



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, 7 April 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.

1 April 2009

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	LA	Cooper, JP
	DQ	Battersby, JP
	BA	Brady, JP
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	AK	Corban, OBE, JP
	RP	Dallow, QPM, JP
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell

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

(Quorum 5 members)

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(Meeting Room could be subject to change)

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

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 7 APRIL 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, 7 APRIL 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 March 2009

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, 10 March 2009, including the public excluded minutes, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 31 MARCH 2009)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Carter Holt Harvey	(CHH)
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.)
WHT	(Weathertight Homes Tribunal)
Protect Piha Heritage Society Incorporated	(PPHS Inc.)
Swanson Structure Plan	(SSP)
Notice to Fix	(NTF)
Certificate of Acceptance	(COA)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Sentencing Act 2002	(Sentencing Act)
Summary Proceedings Act 1957	(Summary Proceedings Act)
Hobsonville Land Company	(HLC)
Comprehensive Development Plan	(CDP)
Metres squared	(m ²)
Metropolitan Urban Limit	(MUL)
Memorandum of Understanding	(MoU)
Minor Household Unit	(MHU)
Carter Holt Harvey	(CHH)
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 March 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 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.

(Unchanged)

Waitakere City Council v Network Developments Limited (November 2008)

5. The Council liquidation proceedings against Network Developments Limited (Network) for failing to comply with a statutory demand. Network owes Council \$11,138.58 for unpaid consent application fees. This matter was called on 19 December 2008 and Network 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.

(Changed)

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

6. The Council was served with seven sets of proceedings under the Public Works Act 1981 (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.
7. 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 met this month to discuss possible settlement strategy for this case and Senior Counsel is discussing possible settlement options with the Plaintiff's Counsel currently.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

8. 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.

9. 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.
10. 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.
11. Mr Mawhinney has lodged an application for leave to appeal in the Court of Appeal against the High Court Judgment. We are preparing a memorandum in response and seeking the determination of the matter as soon as possible.

ENVIRONMENT COURT

(New)

Britten v Waitakere City Council (March 2009)

12. An application has been made to the Environment Court for an enforcement order requiring the property owners to remove slip debris from Council land and the Swanson Stream as the result of a slip which occurred in July 2008. The property owners argue that they do not have any liability because the slip was an "act of god".
13. An initial call over on the application occurred on Tuesday 31 March 2009. Council will be seeking an early hearing date for argument on this dispute.

(New)

Morris v Waitakere City Council (March 2009)

Palmer v Waitakere City Council (March 2009)

Rex Bridgford and others v Waitakere City Council (March 2009)

Joanne Hodge and others v Waitakere City Council (March 2009)

Henning and others v Waitakere City Council (March 2009)

14. These are all appeals against the decision of this Council, through independent commissioners, to grant consent to Hobsonville Land Company (HLC) for a Comprehensive Development Plan (CDP) to develop part of the former Hobsonville Airbase into a residential development under Plan Change 13 which urbanises the airbase as part of the extended Metropolitan Urban Limit (MUL).
15. The appellants have raised issues in the appeal as to the nature of the proposed development, the ability of the CDP to comply with the Resource Management Act 1991 (RMA), the provision of community infrastructure (such as parks, playing fields and shops) and the provision of social housing by HLC.
16. The Court has allocated the matter to a complex track, where it will be treated as if were a Plan Change. The Council has requested for the matter to be set down for mediation as soon as possible.

(New)

Ding v Waitakere City Council (March 2009)

17. This was an appeal from a neighbouring property against an 18 lot subdivision in New Lynn. Between the appeal being lodged and this report being compiled, the parties attended a half day mediation where the appeal was resolved by way of consent order subject to a new advice note being added to the consent granted by the Council.

18. The parties will be filing the consent order with the Court by 25 April 2009.

(New)

Botica v Waitakere City Council (March 2009)

19. This is an appeal from the consent holder against one of the terms of conditions of consent. In essence the appellant/applicant believes further time is required to comply with a condition requiring demolition of a building and reconstructing it.
20. The appellant and the Council have agreed on a suitable time frame and accordingly a consent order will be filed with the Environment Court before the end of April 2009.

(Unchanged)

Swanson Structure Plan Decisions (October 2008)

21. The Court has delivered its decision on the Swanson Structure Plan (SSP). At a special meeting of the Committee on Tuesday, 10 February 2009 it was resolved not to appeal the decision. No other party has appealed.
22. 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)

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

23. 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.
24. 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.
25. The hearing was conducted over two days (2 and 3 February 2009). During the course of the hearings Weddings Etc Limited modified its proposal to reduce the number of evening functions which was acceptable to Mr Hsu and Mr Chapman.
26. The Court has given its decision, and agreed with the Council's decision. However, the parties have agreed to amend the conditions of consent in order to reflect the Court's decision and to clarify certain matters. The parties will be submitting an amended condition document to the Court on 31 March 2009.

(Changed)

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

27. Following the Council's decision being upheld and the appeal from Protect Piha Heritage Society Incorporated (PPHS Inc.) the appellant, being dismissed, the Council has applied for an award of costs from the Court. In total it cost the Council \$85,179.77 to defend its decision. The Council is seeking 35-50% of costs incurred to be awarded as the Court does not consider the full costs as being recoverable. The applicant, Preserve Piha Limited, has also applied for costs. It is seeking 50-67% of its costs to be awarded. It cost the applicant \$87,630.67 to present its case to the Environment Court. The appellant has until 14 April 2009 to respond to the costs applications filed by the Council and Preserve Piha Limited.

(Unchanged)

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

28. This was an appeal by the applicants M and C Brickell, W Ashton and L Schwab under s. 121 of the 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.
29. 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, a decision on costs is expected to occur sometime after the conclusion of that matter.

(Unchanged)

Waitakere City Council v Rodney District Council (April 2007)

30. 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.
31. 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.
32. 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).

(Changed)

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

33. 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

34. 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 - Struck off.

(Changed)

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

35. 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 made to the Court under s. 91(3) of the RMA.
36. The applicant companies dispute the need for the further regional consents.
37. Notice of opposition was filed and a timetable for exchange of submissions and evidence put forward. An affidavit explaining the reasons for the deferral, and submissions have been filed with the Court. Mr Mawhinney has not replied within the specified timeframe (16 March 2009). Waitakere Resource Consents Limited, the sole remaining corporate appellant, has now been struck off the register. An application will be filed requesting directions that the proceeding be struck out (on the basis none of the appellants are currently registered companies) or, failing that, that Mr Mawhinney be allowed a short period to lodge an application to have himself substituted personally as an appellant in the proceedings. This will ensure that he is personally responsible for Council's costs in the case.

(Changed)

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

38. 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.
39. 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. Mr Mawhinney has not replied within the specified timeframe (16 March 2009). Waitakere Resource Consents Limited, the sole remaining corporate appellant, has now been struck off the register. An application will be filed requesting directions that the proceeding be struck out (on the basis none of the appellants are currently registered companies) or, failing that, that Mr Mawhinney be allowed a short period to lodge an application to have himself substituted personally as an appellant in the proceedings. This will ensure that he is personally responsible for Council's costs in the case.

(Unchanged)

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

40. 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 2004 Plan Change Appeals (September 2007)

- A1-A3
41. 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.
 42. 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 Auckland Regional Council (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.
 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 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. All s. 274 parties are required to respond to the Court by 31 March 2009 on that consent order.
 46. 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

(Unchanged)

Trustee Management Services Ltd & OAAIP Investments Ltd – 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 96 (metres squared) m², 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 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.

(Changed)

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. The Court heard all matters together and requested the parties to meet and arrange a timetable for the clean-up, and then report back to the Court for endorsement. The parties agreed on a timetable and if the works are attended to within the timeframe, the abatement notice will be cancelled. If the work is not completed as agreed, Council can request Court intervention and seek an order for costs. At this stage, costs are to lie where they fall.

(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. 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)

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. 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 was set down for sentencing on 23 March 2009. The defendant initially disputed some of the informant's facts but eventually agreed to them and this removed the need for a disputed facts hearing. The Court is to deliver its decision on 7 April 2009.

(Unchanged)

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 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)

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

63. 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 was pursued in respect of issues under the RMA.
64. The defendant applied for a determination from the Department of Building and Housing (DBH) in respect of the Council's decision to decline 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 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. Mr Cottingham was to be sentenced on 23 March 2009 but he changed his position at the last minute seeking for the Court to discharge him without conviction. The Council has opposed the discharge because it is not appropriate that someone who has undertaken such significant unauthorised work, confirmed by the DBH, and then pleaded guilty to having done the work should then be discharged. It is very unusual for such a discharge to be granted. The Court has set the matter down for a hearing to resolve this issue on 23 July 2009. The Court will then decide whether a discharge is disproportionate to the offence and determine whether or not to convict the defendant.

(Changed)

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

65. 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.
66. 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 Council concluded its case in the absence of the defendant who did not show. The Court has reserved its decision.

(Changed)

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

67. 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.
68. This matter was heard for sentencing on 6 March 2009. The Court fined the defendant \$3,500 and granted the Council costs of \$630. The Court accepted the Council's position that \$8,000 was appropriate to start with given the scale of works. The Court then reduced the fine given the early guilty plea entered by the defendant and the mitigation works carried out, which included obtaining a consent to remove the unauthorised work and reconstructing them in accordance with the consent.

(Changed)

Leaky Building Claims

TOTAL CURRENT CLAIMS

69. Claim statistics are as follows:
 - (a) There are 19 unresolved leaky building claims being handled by Council's lawyers as at 31 March 2009. The 19 claims represent 204 units, with 7 multi unit claims representing 192 units:
 - High Court: 8 (including 4 multi unit claims)
 - Weathertight Home Resolution (WHRS) 7 (including 1 multi unit)
 - Weathertight Homes Tribunal (WHT) 4 (including 2 multi units claims)
 - (b) The total number of WHRS claims recorded on the DBH website relating to properties in Waitakere City as at 1 February 2009 was 196. There are 3 fewer WHRS claims than reported in the legal update for 28 February, 2009. The number of properties affected is one less at 352. 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

March 2009

70. No claims settled during March 2009.

February 2009

71. 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

72. 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

73. No claims settled during December 2008.

November 2008

74. 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

March 2009

75. One claim received during March 2009.
- Three WHRS notifications of acceptance for the purposes of assessor's reports have been received since the last update. These are for: 116 Wood Bay Road, Titirangi - accepted 25 February 2009; 24 Ruze Vida Drive, Royal Heights - accepted 11 March 2009; and 49 Pooks Road, Ranui - accepted 17 March 2009.

February 2009

76. 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

77. There was 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

78. 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

79. 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.

Report prepared by: David Collins, Contract Solicitor.



6 DOG CONTROL ACT 1996, SECTION 37 - DOG CONTROL FEES 2009/2010

GLOSSARY

Dog Control Act 1996 (the Act)

EXECUTIVE SUMMARY

The purpose of this report is to seek approval from the Planning and Regulatory Committee to approve fees for the registration and control of dogs in accordance with section 37 of the Dog Control Act 1996 (the Act) from 1 July 2009.

Registration fee increases are proposed for un-neutered dogs. Increases are also proposed for the second and subsequent impoundings and the first impoundings for un-registered dogs.

In addition, the sustenance fee will be increased to reflect current costs and this is imposed on all dogs that are detained at Animal Welfare.

RECOMMENDATIONS

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

1. **Receive** the Dog Control Act 1996, Section 37 - Dog Control Fees 2009/2010 report.
2. **Approve** the dog registration and control fees for 2009/2010 as follows:

Dog Registration Fees	If paid on or before 1 August	If paid after 1 August
Un-neutered	\$125.00	\$187.50
Neutered	\$76.00	\$114.00
Responsible Dog Owner un-neutered	\$63.00	\$94.50
Responsible Dog Owner neutered	\$56.00	\$84.00
Superannuitants	\$56.00	\$84.00

Impounding – registered dog		
1 st impounding	\$65.00	
2 nd impounding	\$150.00	
3 rd impounding	\$215.00	
4 th impounding	\$280.00	
Impounding unregistered dog	\$75.00	
Sustenance	\$17 per day	
Euthanasia	\$35.00	

BACKGROUND

1. Section 37 of the Act requires each territorial authority to prescribe reasonable fees by resolution of that authority for the registration and control of dogs.

DECISION MAKING

Issues

2. Fees for registration and control of dogs must be set before the commencement of the registration year on 1 July 2009.
3. The Planning and Regulatory Committee has delegated authority to fix fees and charges in relation to all matters within its Fields of Activities including animal control.
4. Registration fees were increased across all categories in 2006 to provide for National Dog Database levies. There was no increase in 2007. In 2008 the registration fees were increased by \$2 for neutered dogs and \$5 for un-neutered dogs.
5. Impounding fees have not been increased for at least 7 years.
6. The recommended fees are as follows:

Fee	Proposed 2009-2010		Increase	Current	
Registration Fees	If paid on or before 1 August	If paid after 1 August		If paid on or before 1 August	If paid after 1 August
Un-neutered	\$125.00	\$187.50	\$20/\$31	\$105.00	\$154.00
Neutered	\$76.00	\$114.00	0	\$76.00	\$112.00
Responsible Dog Owner un-neutered	\$63.00	\$94.50	0	\$63.00	\$92.50
Responsible Dog Owner neutered	\$56.00	\$84.00	0	\$56.00	\$82.00
Superannuitants	\$56.00	\$84.00	0	\$56.00	\$82.00
Impounding – registered dog					
1 st impounding	\$65.00		0	\$65.00	
2 nd impounding	\$150.00		\$20	\$130.00	
3 rd impounding	\$215.00		\$20	\$195.00	
4 th impounding	\$280.00		\$20	\$260.00	
Impounding –unregistered dog	\$75.00		\$10	\$65.00	
Sustenance	\$17 per day		\$2	\$15 per day	
Euthanasia	\$35.00				

7. In dog control terminology “neutered” means both “castrated” and “spayed”. The rationale for increasing the fees for un-neutered dogs is that first, un-neutered male dogs are the most likely dogs to show aggressive behaviour. Un-neutered bitches are also at higher risk for aggression albeit not as much as un-neutered males. Secondly, un-neutered bitches are capable of breeding and thereby continue to contribute to the number of unwanted dogs that ultimately become the focus of dog control enforcement. A higher fee for un-neutered dogs (male dogs and bitches) is an incentive to owners to get their dogs neutered.
8. 31% of dogs registered in Waitakere are un-neutered, i.e. neither spayed nor castrated. 83% of service requests for welfare, straying, challenging, barking and attacking relate to dogs that are un-neutered.
9. “RDO” refers to dog owners who meet the criteria for a Responsible Dog Owner’s permit.
10. The Act provides that the penalty for paying after 1 August may not exceed 50% of the base fee.

11. Currently all dog owners who receive national superannuation receive the superannuitant discount, even if their income is substantial. In the past this has been the subject of adverse comment by some ratepayers. By requiring the production of a Community Services Card to qualify for the discount those superannuitants are demonstrating need. Those who do not qualify will pay the normal fee. This will be grand-parented and will only apply to new applications for the superannuitant rate.
12. It is recommended that the impounding fee for a first impounding remains the same for registered dogs but increased for unregistered dogs. There is less work in processing a registered dog and notifying the owner than there is for an unregistered one. For subsequent impoundings it is recommended that those fees increase by \$20.
13. "Sustenance" relates to the cost per day of keeping a dog in custody.
14. A euthanasia fee is invoiced to the owner of a dog that is not claimed where the owner has been identified. This, along with the impounding fee and sustenance fee, becomes a debt and goes through the Council process of debt collection.

Options Identified

15. The options for dog fees include further increases over those proposed, no increases or the proposed fee increases.

Assessment of Options

16. The proposed option to increase the registration fees for un-neutered dogs is stated earlier in this report and has the effect of moving cost increases on to those who are likely to utilise a greater proportion of dog control time.
17. The increases in impounding fees are primarily designed to enforce more responsibility on to the dog owner and the increase in the sustenance fee is just to reflect current prices.

Consideration of Community Views

18. There is no requirement in the Act to consult the community prior the fees being prescribed. Should any submissions be made in the Annual Plan round that pertain to fees for the registration and control of dogs those submissions will be taken into account when prescribed fees in the next year (2010/2011).

STRATEGIC CONTEXT

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

CONSULTATION

20. No external consultation is required.
21. Internal consultation has been carried out through the budget preparation process.

RESOURCES

22. The resources required to collect registration fees are established through Animal Welfare, Waitakere Central cashiers, and libraries and, for dog control fees, through Animal Welfare: Waitakere.

IMPLEMENTATION ISSUES

23. Once prescribed by the Planning and Regulatory Committee, the fees will be applied to the dog registration notices that are mailed to each dog owner in the second week of June 2009. A reminder post card is posted in the 3rd week of July 2009.
24. Those dog owners who pay on or before 1 August 2009 will pay the basic registration fee. Those who pay after 1 August 2009 will pay the penalty registration fee.

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



PART C - ENVIRONMENTAL MANAGEMENT

7 WAITAKERE CITY COUNCIL SUBMISSION ON THE AUSTRALIA/NEW ZEALAND STANDARD – LIGHTING FOR ROADS AND PUBLIC SPACES PART 6: LUMINAIRES

GLOSSARY

Australia/New Zealand	(A/NZ)
Stealth Light Emitting Diodes	(LEDs)
Planning and Regulatory Committee	(the Committee)
Australia/New Zealand Standard - Lighting for Roads and Public Spaces Part 6: Luminaires	(the Standard)

EXECUTIVE SUMMARY

The purpose of this report is to advise the Planning and Regulatory Committee (the Committee) of the Australia/New Zealand (A/NZ) Standard – Lighting for Roads and Public Spaces Part 6: Luminaires (the Standard), and seeks the Committee's approval for the lodgement of a Council submission on the Standard.

The objective of the Standard is to set out the requirements for the design, construction, performance and testing of road lighting luminaires to ensure that they will be suitable for the operating and environmental conditions to which they will be subjected in service. The Standard provides the basis for the mechanical and physical requirements, electrical wiring and components, additional requirements for particular luminaires, and performance and tests for luminaires suitable for road and public space lighting.

While the intent of the Standard is supported, a number of amendments could be made to improve outcomes and avoid unintended consequences.

RECOMMENDATIONS

It is recommended that Planning and Regulatory Committee resolve to:

1. **Receive** the Waitakere City Council Submission on the Australia/New Zealand Standard – Lighting for Roads and Public Spaces Part 6: Luminaires report.

A4-A6

2. **Approve** that the submission on the Australia/New Zealand Standard – Lighting for Roads and Public Spaces Part 6: Luminaires report as attached at pages A4 to A6 be forwarded to Standards New Zealand on behalf of the Council.

BACKGROUND

1. The Council has been reviewing opportunities to reduce the greenhouse gas emissions associated with street lighting through energy efficient street lighting technologies, and has installed two hundred and three CosmoPolis new metal halide luminaires and nineteen Stealth Light Emitting Diodes (LEDs) luminaires during 2007/2008.
2. The CosmoPolis new metal halide luminaire and control gear can achieve around twenty-six percent energy reduction per luminaire, and the LED luminaires and control gear can help achieve around forty-five percent energy reduction per luminaire. New metal halides are a better understood technology, while the use of LEDs for street lighting is a relatively young technology that is still being introduced to many street lighting authorities internationally. More understanding needs to be gained by the Council before significantly larger quantities are installed.
3. Initial research is being conducted by the Council into street lighting control systems, which can enable dimming street lighting during low-traffic hours, e.g. 12am - 5am. Around thirty percent energy reduction can be achieved from dimming street lighting, and lamp usage can be extended, reducing maintenance costs.
4. The proposed Standard does not adequately provide a wide enough framework to enable or encourage the installation of some of the above technologies. The Standard sets a framework that will continue to encourage current practices, rather than encourage improvements through using decision making processes that take other sustainable outcomes into account (e.g. energy efficiency or life cycle implications).

Australia/New Zealand Standard for Lighting for Roads and Public Spaces Part 6: Luminaires

A4-A6

5. The Waitakere City Council submission on the A/NZ Standard for Lighting for Roads and Public Spaces Part 6: Luminaires is attached at pages A4 to A6. A full copy of the draft Standard will be available for review in the Councillor's Lounge.
6. The A/NZ Standards are prepared through a consensus process involving representatives nominated from all major interests associated with lighting. For this Standard, the New Zealand representatives included Ingenium (the Association of Local Government Engineering New Zealand Incorporated), the Lighting Council of New Zealand and the New Zealand Transport Agency. Submissions closed on 17 March 2009 and an extension for the Council has been approved to the 17 April 2009.

DECISION MAKING

7. The changes to the Standard as proposed could have significant impacts on the manner in which Council implements the energy efficiency outcomes for the street lighting and public spaces infrastructure and the resulting reductions in corporate greenhouse gas emissions associated are approximately twenty-six percent. The reason is that the proposed standard focuses solely on the length of service life of luminaires with the risk that may discourage the consideration of new technologies that offer wider-ranging benefits in the long term.

Issues

8. Section

Section 1.5 Environmental Conditions (page 6, paragraph 1):

"It is anticipated that a luminaire conforming to this Standard will be capable of having an effective service life of at least 20 years under the following environmental conditions.

Submission

9. The Council acknowledges that the implicit objective of the standard, i.e. for a luminaire to have a *service life of at least 20 years* (within expected environmental parameters) is both a useful and effective guide for developing a workable street lighting network. However, as a Council it must be cognisant of the wider costs and benefits of luminaire performance, in respect of the Council's economic, social, environmental and cultural wellbeings, when determining the technology the Council deploys in its street lighting infrastructure.
10. The implied aim of section 1.5 of the Standard is too narrow in focus, and ignores other significant benefits and costs associated with existing and future luminaire technologies. For example, perceptions of light quality and safety, light externalities, energy use and associated carbon emissions and economic cost, seem to be ignored by the Standard's methodology. Thus, focussing on achieving a 20 year service life (within the Australasian environmental context), while a sound basic strategy, it overlooks important benefits and costs, and may in fact discourage the consideration of new technologies. To be explicit, newer technologies may not be capable of a 20 year service life, but may more than compensate for this through other means.
11. The Council would encourage a lifecycle cost method that assesses luminaires across the four wellbeings and over their lifetime use. Therefore, the Council examines and trials luminaires that perform best with all things considered. As an example, a recent study indicated that a change from standard High Pressure Sodium to Philips' Cosmopolis luminaires was warranted.

Section

12. Section 3.2.1 Ballasts (page 17, paragraph 4):

"Nonetheless, the use of an electronic ballast may reduce the luminaire's service life due to the possible periodic replacement of the ballast."

13. Section 3.2 of the Standard also makes no mention of electronic control gear technologies that are compatible with street lighting control and dimming technology and it is appropriate to suggest its inclusion in this section. These technologies are able to deliver significant greenhouse gas reductions if implemented and should be identified as acceptable control gear for luminaires.

Submission

14. Remove:

"Nonetheless, the use of an electronic ballast may reduce the luminaire's service life due to the possible periodic replacement of the ballast."

15. Add:

"Electronic control gear may incorporate internet communication and dimming technology, as appropriate, to increase luminaire longevity and increase energy efficiency."

General

16. The Standard allows for submissions of general comment to be included.

Submission

17. The Council notes that while the provision of specifications for a reference network will be useful to street lighting engineers, additional and complimentary specifications that focus on the performance characteristics of an *ideal network* would also be of great benefit. Such parameters may include ranges for light intensity, light quality and colour, electricity consumption.
18. This would allow engineers to more easily work from the desired performance characteristics to determine the most appropriate luminaire for their circumstances. In our opinion, this would benefit the standard greatly by reducing the bias towards older technologies and providing stakeholders with more flexibility in their street lighting solutions.
19. Add: A section that defines the ideal performance ranges for all salient characteristics of a lighting network as a guide for the expected performance of non-reference luminaire technologies.

Options Identified

20. While the Council could decide not to make a submission on the Standard it is Council officer's advice that a written submission identifying the issues of concern and provide recommendations on wording and content should be lodged by the Council.

Consideration of Community Views

21. The role of the Standards committee is to receive and consider the interests of the stakeholders in the A/NZ street lighting industry and provide a Standard that reflects a consensus of the industry.
22. The submission has been developed in light of existing Council policies and strategies, most of which have been developed in conjunction with the community, including the Long Term Council Community Plan 2006-2016 and the Waitakere Action Plan on Climate Change and Energy.
23. No consultation has been undertaken with the community.

STRATEGIC CONTEXT

24. The key strategic linkages are outlined in the table below. Allowing and encouraging energy efficient street lighting technologies, and control and dimming gear most directly relates to the Sustainable Energy and Clean Air Strategic Platform, but has cross over with a number of other Community Outcomes, Priorities and Strategic Platforms:

	Community Outcomes	Priorities	Strategic Platforms
Environmental	Sustainable Environment	Sustainable Development	Sustainable Energy and Clean Air Integrated Transport and Communication
Social	Working Together	Safe City	
Cultural			
Economic	Sustainable Integrated Transport		Integrated Transport and Communication

CONSULTATION

25. Consultation with Transport Assets and Strategic Planning staff lead to the development of the draft submission.
26. The Council co-hosted a forum and night tour on Advancing New Zealand's Street Lighting Technologies in September 2008, which included a discussion on issues the street lighting industry were facing in trialling and installing energy efficient street lighting technologies, and was perhaps the largest street lighting gathering held in New Zealand. Issues raised in the Council's submission are reflective of that event held before the revision of this standard was proposed. Follow-on conversations with street lighting industry representatives have continued to reinforce these issues.

RESOURCES

27. Any future additional costs in adopting new street lighting technologies would be supported by a business case to be considered by the Council for inclusion in the Long Term Council Community Plan at that time.

IMPLEMENTATION ISSUES

28. There are no implementation issues with making a submission, as this will allow improvement to the Standard with little to no risk or cost other than budgeted officer time.

Report prepared by: Michelle Dawson, Corporate Sustainability Manager.

