



**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 MARCH 2009, COMMENCING AT 9.30 AM**

---

**TABLE OF CONTENTS**

<b><u>ITEM</u></b>	<b><u>PAGE NO.</u></b>
<b><u>PART A - OPENING OF MEETING</u></b>	<b>1</b>
1 <b>APOLOGIES</b>	<b>1</b>
2 <b>URGENT BUSINESS</b>	<b>1</b>
3 <b>CONFLICTS OF INTEREST</b>	<b>1</b>
4 <b>CONFIRMATION OF MINUTES</b>	<b>1</b>
<b><u>PART B - REGULATORY / ENFORCEMENT</u></b>	<b>2</b>
5 <b>LEGAL UPDATE (AS AT 28 FEBRUARY 2009)</b>	<b>2</b>
6 <b>PROPOSED REGULATORY FEES AND CHARGES 2009/2010</b>	<b>16</b>
<b><u>PART C - DISTRICT PLAN / STRUCTURE PLANS</u></b>	<b>23</b>
7 <b>PROPOSED PLAN CHANGES 30 AND 31 - EARTHWORKS IN THE TRANSPORT ENVIRONMENT</b>	<b>23</b>
<b><u>PART D - ENVIRONMENTAL MANAGEMENT</u></b>	<b>26</b>
8 <b>RESOURCE MANAGEMENT ACT REFORM</b>	<b>26</b>
<b><u>PART E - REPORT OF THE SUBCOMMITTEE</u></b>	<b>28</b>
9 <b>SWIMMING POOL EXEMPTION SUBCOMMITTEE</b>	<b>28</b>
<b><u>PART F - PUBLIC EXCLUDED MATTERS</u></b>	<b>29</b>
10 <b>DISTRICT PLAN APPEAL RESOLUTION - PENIHANA SOUTH</b>	<b>29</b>
11 <b>PENIHANA NORTH APPEAL SETTLEMENT</b>	<b>29</b>

**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 MARCH 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, 10 February 2009  
Friday, 13 February 2009

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, 10 February 2009 and Friday, 13 February 2009 (Extraordinary) as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 28 FEBRUARY 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 28 February 2009) report.

#### **HIGH COURT**

*(Unchanged)*

#### **Wilton Joubert Ltd & 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 which 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.

**(Unchanged)**

**Waitakere City Council v Networth Developments Limited (November 2008)**

5. The Council 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. This matter was called on 19 December 2008 and Networth was put into liquidation. The liquidators, Jollands Callander have advised in their first liquidator's report that it is unlikely there will be a distribution to creditors.

**(Unchanged)**

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

6. This was 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. The Council granted consent 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, contended 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 refuted 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 had been a vacant site nominated for development for some 15 years.
8. The matter had been allocated a 2 day hearing in the week of 11 May 2009. Following lengthy discussions, the Council and the applicant, Ms Burgess, have worked with the consent holder to amend some of the engineering designs. As a result, the fixture has been vacated.

**(Unchanged)**

**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 well advanced. We are also currently considering whether there are limitation defences to the claims and Senior Counsel has been asked to give advice on this point.

#### **Substantive hearings involving Mr Mawhinney**

**(Unchanged)**

#### **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 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.
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 filed an application for leave to appeal to the Court of Appeal against the decision which was heard on 19 February 2009. Heath J after hearing argument dismissed Mr Mawhinney's application for leave. This was on the basis that he did not consider any of the alleged errors of law submitted by Mr Mawhinney were of general or public importance.
13. Costs were awarded to Council on both the substantive appeal and the leave application. Heath J awarded above scale costs with 50% uplift on the substantive matter - \$14,880. Costs of \$3,000 were awarded for the leave application. Enforcement of costs was stayed for 20 working days until determination of any application to the Court of Appeal for special leave.

#### **ENVIRONMENT COURT**

**(Unchanged)**

#### **Swanson Structure Plan Decisions (October 2008)**

14. The Court has delivered its decision on the Swanson Structure Plan (SSP). At a special meeting of the Planning and Regulatory Committee on Tuesday, 10 February 2009, it was resolved not to appeal the decision. No other party has appealed.
15. 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 3 months thereafter.

**(Unchanged)**

#### **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. The hearing was conducted over 2 days (2 and 3 February 2009). During the course of the hearings Weddings Etc Limited modified their proposal to reduce the number of evening functions which was acceptable to Mr Hsu and Mr Chapman.
19. The Court has reserved its decision. We expect that a decision will be released in the next couple of months.

*(Unchanged)*

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

20. 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.
21. 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.
22. 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.
23. There were 12 s. 274 parties. They all supported the granting of consent. The 2 s. 274 parties that opposed the grant of consent withdrew their interest.
24. These matters were set down, and jointly heard in the Environment Court in November 2008 over 7 days. The Court released its decision on 26 February 2009. The Court dismissed the appeal from PPHS Inc in its entirety. The parties did however agree to amend some of the consent conditions in accordance with matters agreed between experts during caucusing. These related to cooking and the noise management plan. Otherwise the Council's decision was upheld in its entirety.

*(Unchanged)*

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

25. 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.

26. 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.

*(Unchanged)*

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

27. 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.
28. 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.
29. 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)**

30. 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**

31. 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 status of Mr Mawhinney's companies referred to is as follows:
- London & Greenwich Trading Company Limited - Struck off;
  - Perceptus Limited - Struck off; and
  - Waitakere Resource Consents Limited - In the process of being struck-off for non-compliance with Companies Office requirements.

*(Changed)*

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

32. This was a proceeding lodged in the Environment Court by 3 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 2 subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application was made to the Court under s. 91(3) of the RMA. The applicant companies dispute the need for the further regional consents.

33. 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 also filed submissions with the Court. Mr Mawhinney now has until 16 March 2009 to reply. The matter will then be referred to the Judge for a decision on the papers.

*(Changed)*

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

34. 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.
35. 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. Council served legal submissions and an affidavit from Philip Brown on 17 February 2009 and Mr Mawhinney has until 16 March 2009 to reply. The matter will then be referred to the Judge for a decision on the papers.

*(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)**

36. These 3 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.
37. 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 was served on Waitakere Resource Consents Limited. The other Mawhinney companies were already struck off or in liquidation, but as noted at paragraph 29 a similar fate now awaits Waitakere Resource Consents Limited.

*(Changed)*

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

38. 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.
39. 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.

40. A costs decision was released by Judge Whiting in December 2008. An indemnity award of \$42,651 was made against Waitakere Resource Consents Limited and successors, in favour of the Council. The award carries interest at 7.5% from the date of the decision (31 October 2008). Demand has been made and the statutory demand will be served on the Company. The application to make Mr Mawhinney personally liable for these costs was unsuccessful. It is thought that the debtor will have no assets and will be allowed to be wound up.

**(Unchanged)**

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

41. 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* 42. 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.
43. 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.
44. 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.
45. 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.
46. A judicial conference was held on 23 May 2008 where all parties, including the Councils, put forward their strategies for managing the appeals.

47. 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. The s. 274 parties to the consent order filed a response with the Court, seeking further time to consider the matter. The parties are to report back by 6 March 2009.
48. In respect of all other appeals, the topics classified and referred to above as Commercial Appeals have 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**

**(Changed)**

#### **Trustee Management Services Ltd & OAAIP Investments Ltd - 10-16 Pohutukawa Road, Whenuapai (December 2008)**

49. 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 96 metres squared, 30 metres squared over the permitted Ground Floor Area under the rules of the District Plan for that location.
50. One of the defendants, Mr Dean Thompson, has twice previously been prosecuted for similar offences.
51. Informations were filed at the Court in December 2008 and we are awaiting confirmation of service of the summonses. First call for the matter was 23 February 2009 where the parties agreed to the file being transferred to the Auckland District Court. A call at that Court has been set down for 30 March 2009.

**(Unchanged)**

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

52. 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.
53. 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.

54. 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.
55. The matter is to be heard in the week of 2 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)**

56. Mr Hafeez has been charged with two offences under the 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.
57. 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. Mr Hafeez pleaded not-guilty and the matter has been set down for a status hearing on 4 June 2009.

**(Changed)**

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

58. 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.
59. Informations have been laid in relation to the works which are alleged to be an offence pursuant to s. 40 of the Building Act.
60. A first call of the matter was on 1 December 2008 and has been adjourned to 23 February 2009. The defendant has pleaded guilty to one charge of undertaking unauthorised building works, and the informant for its part has withdrawn charges against the director and general manager. The matter has been set down for sentencing on 23 March 2009.

**(Unchanged)**

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

61. 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.
62. 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.
63. 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.

64. 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 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.

*(Unchanged)*

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

65. 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.
66. 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.
67. 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.
68. The enforcement order was granted retrospectively to 5 May 2008; the date the guilty plea was entered, and signed by Judge McElrea on 15 October 2008.

*(Unchanged)*

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

69. This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store complex currently under construction at Henderson.
70. Council laid informations against various parties (including the developer company and a director) in respect of the unauthorised building works.
71. 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)**

72. 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.
73. 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.

**(Changed)**

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

74. 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.
75. 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.
76. 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 was dropped off because Mr Gordon pleaded guilty to the other, and the matter was set down for sentencing.
77. 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.
78. 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.
79. The Building Act prosecution was also adjourned and will be dealt with at the sentencing.
80. 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. A Dangerous Building Notice was issued pursuant to s.124 of the Building Act because the dwelling was considered by the NZ Fire Service to be dangerous. Mr Gordon wished to oppose the notice and was advised to contact DBH to seek a determination of the notice.
81. 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 likely sentence.
82. The Building Act charges were set down for hearing on 17 February 2009. 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. After consideration of the time since the charges were laid, the fact that a Council witness is now deceased, and various other concerns about the Council's ability, with the passage of time, to lead good evidence, all remaining charges were withdrawn and that aspect of this matter is now at an end. Meredith Connell will continue to act on the costs award related to the costs to enforce the Court's order to remove vehicles from the site and the Committee will be provided with regular updates on this matter.

**(Changed)**

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

83. 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.
84. 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)**

85. 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 6 March has been allocated.

**(Changed)**

**Leaky Building Claims**

**TOTAL CURRENT CLAIMS**

86. Claim statistics are as follows:
- (a) There are 20 unresolved leaky building claims being handled by our lawyers as at 28 February 2009. The 20 claims represent 204 units which means that the 6 multi unit claims represent 190 units:
- High Court: 8 (including 4 multi unit claims)
  - Weathertight Home Resolution (WHRS) 7 (including 1 multi unit)
  - Weathertight Homes Tribunal (WHT) 5 (including 1 multi units claims)
- (b) The total number of WHRS claims recorded on the DBH website relating to properties in Waitakere City as at 28 February 2009 was 353 which is unchanged since December 2008. There has also been no change in the number of properties affected which remains constant at 199. These figures include buildings where building consents were processed and/or inspections were undertaken by building certifiers. In respect of those matters the Council may have no liability exposure from claims.

## **CLAIMS SETTLED**

### **February 2009**

87. Two claims settled during February 2009:
- 129 Hobsonville Road settled at a Judicial Settlement Conference on the 12 February 2009. The Council contributed its \$50,000 Riskpool excess to the settlement.
  - 3/13 Ambler Avenue settled at mediation on the 10 February 2009. The Council contributed its excess of \$50,000 to the settlement.

### **January 2009**

88. One claim settled during January 2009:
- Bocage Lane settled on 26 January 2009 at mediation. The Council contributed its excess of \$50,000.00 to the settlement.

### **December 2008**

89. No claims settled during December 2008.

### **November 2008**

90. Two claims settled during November 2008:
- 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**

### **February 2009**

91. Two claims received during February 2009:
- A High Court Claim in respect of 23 Kopiko Road, Titirangi was received on the 16 February 2009. The claim is not fully quantified, but the costs of the remedial works are estimated at \$344,000.
  - The Council also received notification from the WHRS of acceptance for an assessors report on the 12 February 2009, in respect of 79 Kamara Road, Glen Eden.

### **January 2009**

92. One claim received during January 2009:
- Notification of the acceptance for the purposes of assessor's reports by the WHRS was received in respect of 2 properties. These were 111A Rosier Road, Glen Eden which was accepted on the 6 January 2009 and 1/4 Mickle Street, Te Atatu which was accepted on 20 January 2009.

### **December 2008**

93. 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. 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

95. The Council was 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).

96. In June 2008 we became aware of a multi unit claim in respect of the units known as Clearwater Cove Apartments at West Park Marina through the WHT. More detail of that claim has now emerged. The claim has been brought by the body corporate and by 14 of the 18 unit owners against the Council as local authority, and Fletcher Construction Ltd as builder. The claim is for an amount just a little under \$2 million. There are several curious features about this claim. Of the 14 owners suing, a substantial majority of these are interests associated with the Livi Family Trust. ("livi" is "lvil" spelt backwards. The settler of the trust was Mr Brent lvil. The majority of the claimants appear to have interests associated with the trust and/or Mr lvil.) The Livi Family Trust was the purchaser of the land from the Council and the developer of the complex. Fletcher Construction Ltd was engaged to build the units. A dispute arose on completion between the Livi Family Trust and Fletcher Construction Ltd which was settled. Fletcher Construction Ltd is now arguing that any claim against it is statute barred. If that argument succeeds the Council will be facing the claim alone. There are several technical defences available to the Council. (Some of the claimants appear to have purchased the units knowing that there were problems). This claim (at least to the extent that it is brought by interests associated with the Livi Family Trust) will be vigorously defended by the Council's insurers (Riskpool has accepted that this claim falls into the 2005/2006 fund year).

**Report prepared by:** David Collins, Contract Solicitor and Mary Davenport, Contract Solicitor.



## **6 PROPOSED REGULATORY FEES AND CHARGES 2009/2010**

### **EXECUTIVE SUMMARY**

The purpose of this report is to present the 2009/2010 proposed regulatory fees and charges, to summarise the proposed differences against the current year's schedule, and to seek approval for public consultation of the proposed fees and charges.

The schedule of Proposed Regulatory Fees and Charges (statement of proposal) and the summary of information will be publicly consulted, following the special consultative process under section 83 of the Local Government Act 2002. The fees and charges are expected to be in place from 1 July 2009.

It is considered that the proposed fees and charges are in accordance with the Revenue and Financing Policy and seek to recover 'Actual and Reasonable' costs in line with prevailing statute.

This report is being forwarded to the Planning and Regulatory Committee at the request of the Long Term Council Community Plan and Annual Plan Committee at its meeting of 24 February 2009 where it was resolved:

*"Receive the Proposed Regulatory Fees and Charges 2009/2010 report and that a report on consent charges be taken to Planning and Regulatory Committee covering issues raised at Long Term Council Community Plan and Annual Plan Committee meeting."*

189/2009

## **RECOMMENDATIONS**

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

1. **Receive** the Proposed Regulatory Fees and Charges 2009/2010 report.
2. **Agree** to recommend to Council Various scheduled to be held on 18 March 2009, that the Proposed Regulatory Fees and Charges 2009/2010 for public consultation be approved.

## **BACKGROUND**

1. Under the Building Act 2004 and section 36 of the Resource Management Act 1991 (and subsequent amendments) Council is required to use the special consultative procedure under sections 83 and 150 of the Local Government Act 2002 when setting new fees and charges.
2. Expected revenue from the fees and charges, in the Consent Services totals around \$10,500,000 per annum.
3. Council's Revenue and Financing Policy sets the basis on which fees and charges are to be set and in terms of Consents; 100% user funding applies, with the exception of resource consents pertaining to trees and heritage matters, which remain ratepayer funded. The existing and proposed Annual Plan are both geared in accordance with the Revenue and Financing Policy.
4. The Consent Services budget is generally calculated using activity based accounting principles. Predictions of forecast volumes are determined through general forecast outlooks and trend analysis. Consent Services uses these forecasts to predict staff requirements and associated fees to recover these costs.
5. Base fees are charged at lodgement of building and resource consents along with any other relevant fees such as Department of Building and Housing levies. Once the consent is approved all time costs exceeding the base fee will be charged to the customer, along with the calculated development contributions.
6. A review has now been completed to identify costs in relation to given processing costs and forms the basis of the proposed fee structure, we have increased the fees and charges by 3% due to the current financial climate.

## **DECISION MAKING**

### **Issues**

#### **Economic Climate**

7. The current world economic situation is expected to continue to impact upon some sections of within Consent Services. Building Consents expects to see a decrease in volume pertaining to building consent application lodgements of up to 35%. However, as the Building Act 2004 has a strict legislative timeframe that customers must achieve code compliance certification by, the volume in the construction review and certification area is expected to remain fairly static in this financial year. Staff redeployment is utilised wherever possible. Previously approved unit vacancies have recently been deleted from the budget to counteract the downturn.
8. Resource Consents have recently reforecast a volume decrease of around \$30% for the 2009/2010 period. The expected surge of applications surrounding Northern Strategic Growth Area has not eventuated to date, though it is considered that these applications will commence in the coming year. While some existing positions have not been filled, the extent and probable parallel timing of these applications is such that senior planning staff must be retained to ensure the complexity of the applications along with the potential political implications are well managed.

9. Land Information Memoranda and Licensing have forecast volume decreases of 45% and 20% respectively. For this reason two approved vacancies were recently removed from the budget. Recruitment will only occur once the market shows definite signs of recovery. It is the Land Information Memorandum volumes that generally precede likely up or downturns in the volumes across consent services. Whilst each of the areas are operating at decreased capacity the Land Information Memoranda sales are being proactively monitored to assist with timely and thoughtful recruitment.

### **Legislative Changes**

10. The Proposed changes to the Resource Management Act 1991 have financial ramifications for Resource Consents. The potential discounting of fees where statutory compliance is not met will impact upon revenue. Additionally, the proposed bill, if carried, may negate the need for customers to apply for land use consent relating to trees. The timeframe for these changes are likely to be outside this annual plan.
11. The proposed changes to the Building Act 2004 may see the currently mandatory Project Information Memorandum applications become voluntary. This will impact upon revenue in both the resource and building consent areas.

### **Benchmarking**

12. A brief analysis has been undertaken as to how the Regulatory fees and charges compare to other territorial local authorities in the greater Auckland region. Last year Waitakere's fees were at the mid point for the Auckland region.

### **Resource Consents Performance**

13. As far as can be gauged, Waitakere is amongst the top performers in relation to Statutory Timeframes for resource consent processing. Current performance is around 75-89% within the statutory timeframe.

### **Building Consents Performance**

14. Though Waitakere experienced some delays with the processing of building consents throughout the first half of 2008, continuous improvements aided in performance attainment now at an average of 99% of building consents granted within the statutory timeframe. Additionally, considerable effort and resource remains directed towards meeting the requirements of the Building Act 2004 Regulations, this directly affects available productive time.
15. A recent review of the Code Compliance Certification of a building consent has markedly improved the statistical and statutory performance in this area whilst ensuring the process remains customer focused and meets all compliance and legal requirements. Code Compliance Certificates are now around 99% within the statutory timeframe.
16. Plan processing times continue to increase in the assessing of an application against approved plans. Failure to detect any matters of non-compliance at processing stage can not be rectified at the construction review phase of a building consent. A further increase in the time required of building surveyors (in both the processing and inspection phases) is expected for the additional checks required to be carried out during the consent process, increasing the end cost to the user. Additionally, regulation led training requirements for staff also impact on the available productive time of processors.

### Ongoing Building Consent Authority and Continuous Improvement Costs

17. Whilst phase one Building Consent Authority accreditation was achieved 14 March 2008, Consent Services has been advised by International Accreditation New Zealand that Waitakere will be subject to a phase two audit of the accreditation programme in August 2009. Along with audit of ongoing compliance against Regulations 5 through 16 (requiring every process, procedure and decision rationale be robustly documented), significant attention will also be focused on the required implementation of a Quality Assurance Systems framework surrounding Regulation 17 - this work is currently underway.
18. As indicated above, in order for Waitakere to maintain its accreditation as a Building Consent Authority regular audits will be carried out every two years. In terms of Long Term Council Community Plan 5 further audits will take place; Phase Two ensuring ongoing compliance and the additional requirements of Regulation 17 (complete by 1 December 2010), further additional requirements under Regulation 18 (due 1 December 2013) and other programmed two year audits.
19. There are significant costs attached to maintaining Building Consent Authority accreditation and other customer and/or efficiency driven continuous improvement initiatives. The business support unit of Consent Services maintains the documentation required for the accreditation process.

### Land Information Memoranda Performance

20. Land Information Memoranda have consistently achieved 100% statutory compliance over the last 12 months and the turnaround time has reduced from an average of 10 working days to a current average of four working days.

### Fees and Charges Structure

21. Legislation provides that only reasonable and actual costs may be recovered through the fees set. In terms of the framework of charging "actual and reasonable", the following applies in respect of setting fees:
  - (a) Actual Costs: These have been developed from a zero base against each activity.
  - (b) Reasonable Costs: this is gauged in two ways:
    - *Reference to the Market* - where fees set compare favourably with Competitors or other authorities.
    - *Cost Efficiency* - where actual costs are only those incurred in supplying the service. These have been the basis of the recommended charges.
22. The existing fees and charges are made up of a series of fixed prices for various licenses and miscellaneous services together with category and base fees for Building Consents and Resource Consents.

### Proposed Changes to Fees and Charges 2009/2010

A4-A37

23. The proposed fees and charges form the basis of the Annual Plan 2009/2010. Copies of the proposed 2009/2010 regulatory fees and charges schedule and the current 2008/2009 regulatory fees and charges are attached at pages A4 to A21 and A21 to A37 respectively.
24. The base fees and charges proposed for 2009/2010 are to be increased by a nominal average of 3% across the consent services base fees, with the exception of code compliance certificate processing fees.

25. A review and subsequent implementation of Building Consent Authority required procedures has seen a substantial increase in the processing time of code compliance certificates. This fee is proposed to increase to reflect the additional building consent authority compliance requirements. Comparisons against the 2008/2009 fees are included below:

Category	Code Compliance Fee	
	2008/2009	2009/2010
1(a)	\$101.00	\$179.00
1(b)	\$101.00	\$179.00
1(c)	\$101.00	\$179.00
1(d)	\$101.00	\$179.00
2(a)	\$101.00	\$179.00
2(b)	\$101.00	\$179.00
3	\$101.00	\$179.00
4	\$133.00	\$211.00
5a	\$198.00	\$345.00
5b	\$198.00	\$345.00
6a	\$296.00	\$442.00
6b	\$296.00	\$442.00
7	\$296.00	\$488.00
8	\$296.00	\$488.00
9	\$587.00	\$826.00
Minor P & D	\$101.00	\$179.00

A21-A37

26. Due to the complexity of the fee tables and a wide array of fees and charges, an existing fees and charges schedule for the 2008/2009 year is attached for comparison (pages A21 to A37). Basic comparisons against the 2008/2009 fees are included below:

**Building Consent Base Lodgement Fees**

	2008/2009 Processing Fee	2009/2010 Processing Fee
1(a)	\$223	\$229
1(b)	\$265	\$272
1(c)	\$269	\$277
1(d)	\$311	\$320
2(a)	\$286	\$294
2(b)	\$113	\$116
3	\$579	\$596
4	\$937	\$965
5a	\$1,374	\$1,416
5b	\$1,404	\$1,446

<b>6a</b>	\$2,005	\$2,065
<b>6b</b>	\$2,019	\$2,079
<b>7</b>	\$2,149	\$2,213
<b>8</b>	\$2,814	\$2,898
<b>9</b>	\$5,481	\$5,646
<b>Minor</b>	\$248	\$255

### Resource Consent Base Lodgement Fees

		Current 2008 2009	Proposed 2009 2010
Discretionary and non complying activities		\$1,786	\$1,841.00
Controlled and limited discretionary activities		\$1,206	\$1,243.00
Minor consents		\$1005	\$1,036.00
Subdivisions	2 lots	\$1,668	\$1,720.00
	3 to 10 lots	\$2,143	\$2,209.00
	11 to 20 lots	\$2,143	\$2,209.00
	21 plus lots	\$2,854	\$2,942.00
Variations		\$1,079	\$1,112.00
Tree applications		No Charge	No Charge
Monitoring	Normal	\$566	\$583.00
	Complex	\$1,415	\$1,459.00

27. Tree consents will not attract a base fee, these are processed by Resource Consents at no cost to the applicant. The estimated annual cost to Consent Services in the provision of this service is \$305,000. Heritage consents are also to remain free of charge.

### Resource Management Act 1991/Resource Consent Changes

28. The fees are set at base rates to minimise where possible further charges - except those related to the recovery of expert (Arborist, EcoWater, traffic engineer etc) assessment and peer reviews. It is also noted that any additional planning charges over the base fee are also charged at the scheduled hourly rates.

### Assessment of Options

#### Option 1

29. To approve the proposed Regulatory Fees and Charges 2009/2010 schedule as presented for public consultation. It is considered that the proposed fees and charges will recover the actual and reasonable costs required to operate consent service activities and meet and statutory obligations. At the same time costs have been scrutinised to restrict any increase to fees and charges to around 3% with the exception of code compliance certificate fees.

#### Option 2

30. Status Quo - retention of current Regulatory Fees and Charges as approved for 2008/2009. This would necessitate Consent Services recalculating and calling for greater rates funding in the Annual Plan 2009/2010.

### Preferred Option

31. The Proposed Regulatory Fees and Charges 2009/2010 as presented be approved for public consultation.

### STRATEGIC CONTEXT

32. Consent Services forms a part of the regulatory arm of Council. Working with the community, it contributes to Council's strategic platforms of Urban and Rural Villages, the Green Network, Strong Economy and Strong Communities. Input from other areas in Council, ensures contribution to most of the Strategic Platforms, thereby assisting Council to meet its strategic objectives.
33. Significant drivers are the statutory provisions of the Resource Management Act 1991, Building Act 2004, Local Government Official Meetings and Information Act 1987, the Health Registration of Premises Regulations, the Food Hygiene Regulations and the relevant Council Bylaws.

### CONSULTATION

34. The schedule of proposed Regulatory Fees and Charges (statement of proposal) and the summary of information will be publicly consulted on, following the special consultative process under section 83 of the Local Government Act 2002. This includes advising the public via the Annual Plan submission process, public notices in the Western Leader, The Aucklander and The Herald, a posting on the Council's internet page, a public meeting and the Annual Plan documents.

### RESOURCES

35. The proposed Regulatory Fees and Charges schedule forms the basis of the Consent Services Annual Plan for the year 2009/2010.
36. Consent Services operates a 100% cost recovery policy with the current exception of resource consents pertaining to trees and heritage matters.

### IMPLEMENTATION ISSUES

37. It is historically the case that an increase to fees and charges at the commencement of each financial year causes a spike in the lodgement volume of applications. This generally occurs in the month leading up to the date the new fees become effective. Backlogs of up to a calendar month have occurred in previous years; however the current climate would indicate that this is unlikely to be of particular significance this year.

**Report prepared by:** Tracey Tamakehu, Manager: Regulatory Administration and Michael Campbell, Group Manager: Consent Services.



## PART C - DISTRICT PLAN / STRUCTURE PLANS

### 7 PROPOSED PLAN CHANGES 30 AND 31 - EARTHWORKS IN THE TRANSPORT ENVIRONMENT

#### GLOSSARY

Proposed Plan Change 30 – Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area	(Plan Change 30)
Proposed Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area	(Plan Change 31)
Resource Management Act 1991	(the Act)

#### EXECUTIVE SUMMARY

The purpose of this report is to request the approval from the Planning and Regulatory Committee to the public notification of Proposed Plan Change 30 - Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area (Plan Change 30), and Proposed Plan Change 31 - Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area (Plan Change 31). This report describes the proposed plan changes and the reasons for them. The proposed plan changes will have the effect of reducing resource consent requirements for earthworks in the Transport Environment, while maintaining environmental standards. It is recommended that the Planning and Regulatory Committee approve notification of Plan Change 30 and Plan Change 31 for public submission.

#### RECOMMENDATIONS

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

1. **Receive** the Proposed Plan Change 30 And 31 - Earthworks In The Transport Environment report.
2. **Approve** Proposed Plan Change 30 - Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area and Proposed Plan Change 31 Earthworks in the Transport Environment that is within the Waitakere Ranges Heritage Area.
3. **Agree** that Proposed Plan Change 30 - Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area and Proposed Plan Change 31 - Earthworks in the Transport Environment that is within the Waitakere Ranges Heritage Area be publicly notified in accordance with the provisions of the Resource Management Act 1991.

#### BACKGROUND

1. Plan Change 30 and Plan Change 31 have been prepared as a result of an analysis of the efficiency and effectiveness of the operative earthworks rules, since 2003. Various issues have been identified and were reported to the September 2007 meeting of the Planning and Regulatory Committee where it was resolved that:

- “1. That the Issues Surrounding the Earthworks Provisions of the District Plan report be received.
2. That further investigation is undertaken in relation to earthworks provisions of the District Plan.
3. That a Plan Change to the earthworks provisions be brought back to the Planning and Regulatory Committee for consideration.”

3425/2007

2. After further investigation it is proposed to address earthworks issues by several incremental plan changes. This to keep the work load manageable and allows several smaller plan changes to be fitted around other major ongoing planning projects such as the Local Government (Auckland) Amendment Act plan changes.
3. Plan Change 30 and Plan Change 31 address the management of earthworks in the Transport Environment. This mainly involves road works but also includes other asset management works that involve earthworks in the Transport Environment. This issue was given priority as Plan Change 30 and Plan Change 31 have the potential for a modest but ongoing saving in consent costs associated with works in the Transport Environment. These works occur frequently and are necessary to maintain and upgrade roads and network utilities which use the Transport Environment as a corridor.

## DECISION MAKING

### Issues

4. The operative earthworks rules require resource consent for relatively minor quantities of earthworks. Typically such resource consents for minor works require sediment and erosion control that duplicates a requirement of the permitted activity standards in the Waitakere City Operative District Plan.
5. Earthworks in the Transport Environment are typically small scale and are associated with road or utility network maintenance or upgrading. Earthworks are necessary to implement the functional purpose of the Transport Environment as a transport and utility corridor and should only be regulated to the extent necessary to manage effects.
6. In this context, the operative rules are being effective in managing effects but this is achieved at a high administrative cost in relation to the benefits. It is considered that earthworks in the Transport Environment can be more cost effectively managed as a permitted activity subject to specific standards on:
  - a. sediment and erosion control;
  - b. larger scale cuts or retaining walls that could affect the landscape values of the Waitakere Ranges Heritage Area;
  - c. larger retaining walls that could affect urban amenity values;
  - d. disturbance of archaeological sites; and
  - e. weed control.

### Options Identified

A38-A77

7. The options are discussed in more detail in the section 32 report attached at A38 to A77. In summary, the options are:
  - retaining the existing earthworks rules (the "status quo" option);
  - having no rules (the "do nothing" option); or
  - amending the rules as proposed.

### Assessment of Options

8. A more detailed assessment of the options is contained in the Section 32 report. In summary: the status quo manages effects but at significant administrative cost; the "do nothing" option is likely to cause adverse effects on the environment, particularly on aquatic ecosystems, and the proposed amendments will manage effects at a lower administrative cost. Therefore the proposed amendments are considered to be most consistent with overall community wellbeing and the purpose of the Resource Management Act 1991 (the Act).

9. Plan Change 30 and Plan Change 31 will alter the management of land and the control of sediment runoff into bodies of water. Therefore Plan Change 30 and 31 are of potential interest to tangata whenua. Consultation has occurred and is in the Section 32 report.

#### **Consideration of Community Views**

10. Unsolicited feedback from the community on the earthworks rules has been taken into account in the review of the earthworks rules. Consultation has also been undertaken with tangata whenua and the Auckland Regional Council. This is discussed in the Section 32 report.
11. It is considered that public notification of Plan Change 30 and Plan Change 31 will provide an opportunity for the general community to make submissions.

#### **Preferred Option**

12. Adoption of Plan Change 30 and Plan Change 31 is the preferred option.

#### **STRATEGIC CONTEXT**

13. The Long Term Council Community Plan comprises five priorities and nine strategic platforms. Plan Change 30 and Plan Change 31 are consistent with the Council's strategic priority: Sustainable Development; and the strategic platform for the Three Waters.
14. Refer to paragraphs 46 - 58 of the Section 32 report for the Strategic Context under the Act.

#### **CONSULTATION**

15. Consultation has been undertaken with representatives of Te Kawerau A Maki and Ngati Whatua. Issues relating to disturbance of archaeological sites and the potential for earthworks to spread weeds were raised. Consequently standards are recommended to address these two issues.
16. Consultation has occurred with Auckland Regional Council Staff. No specific comment has been received .

#### **RESOURCES**

17. No resources are required other than existing staff time.

#### **IMPLEMENTATION ISSUES**

18. Implementation procedure is prescribed by the Act.

**Report prepared by:** Christopher Turbott: Senior Planner Policy Implementation.



## PART D - ENVIRONMENTAL MANAGEMENT

### 8 RESOURCE MANAGEMENT ACT REFORM

#### **GLOSSARY**

The Resource Management Act 1991	(the Act)
The Resource Management (Simplifying and Streamlining) Amendment Bill 2009	(the Bill)

#### **EXECUTIVE SUMMARY**

This report informs the Planning and Regulatory Committee of the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (the Bill), which proposes amendments to the Resource Management Act 1991 (the Act).

The report seeks the Planning and Regulatory Committee's approval to make a submission to the Parliamentary Select Committee in response to the proposed reforms.

#### **RECOMMENDATIONS**

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

1. **Receive** the Resource Management Act Reform report.
2. **Agree** that a submission be made to the Parliamentary Select Committee in response to the Resource Management (Simplifying and Streamlining) Amendment Bill 2009.
3. **Delegate** authority to the Chairperson to sign off the final submission to the Parliamentary Select Committee in response to the Resource Management (Simplifying and Streamlining) Amendment Bill 2009, on behalf of the Planning and Regulatory Committee, prior to lodgement.

#### **BACKGROUND**

1. The National Party had signalled an intention to review the Act if elected to government.
2. No time has been wasted in formulating a series of proposed amendments which are contained in the recently released the Bill. As the name suggests, the Bill focuses on reducing delays and costs by simplifying procedures and rationalising processes. A copy of the Bill has not been attached to this agenda because of its size, but copies can be made available on request.
3. The Government has invited public submissions on the Bill, for consideration by a Parliamentary Select Committee. Any submissions must be received by 3 April 2009.

#### **DECISION MAKING**

4. The Bill contains a number of provisions that will directly impact on the Council. As such, it is considered that a submission should be lodged to ensure that the Parliamentary Select Committee is made aware of any issues and concerns that the Council may have.

A78-A96

5. An analysis of the Bill is attached at pages A78 to A96. That paper considers the issues and implications of the proposed amendments from the Council's perspective. Also attached are the Council's original comments on the draft proposals that were sent to the Minister for the Environment in December 2008 (refer pages A92 to A96).

## Issues

6. The Bill contains a number of positive amendments that could significantly improve resource management processes and reduce cost and delay. It is considered that the Council should support these initiatives in any submission it makes.
7. In particular, proposals to address trade competition abuses under the Act are welcome. Benefits are also apparent in relation to the amendments that prevent appeals against a proposed district plan in its entirety, remove the non-complying activity category from district plans, and simplify reporting requirements on resource consent applications.
8. Some of the other aspects of the Bill may not be entirely positive from the Council's perspective. The Planning and Regulatory Committee may want to consider whether it supports or opposes some of those proposed amendments, such as proposals to limit district plan appeals to points of law, remove the 10-year district plan review requirement, limit requests for further information on resource consents, provide discounts for late processing of consents, remove the ability to adopt blanket tree removal rules, and allow applicants or submitters to determine whether a notified application is heard by independent commissioners or elected members.
9. Staff will provide a short presentation at the meeting to assist with the discussion around these issues, and any other aspects of the Bill that may be of concern to the Committee. Once some guidance from the Planning and Regulatory Committee is received, it is proposed that staff would prepare a draft submission which would be signed-off by the Chairman prior to lodging on 3 April 2009.

## STRATEGIC CONTEXT

10. The Resource Management Act provides a significant tool for the Council to utilise in achieving a number of its strategic objectives. The District Plan plays a major role in managing growth, maintaining and enhancing amenity, fostering economic development, and protecting the natural environment.
11. In this context, it is important that Council is involved in any proposals to significantly amend the Act.

## CONSULTATION

12. No external consultation has occurred as the Bill has implications for the Council that are not necessarily shared by other individuals or organisations. Any party has the opportunity to make a submission to address their own concerns or issues.

## RESOURCES

13. The process of preparing and lodging a submission can be accommodated within existing budgets and staff resources.

## IMPLEMENTATION ISSUES

14. There are no implementation issues.

**Report prepared by:** Philip Brown, Group Manager: Planning & Community Services.



**PART E - REPORT OF THE SUBCOMMITTEE**

**9 SWIMMING POOL EXEMPTION SUBCOMMITTEE**

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 26 FEBRUARY 2009**

---

**MATTERS CONSIDERED**

*A97-A103*

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 A97 to A103.

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

**Receive** the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 26 February 2009.

WW Flaunty, QSM, JP

**CHAIRMAN**



**PART F - PUBLIC EXCLUDED MATTERS**

**10 DISTRICT PLAN APPEAL RESOLUTION - PENIHANA SOUTH**

**11 PENIHANA NORTH APPEAL SETTLEMENT**

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 parts of the proceedings of this meeting, namely, District Plan Appeal Resolution - Penihana South and Penihana North Appeal Settlement.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each of the matters, 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 each of the matters to be considered.	Reason for passing this resolution in relation to each of the matters.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
District Plan Appeal Resolution - Penihana South  Penihana North Appeal Settlement.	The withholding of information is necessary in order to: <ul style="list-style-type: none"> <li>• maintain legal professional privilege;</li> <li>• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	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) and 7(2)(i) 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 legal advice and information which if released could affect Council's negotiations.*

