affairs, Maori Relationships and the Social and Cultural Strategy Teams have been consulted about the process to date.
17. A letter has been sent out to all key stakeholders notifying them of the upcoming consultation process as outlined.
18. A communications plan has been developed to support the consultation process and development of the policy. Main stakeholders to be consulted as part of the public consultation process will include key gambling industry groups such as venue operators, societies and trusts as well as key interest groups. The community boards, Te Taumata Runanga, Iwi, Waitakere Pacific Board and Waitakere Ethnic Board will be among groups consulted.

RESOURCES

19. Staff time has been prioritised to enable the development of this policy and \$4000 allocated from the Social and Cultural Strategy budget, 2008/2009.

IMPLEMENTATION ISSUES

20. The initiation of the public consultation process can commence following approval of the attached information pack at today's meeting. Preparations are already under way for the public notification and hearing process. Any further implementation issues will be addressed once the final policy is adopted.

Report prepared by: Kim Conway, Strategic Analyst: Social Wellbeing.



PART C - DISTRICT PLAN / STRUCTURE PLANS

7 MINOR ALTERATION TO DISTRICT PLAN DESIGNATION TRANSIT NEW ZEALAND 4 - UPPER HARBOUR CORRIDOR

GLOSSARY

| | |
|--|----------------|
| The Minister of Defence | (the Minister) |
| The New Zealand Transport Agency | (NZTA) |
| The Resource Management Act 1991 | (the Act) |
| Transit New Zealand | (Transit) |
| Transit New Zealand 4 | (TSNZ4) |
| The Waitakere City Operative District Plan | (the Plan) |

EXECUTIVE SUMMARY

The New Zealand Transport Agency (NZTA) has given notice of a requirement for a minor alteration to the existing designation Transit New Zealand 4 (TSNZ4) for the Upper Harbour Corridor. The effect of the alteration will be minor and it is recommended that it be approved without further formality.

RECOMMENDATIONS

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

1. **Receive** the Minor Alteration to District Plan Designation Transit New Zealand 4 - Upper Harbour Corridor report.
2. **Agree** that the Waitakere City Operative District Plan be amended to give effect to the notice of requirement for the minor alteration to the existing designation known as Transit New Zealand 4 - Upper Harbour Corridor, without further formality.

BACKGROUND

1. The Waitakere City Operative District Plan (the Plan) contains a number of designations for State Highways. One of these, TSNZ4 provides for the construction of a new State Highway 18 to complete the Upper Harbour Corridor.
2. Transit New Zealand (Transit) was the requiring authority for this designation. Recently Transit has merged with Land Transport New Zealand to form the NZTA, which is now the requiring authority for state highway designations.
3. The NZTA has given notice of a minor alteration to TSNZ4. This alteration would extend the designation over recently reclaimed land at the approaches to the upper harbour bridge. The extent of the designation is shown in the supplement circulated separately with the agenda.

4. The purpose of extending the designation is to widen the Upper Harbour Corridor to provide for a cycleway and landscaping.
5. The extension of designation TSNZ4 would overlap with an existing defence designation MD1. The Minister of Defence (the Minister) has given notice that the defence designation is to be uplifted in an area corresponding to that of the extension to TSNZ4. The partial uplifting of MD1 is reported on separately to the Planning and Regulatory Committee.

DECISION MAKING

Issues

6. The Planning and Regulatory Committee needs to decide whether the proposed alteration complies with the requirements of section 181(3) of the Resource Management Act 1991 (the Act) and respond accordingly.

Options Identified

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

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

(a) The alteration-

(i) Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or

(ii) Involves only minor changes or adjustments to the boundaries of the designation or requirement; and

(b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and

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

8. Provided that the proposed alteration complies with the matters set out in Section 181(3) (a), (b) and (c), the designation in the Plan can be amended without further formality. If the alteration does not comply with section 181(3), then sections 168 to 179 of the Act apply which involves public notification for submissions. There is no “do nothing” option in this context.

Assessment of Options

9. The information provided by the NZTA in support of the notice to alter the designation addresses all the relevant issues.
10. The alteration is minor in terms of its environmental effects. There are no heritage features or sites within the realigned designation boundary. Altering the designation will facilitate use of the land for the Upper Harbour Corridor which is a regionally significant asset.
11. The extent of the boundary alteration is minor in the context of the full TSNZ4 designation and the surrounding environment.

12. All the land is either held for road purposes, or has recently been reclaimed for road purposes, or is held for defence purposes. The Crown is the landholder and the NZTA and the Minister represent the Crown's interest. Both the NZTA and the Minister have given approval. Therefore the permission of all landowners has been obtained.
13. The Ministry of Defence has a designation over part of the area. However, the Minister has given notice that the defence designation is to be partially uplifted. The uplifting of the defence designation is addressed in a separate report to Council.

Consideration of Community Views

14. All potentially affected landowners have given written approval of the alteration to the designation. In addition, the original coastal permit applications for the reclamation were publicly notified for submissions. Submissions were heard, considered and decided upon by the Auckland Regional Council. No additional consultation is necessary.

Preferred Option

15. The proposed alteration to TSNZ4 complies with all three matters set out in Section 181(3) (a), (b) and (c) of the Act. Therefore it is recommended that the Plan be altered without further formality to give effect to the notice.

STRATEGIC CONTEXT

16. The alteration will assist with implementation of the Council's Growth Management Strategy for Waitakere City, August 2006, working draft, The Auckland Regional Growth Strategy 1999, the Northern and Western Sectors Agreement 2001 and the Long Term Council Community Plan 2006-2016.
17. It will also contribute to the strategic platform of Sustainable Development and the strategic priorities of Integrated Transport and Communication and Strong Innovative Economy.
18. The alteration will assist the NZTA in achieving its objectives for use of the Upper Harbour Corridor.

CONSULTATION

19. Consultation has occurred with Council's officers on whether the change of land use from defence purposes to transport purposes would have any effect on the adjacent Duke Park land. Council's Parks staff are of the opinion that the alteration to the designation will have no effect on Duke Park.
20. The procedures set out in section 182 of the Act preclude external consultation.

RESOURCES

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

IMPLEMENTATION ISSUES

22. There are no implementation issues.

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



8 PARTIAL REMOVAL OF DESIGNATION MD 1 - UPPER HARBOUR DRIVE

GLOSSARY

| | |
|--|----------------|
| The Resource Management Act 1991 | (the Act) |
| The Minister of Defence | (the Minister) |
| Transit New Zealand 4 | (TSNZ4) |
| The Waitakere City Operative District Plan | (the Plan) |

EXECUTIVE SUMMARY

The Minister of Defence (the Minister) has given notice under section 182 of the Resource Management Act 1991 (the Act) of a partial uplifting of the designation MD1 in Waitakere City Operative District Plan (the Plan). The designation is to be uplifted from an area of land adjacent to the Upper Harbour Corridor. The reason for partial uplift of the designation is to facilitate construction of the Upper Harbour Corridor.

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. Council officers are 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 MD 1 - Upper Harbour Drive report.
2. **Agree** that the Waitakere City Operative District Plan be amended to partially uplift designation MD 1 - Upper Harbour Drive.

BACKGROUND

1. The Upper Harbour Drive is being widened. The widening will provide for a cycle lane and landscaping. The widening will include land currently within the Ministry of Defence MD1 designation, adjacent to the existing Transit New Zealand 4 (TSNZ4) designation which provides for the Upper Harbour Corridor. As this land is no longer required for defence purposes the existing MD1 designation is being partially uplifted. At the same time the TSNZ4 designation will be extended to cover the same area as that uplifted. The alteration of the TSNZ4 designation is addressed in a separate report to the Planning and Regulatory Committee.

DECISION MAKING

Issues

2. The Council needs to decide whether to partially uplift designation MD1 under section 182(2), or alternatively, oppose the partial uplift of the designation under section 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

- A95-A96
4. The Minister has given notice of a partial uplifting of designation MD 1 in the Plan. This designation provides for the Defence Purposes. The area to be uplifted is adjacent to the Upper Harbour Corridor. Copies of the notice and property details are attached at pages A95 to 96.
 5. The Upper Harbour Corridor is being widened in this location and a small area of adjacent defence land will become part of the Upper Harbour Corridor. A partial uplift of the defence 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 defence purposes. Partial uplift of the designation also provides a public benefit by facilitating upgrading of the Upper Harbour Corridor. Therefore it is appropriate to amend the Plan without further formality to partially uplift the designation.

Consideration of Community Views

8. The only party who could be affected by partial uplift of the designation is the Minister of Defence. 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 remaining defence land 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. However, partial uplifting the designation will facilitate upgrading of the Upper Harbour Corridor, which will have strategic benefits to the district and the region.

CONSULTATION

11. The procedures set in section 182 of the Act preclude external consultation. No internal consultation is necessary.

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.



9 PROPOSED PLAN CHANGE 28: HERITAGE

EXECUTIVE SUMMARY

At the Planning and Regulatory Committee meeting held on 7 October 2008, the Committee considered a report to list additional heritage buildings in the District Plan Heritage Appendix. The Planning and Regulatory Committee resolved to:

“The Planning and Regulatory Committee resolved to:

1. **Receive** the Proposed Heritage Plan Change Report.
2. **Agree** that the completed Proposed Heritage Plan Change be reported back to the Planning and Regulatory Committee following further consultation with the landowners.”

1716/2008

A97-A129 The Planning and Regulatory Committee requested that Council officers consult further with landowners and finalise a proposed plan change on the basis that any items to be listed would have the full support of landowners. Council officers have fulfilled this requirement and are in a position to submit the Proposed Plan Change 28: Heritage and section 32 report attached at pages A97 to A129 for approval.

RECOMMENDATIONS

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

1. **Receive** the Proposed Plan Change 28: Heritage report.
2. **Approve** Proposed Plan Change 28: Heritage that will list additional heritage buildings in the Heritage Appendix of the District Plan and reflect those changes in the District Plan Maps.
3. **Agree** that Proposed Plan Change 28: Heritage be publicly notified in accordance with the provisions of the Resource Management Act 1991.

BACKGROUND

1. The current Swanson Railway Station, located at 760 Swanson Road was moved from Avondale in 1995. It was in poor condition at that time, having suffered from vandalism and neglect. It has now been largely restored and is in a good and well-maintained condition. It is the third station to have existed at Swanson. The first station was constructed about 1881, and was composed of a small gabled building with possibly a store attached. This was replaced in 1916 by a '42 foot' station with a toilet attached to one end. This was later removed in the early 1970s in favour of a shelter. In 1995, when the Avondale Station was to be removed, it was secured for use at Swanson and moved to a parcel of land and paid for by the Swanson Balefill Trust. The Station is recommended to be listed as a Category II building. The Swanson community support listing of the Railway Station.
2. The Donner House and studio at 50 Kohu Road, Titirangi are recommended for heritage listing. Tibor Karl Donner was a noted Modernist architect in mid-twentieth century Auckland. His early designs reflect the Beaux-Arts and Art Deco traditions that prevailed in Auckland in the 1920s. The Donner house is a significant modern building, and is well regarded in the architectural community. A resurgence of interest in mid-twentieth century architecture, and publication of a recent article, has refocused attention on this house. It is recommended that the House is scheduled as Category I listing with some interior elements listed as well. The studio building on the same site as the house is recommended for a Category III listing. The landowner supports listing the house and studio. There is a third studio located partially in road reserve that was constructed by Donner, although it has been the subject of enforcement action by Council and a neighbourhood dispute.
3. The Laurie family built and owned four brick houses in the Hepburn Road area. James lived at 170 Hepburn Rd (now 170B) until his death in 1938, and William at 172 Hepburn Road, until his death in 1930. Another example still remains within a subdivision immediately to the west. The two houses facing Hepburn Road are considered together as a pair, because they were built by the same family, in close proximity, with one being a mirror image of the other.
4. The house at 172 Hepburn Road owned by Delegat's has recently had an extensive interior refurbishment. It has had some window openings widened and lowered, and some new external doors installed, both to the original front veranda and a new veranda on the side. Delegates have indicated that they do not wish to pursue listing of the house at this stage. This is understood to be on the basis that as a commercial property, the company wish to maintain flexibility on how the site is developed in the future. The interior of the house next door remains relatively original throughout the main body of the house, but has been altered over the years to provide modern kitchen and bathroom facilities.
5. The house at 170B Hepburn Road is still in its original style and both houses have value as neighbourhood landmarks, particularly as a pair. It is recommended that the former James Laurie House at 170B Hepburn Road is scheduled as a Category II item.

DECISION MAKING

Issues

Effect of heritage listing

6. A heritage listing in the District Plan generally only applies to the exterior of buildings except for about four buildings in Waitakere (Lopdell House, the Sextons House and a couple of art deco water filter stations). This means that the exterior additions and alterations require resource and building consents. However, the resource consents are processed free of charge for applicants. Council also has a heritage fund that receives applications annually for heritage projects. Overall, it is considered that the non-regulatory incentives complement the statutory protection offered by the District Plan. However, if Council lists heritage items where a landowner does not want that listing, there is a strong likelihood of submissions and potential Environment Court appeals arising from that action. It is not considered to be a good use of resources to pursue heritage listings where there is landowner hostility.

Options Identified

7. The options identified are to list the buildings where the landowners support the heritage listing and to leave until some future date those buildings of heritage value where the landowners do not wish to pursue listing at this time. The other option is the “do nothing” option.

Assessment of Options

8. There is little risk of promulgating a proposed plan change where the level of public consultation indicates that there will be no opposition by the landowner. The proposed plan change is framed in such a way that additional items are being added to the Heritage Appendix. The Heritage rules are not being altered, as that would facilitate a broader debate on heritage matters.
9. There is a small risk to Council in the “do nothing” approach of not listing buildings that are drawn to its attention. The main issue is that owners of buildings often maintain their private properties to a very high standard that benefits the overall resilience of the heritage resource and improves local amenity. If landowners believe that Council does not support and recognise the significance of those heritage items, this can lead to frustration.
10. The proposed plan change does not affect ancestral the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna and other taonga.

Consideration of Community Views

11. The main people to be affected by the Proposed Plan Change are the landowners. Other parties that are considered to be affected parties include the New Zealand Historic Places Trust and the Auckland Regional Council. Iwi will also be consulted, although the properties to be listed are either in private ownership or are not in areas where iwi generally have an interest.
12. It is unlikely that the Auckland Regional Council or New Zealand Historic Places Trust will object to Proposed Plan Change 28 because its scope is relatively narrow, it only seeks to add a few buildings to the District Plan Heritage Appendix.

Preferred Option

13. The preferred option is to publicly notify proposed Plan Change 28: Heritage.

STRATEGIC CONTEXT

14. The strategic platform that aligns most closely with this topic is Vibrant Arts and Culture Platform "Waitakere City's arts and culture is reflected and appreciated in our everyday life and the City itself is a work of art. We participate in creative pursuits and have a deep and wide perception of arts and cultures in our City."

CONSULTATION

15. Council has consulted with landowners affected by the proposed listings. In addition, it has received information from the West Auckland Historical Society, libraries (local history collections), the arts team and urban design staff.
16. Council will consult as part of the statutory process of the Resource Management Act 1991 with the New Zealand Historic Places Trust and Auckland Regional Council over the Proposed Plan Change 28: Heritage.
17. None of the sites identified are of significance to iwi, therefore no specific iwi consultation has occurred.

RESOURCES

18. Proposed Plan Change 28: Heritage can be resourced from existing resource management staff budget.

IMPLEMENTATION ISSUES

19. The Proposed Plan Change 28: Heritage will be publicly notified and may attract submissions and further submissions. In due course, there will be a hearing to consider the planner's response to the submissions received.

Report prepared by: Alina Wimmer, Principal Advisor, Heritage.



PART D - ENVIRONMENTAL MANAGEMENT

10 SUBMISSION ON PROPOSED NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT 2008

This report was not ready at the time of printing of this Agenda and will be circulated separately.



PART E - REPORT OF THE SUBCOMMITTEE

11 SWIMMING POOL EXEMPTION SUBCOMMITTEE

THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 18 DECEMBER 2008

MATTERS CONSIDERED

A130

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 A130.

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

Receive the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 18 December 2008.

WW Flaunty, QSM, JP

CHAIRMAN

