



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, 12 May 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.

6 May 2009

Desiree Tukutama  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8815

### MEMBERSHIP:

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

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

(Quorum 5 members)

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(Meeting Room could be subject to change)

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

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 12 MAY 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, 12 MAY 2009, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFLICTS OF INTEREST**

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



**4 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 7 April 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, 7 April 2009 as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 30 APRIL 2009)**

#### **GLOSSARY**

Hobsonville Land Company	(HLC)
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)
Comprehensive Development Plan	(CDP)

#### **EXECUTIVE SUMMARY**

The following is a list of legal actions in respect of matters which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include minor prosecutions for dogs, swimming pools, health, parking and litter, although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee (the Committee) if it wishes.

#### **RECOMMENDATION**

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

**Receive** the Legal Update (As at 30 April 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 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.

**(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 plaintiffs 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 last 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 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 lodged an application for leave to appeal in the Court of Appeal against the High Court Judgment on 11 March 2009. Council prepared its response opposing special leave and filed this on 26 March 2009. The matter has now been set down for hearing on 18 May 2009 and timetables for the exchange of submissions have been directed. Mr Mawhinney sought an extension to 27 April 2009, and Council has sought an adjournment of the fixture to a later date. We are awaiting the Court's directions.

### **ENVIRONMENT COURT**

**(Changed)**

#### **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. The parties have exchanged engineering evidence on the cause of the slip and a tentative hearing date in the week of 25 May 2009 has been set aside.

**(Changed)**

#### **Morris v Waitakere City Council (March 2009)**

#### **Palmer v Waitakere City Council (March 2009)**

#### **Rex Bridgeford 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 (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 it were a plan change. The Council has requested for the matter to be set down for mediation as soon as possible. We have not received a date from the Court, but indications are that it may be mid-June 2009. In the meantime the parties are trying to work together.

**(Changed)**

#### **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 have filed a consent order with the Court.

**(Changed) 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 has been filed with the Environment Court.

**(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.

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)**

22. 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.
23. 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.
24. 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.
25. 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 have submitted an amended condition document with the Court. The final order has yet to be received.

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

26. 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 had until 14 April 2009 to respond to the costs applications filed by the Council and Preserve Piha Limited.
27. The appellant has filed a memorandum opposing the application for costs from the Council and the applicant. The Court will determine the matter and will issue its decision in Chambers without a hearing.

**(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 proposed Rodney 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 proposed Rodney District 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 proposed 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).

**(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)**

33. This appeal concerns the Auckland Regional Council's (ARC) 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;
  - 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 companies 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 was filed with the Court. Mr Mawhinney did not reply 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 was 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. The Court has directed that Mr Mawhinney file evidence by 4 May 2009 or it will strike out the matter.

*(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 has been 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. The Court has directed that Mr Mawhinney file evidence by 4 May 2009 or it will strike out the matter.

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

**Plan Change Hearings**

***(Changed)***

**Local Government (Auckland) Amendment Act 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 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. The Council has resolved the appeals against the MUL as well as the appeals by the National Trading Company (NTC) seeking to have Plan Changes 14 and 15 cancelled and withdrawn. NTC have withdrawn their appeal against the MUL and the substantive challenge against Plan Changes 14 and 15 has also been resolved. Therefore, only certain rules in the plan change areas are under challenge. To try to resolve some of these challenges, the Council and NTC have submitted a draft consent order to the Court. The s. 274 parties to that draft consent order are New Zealand Retail Property Group Limited, Auckland Regional Council, Auckland Regional Transport Authority, New Zealand Transport Agency, Progressive Enterprises and Garelja Brothers. All parties aside from Garelja Brothers have refused to sign on to the draft consent order.
  45. In respect of the North Shore City Council Appeal against Plan Change 13, we have resolved that appeal as between the Council and North Shore City Council. We have agreed on a draft consent order which has been sent to the s. 274 parties who are HLC and Waitakere Properties Limited. These parties have been involved in the discussion on the amendments to the plan change that will result from the consent order being executed. We anticipate that they will sign on to the consent order. As soon as we have that the consent order back, we will be sending it onto the Court for execution. Once the executed consent order comes back from the Court, there will be a media release.
  46. In respect of the appeals against Plan Change 16: Growth, classified under the topic Commercial Appeals, which gives rise to the issue of whether centres or corridors should be intensified by commercial purposes, or whether it should be both. The Councils have jointly commenced mediation with the large format retailers. The next mediation session is set down for 25 May 2009.
  47. In respect of all other appeals, the Council must file a progress report with the Court by 1 October 2009.

**DISTRICT COURT**

**(New) Leslie Comer - 164 State Highway 16 (April 2009)**

48. Mr Comer sought a resource consent to establish a firewood store and processing facility at the property. A resource consent RMA20060922 was granted to Mr Comer on 26 October 2006 subject to 26 conditions. On 11 November 2008 an Environmental Monitoring Officer inspecting the site found that Mr Comer had laid a huge concrete slab instead of a turning circle which was a breach of Condition 1 of RMA20060922 that required Mr Comer to follow the architect's plans which were submitted with the application for resource consent, and in addition Mr Comer had erected signs that did not include the words "no retail sales" in contravention of Condition 15 of RMA20060922.
49. A subsequent inspection was made on 22 December 2008 by an Environmental Protection Officer who took measurements of the building coverage as well as photographs of the site. A Significant Breaches Report was subsequently completed which identified substantial breaches of building coverage limits in the district plan as well as condition 1 and 15 of RMA20060922. As a result of the gravity of the breaches prosecution was recommended.
50. Informations were laid on 8 April 2009 and the matter is set down for a first call on 25 May 2009.

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

51. 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 96m<sup>2</sup>, 30m<sup>2</sup> over the permitted Ground Floor Area under the rules of the District Plan for that location.
52. One of the defendants, Mr Dean Thompson, has twice previously been prosecuted for similar offences.
53. The first call of the matter was 30 March 2009 at the District Court in Auckland. Mr Thomson entered a plea of not guilty and the matter was set down for hearing on 12 August 2009. Mr Thomson will represent himself. The trustees are professional trustees and have been requested to draft affidavits advising of their involvement with the property, and the informant will look at withdrawing the informations laid against the professional trustees if it is accepted that their involvement was at arms length to the offending. Mr Thomson is settler, trustee and beneficiary of one the two trusts that owns the property, and it is accepted by the informant that he was the party that made all material decisions connected with the offending. The matter has been adjourned until pleas are entered on 15 June 2009.

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

54. 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.

55. The parties 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.
56. 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.
57. 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. Council's officers are to check compliance at the end of May 2009.

**(Unchanged)**

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

58. Mr Hafeez has been charged with two offences under the Building Act. The first involves allegedly unauthorised building works consisting of the construction of two large timber decks without consent, and not in accordance with the Building Code. The second offence is that Mr Hafeez allegedly failed to comply with the Council's Notice to Fix. The informant laid informations on 26 September 2008 and the matter has a first call on 3 November 2008.
59. 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)**

60. 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.
61. The company entered a guilty plea and the informant withdrew the charges against the director and General Manager. Sentencing was on 23 March 2009 and the Court reserved its decision and delivered it on 7 April 2009.
62. The defendant had sought a s. 106 discharge without conviction which the Court declined to grant. It was accepted by the Court that culpability was moderately high and that there were no relevant explanations for why the works had been undertaken without consent. The company was convicted and a fine of \$8,000.00 was imposed as well as the usual costs. This matter is at an end.

**(Changed)**

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

63. 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.
64. 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.

65. 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 Plan. The matter had a first call on 3 November 2008.
66. 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 18 and 19 June 2009. Mr Knight will represent himself. The informant received an affidavit from Mrs Knight that sought to explain her involvement in the offending. The informant accepts that she was not involved, except in her capacity as a trustee of the trust that owned the property, and will withdraw the two charges laid against her by memorandum on 1 May 2009.

*(Unchanged)*

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

67. 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.
68. 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 due 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 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.

*(Unchanged)*

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

69. 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.
70. 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)*

## Leaky Building Claims

### TOTAL CURRENT CLAIMS

71. Claim statistics are as follows:

(a) There are 19 unresolved leaky building claims being handled by Council's lawyers as at 30 April 2009. The 19 claims represent 216 units, with 7 multi unit claims representing 204 units:

- High Court: 8 (including 4 multi unit claims)
- Weathertight Home Resolution Service (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 as at 31 March 2009 was 177. There are 12 fewer WHRS claims than reported in the legal update for 31 March 2009. The total number of properties affected is reduced by nineteen to 333. 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

#### April 2009

72. No claims settled during April 2009.

#### March 2009

73. No claims settled during March.

#### February 2009

74. 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

75. 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

76. No claims settled during December 2008.

#### November 2008

77. 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**

78. One claim was 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**

79. One claim was 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**

80. One claim was 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**

81. 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

82. 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 SWIMMING POOL FENCE SPECIAL EXEMPTION FEE WAIVER

### GLOSSARY

Planning and Regulatory Committee  
Justice Randerson decision

(the Committee)  
(Randerson decision)

### EXECUTIVE SUMMARY

The purpose of this report is to brief the Planning and Regulatory Committee (the Committee) on options for dealing with requests for waiving of fees for applications for special exemptions.

The Committee resolved to allow provision for the Swimming Pool Exemption Subcommittee to waive application fees for special exemptions in light of the Randerson decision of October 2004 (Randerson decision). The continuing need for a provision to waive application fees should be reconsidered in light of the impending completion of inspections for all registered pools in Waitakere since the Randerson decision.

Options considered are: removing the provision to consider waiving the application fee, the status quo, or aligning the process for waiving the application fee with the existing waiver process for regulatory fees and charges.

### RECOMMENDATIONS

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

1. **Receive** the Swimming Pool Fence Special Exemption Fee Waiver report.
2. **Approve** Option 3, the alignment of the process for waiving the fee for special exemptions under section 6 and clause 11 of the schedule to the Fencing of Swimming Pools Act 1987 with the existing waiver process for regulatory fees and charges.

3. **Approve** that, pursuant to Standing Order 27.18, resolution number 2104/2004:

“9. *That the fee for an application for exemption under Section 6 and Clause 11 of the Fencing of Swimming Pools Act 1987 be set at \$250 GST inclusive but that provision be made for the waiving of this fee by the Swimming Pool Exemption Committee where it deems appropriate.*”

2104/2004

be revoked.

## BACKGROUND

1. At the March 2009 Planning and Regulatory Committee meeting there was discussion over whether the Swimming Pool Exemption Subcommittee still needed to consider requests for waiving of the fee required for applications for special exemption under section 6 and clause 11 of the schedule to the Fencing of Swimming Pools Act 1987. This report has been prepared in response to that discussion.

2. At the November 2004 Council meeting it was resolved:

“9. *That the fee for an application for exemption under Section 6 and Clause 11 of the Fencing of Swimming Pools Act 1987 be set at \$250 GST inclusive but that provision be made for the waiving of this fee by the Swimming Pool Exemption Committee where it deems appropriate.*”

2104/2004

## DECISION MAKING

3. The Swimming Pool Exemption Subcommittee was established after the Randerson decision in response to a need to provide an efficient way of disposing of applications for special exemptions. The provision for the waiving of the application fee gave the Swimming Pool Exemption Subcommittee some discretion to deal with perceived hardship where a pool fence previously judged to be complying was assessed as being non-complying in light of the Justice Randerson decision.
4. At the time of the writing of this report Council Officers were averaging 300 primary inspections every three months and as at 1 April 2009 had 323 sites to inspect that had not been inspected since the Randerson decision. It is likely that these 323 site inspections will generate some special exemption applications that will not be assessed by the Swimming Pool Exemption Subcommittee before 30 June 2009.
5. Since 1 October 2004, a total of 68 applications for fee waivers have been received and granted. At \$250 per waiver this would equate to \$17,000, which is approximately \$3,800 per annum.
6. The direct costs of providing the swimming pool inspection programme are \$174,000 per annum. This is partially offset by income from re-inspections of \$42,000 per annum. The Council has a statutory duty to enforce the law in relation to the Fencing of Swimming Pools Act 1987 and this limits the Council's ability to recover costs.

## Issues

7. Once all of the registered pools in Waitakere have been inspected in light of the Randerson decision the need for the Swimming Pool Exemption Subcommittee to consider waiving the application fee for special exemptions, due to the Randerson decision, should become unnecessary.

8. There will however be other situations that may arise from time to time where a fee waiver for a special exemption application may need to be considered. The Director City Services has delegated authority to grant waivers for regulatory fees and charges to an amount not exceeding \$2,000 and it may be an appropriate time for the Committee to consider aligning the process to waive the special exemption fee with the current practice for regulatory fees and charges.

#### **Options identified**

##### **Option 1**

9. Remove the option for waiver of the fee for special exemption applications from 30 June 2009.

##### **Option 2**

10. Status Quo – retention of the option for waiver of the fee by the Swimming Pool Exemption Subcommittee, for special exemption applications.

##### **Options 3**

11. Align the process for waiving the fee for special exemption applications with the existing waiver process for regulatory fees and charges.

#### **Assessment of Options**

##### **Option 1**

12. Removing the option to grant a waiver of the application fee from 30 June 2009 could disadvantage any special exemption applicants whose pools had not been inspected since the Randerson decision. This option would also not allow for the possibility of unforeseen circumstances in the future where a waiver of the application fee may be warranted.

##### **Option 2**

13. The Status Quo provides more flexibility than Option 1 but exposes the Swimming Pool Exemptions Subcommittee to property owners lobbying for a fee waiver during site inspections.

##### **Options 3**

14. Aligning the waiver process with the existing waiver process for regulatory fees and charges retains the flexibility of the Director City Services being able to grant fee waivers and provides more time for consideration of all the issues surrounding any request for a fee waiver application.

#### **Preferred Option**

15. Option 3 is the preferred option.

#### **STRATEGIC CONTEXT**

16. Council has a statutory enforcement role with respect to swimming pools under the Fencing of Swimming Pools Act 1987. This role is part of Council's wider strategic role with respect to ensuring residents have a healthy and safe environment to live, work and play in. As such this area contributes to Council's community safety and the first call for children policies.

## CONSULTATION

17. Both Legal Services and Democracy and Support Services have been consulted on the obligations of the Council in relation to the Fencing of Swimming Pools Act 1987 and the delegation of authority to waive the fee for special exemption applications.

## RESOURCES

18. No additional resources are considered to be required to implement the decision.

## IMPLEMENTATION ISSUES

19. There are no significant issues involved in implementing the recommended decision.

Report prepared by: Max Wilde, Manager: Field Services.



## 7 PROPOSED REGULATORY CHANGE FOR WAIKUMETE CEMETERY

### GLOSSARY

hectare	(ha)
Burial and Cremations Act 1964	(BCA)
Resource Management Act 1991	(RMA)
Historic Places Trust	(HPT)
Waikumete Cemetery Conservation and Reserve Management Plan	(WCCRMP)
Waitakere City Council District Plan	(WCCDP)
Waikumete Cemetery	(the Cemetery)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
The Waikumete Cemetery Advisory Group	(WCAG)

### EXECUTIVE SUMMARY

The Burial and Cremations Act 1964 (BCA) requires local authorities to establish and maintain appropriate cemetery facilities to provide for persons dying within its district (s. 4 BCA). The Waikumete Cemetery Conservation and Reserve Management Plan (WCCRMP) identified:

*“Given that existing areas developed for burials have only enough capacity for another 10-15 years, resources need to be set aside to investigate the development of new areas.” (pg 91)*

The Waikumete Cemetery (the Cemetery) has burial capacity until 2021. The Asset Management Group of the City Services Directorate has recognised that under the Resource Management Act 1991 (RMA) opportunities exist to create additional burial capacity, through the alteration of the Cemetery designation in the Waitakere City Council District Plan (WCCDP). Preliminary studies indicate that there is potential, dependant on the size of the area being released and the adoption of new burial technologies, that burials could continue to take place at the current site until 2055. Operations within the Cemetery could also be streamlined by reviewing the WCCDP heritage listing that covers the entire cemetery.

It is anticipated that there will be significant public interest in any alteration to the regulatory framework that applies to the Cemetery. The Cemetery is a burial place of significant local, regional and national interest, of considerable heritage and ecological importance and the largest open space in the urban area of Waitakere.

Given that an alteration to the designation may take two years to go through the relevant statutory processes from the time of notification and further that new burial sites can take up to three years to be developed ready for use, there is some urgency to this work.

### **RECOMMENDATIONS**

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

1. **Receive** the Proposed Regulatory Change For Waikumete Cemetery report.
2. **Agree** that work to develop an option to achieve additional burial capacity in the Waikumete Cemetery by regulatory change, being an alteration to the Designation and Councils Heritage listing, be continued.

### **BACKGROUND**

1. The need for additional burial capacity is focused on the potential of the Cemetery, as it is the City's largest cemetery. Originally developed in 1908, the 108 hectare (ha) site has 42.7 ha protected under the WCCDP, that leaves only 8.6 ha currently available for burials, which at the current rate of use will run out in 2021. To be able to utilise areas currently protected by the WCCDP for future burials, existing regulations would have to be altered (the Cemetery is subject to additional regulatory management, both external and internal, in addition to the non statutory WCCRMP, all of which have an impact on the management of the Cemetery). All relevant aspects of the management system are discussed below.
2. In terms of external regulation, the Cemetery is subject to the requirements of the following statutes:
  - The BCA - stipulates that the City provides burial opportunities.
  - The RMA - manages the uses of land and the processes that are undertaken to develop or change rules associated with land uses. The rules in the WCCDP manage the land use of the Cemetery.
  - The Historic Places Act 1993 - the Chapel of the Faith in the Oaks is listed as a Category 2 Heritage Item under s. 22.3(a)(ii) of the Historic Places Act 1993. The Historic Places Trust (HPT) must be advised of all proposed development and conservation measures of the building. Graves that were constructed prior to 1900 fall under the status of archaeological items in terms of this act. They cannot be modified, damaged or destroyed without an authority from the HPT.
  - The Reserves Act 1977 - the Cemetery is a Local Purpose (Cemetery) Reserve, which means that the Reserves Act 1977 applies to the area. The underlying ownership of the land is with the Crown, with the land being vested in trust with the Council.
3. Consideration is also required under Part 6 Heritage of the Auckland Regional Policy Statement (ARPS) as the Gumlands area of the Cemetery is a potentially regionally significant natural area. Although not listed in the ARPS as regionally significant, the ARPS notes that its list is not exhaustive, and there is sufficient literature in circulation to endorse that the Gumlands area of the cemetery would be considered regionally significant.

4. The Crematorium requires an air discharge resource consent for its operation under the Auckland Regional Council Air Land Water Plan and activities in the vicinity of the streams in the Cemetery may also require an Auckland Regional Council (ARC) resource consent/permit.
5. Internally the Cemetery is subject to bylaws, WCCDP controls, and the WCCRMP. The Council Bylaw Cemeteries and Crematoria No 18 (1990) governs the activities that are permitted in the Cemetery.
6. Overlaying the entire Cemetery is the Cemetery Designation in the WCCDP, the purpose of which is "Cemetery activities". The designation requires that an Outline Plan of Works must be undertaken for all works that are in accordance with the designation. As with most WCCDP designations, this designation is subject to all relevant Natural Area rules, together with a number of other rules including those relating to heritage.

A4

7. With regard to the Natural Environment rules the majority of the Cemetery used for burials has a General natural area zoning. The remainder of the Cemetery has Protected, Managed, and Restoration natural area zoning, in addition to a smaller number of areas identified as Ecological Linkage natural area (a copy of the relevant natural areas map is attached at page A4).
8. Two areas of the Cemetery are also listed in Appendix E of the WCCDP as Outstanding Vegetation sites, these being areas of Manuka scrub on the Cemetery's undulating lowland hills.

*"The manuka shrublands on the poor clay soils within Waikumete Cemetery are a regionally significant botanical feature" (Pg 49 WCCRMP).*

They are the largest contiguous tracts of gumland vegetation in the Tamaki Ecological District, in addition to containing a large variety of rare and endangered plants, such as grasses and orchids, and a significant habitat for native fish species.

9. There is an additional layer of controls related to heritage, covering a number of specific buildings and trees that have individual heritage designations within the WCCDP and two other blanket WCCDP heritage listings over the entire cemetery being:

Location	Description	Category	CHI No
Mausoleums, Waikumete Cemetery, Glenview Rd, Glen Eden	Masonry mausoleums. Significance attributed to historical values	1	1614
Waikumete Cemetery, Glenview Rd, Glen Eden	Significance attributed to its regional, cultural, historic, community, visual, pattern and of place values	1	1668

10. These listings in the WCCDP result in a requirement to obtain resource consent in any instance of work being undertaken within the Cemetery.
11. With regard to the human environment identifications in the WCCDP, the Cemetery is subject to the Open Space Human Environment identification, consistent with its use as a reserve. The WCCRMP identifies that where the Cemetery is not being utilised for cemetery purposes that it will be used for passive recreation. The WCCRMP was developed to integrate the management of the many varied aspects of the Cemetery.

12. The Cemetery is operated as a Council business unit.

*“The Council funding policy states that the cemetery business unit must be self funding. Revenue is largely earned through cremations, ash internment, and selling burial plots. To enable long term planning, the conservation plan has assumed that the cemetery is to continue operating for at least another 30 years”. (pg 91 WCCRMP)*
13. Currently the Cemetery processes 450 burials and 650 cremations per annum.
14. In terms of other options and technologies, many more intensive options are now available for burials, for example mausoleums. In some overseas locations reuse of graves is an accepted practice where land is at a premium. However, into the foreseeable future it is most likely that burials and cremations will be used at the Cemetery with a smaller number of people choosing other options such as mausoleums and eco burials. Therefore planning is most likely to have to be based around the options that use the greater area of land.
15. An important consideration in the operation of the Cemetery is the lead in time required for the development of a new area for burials. Dependent on topography and location, development may require resource consent to be obtained, earthworks to be undertaken, and the installation of new roading, berms, and stormwater systems. These processes can take between 1-3 years, with the cost of these works being recovered in the sale of the new burial plots. When combined with a process to alter the rules, which may take two years from the time of notification, it may be up to five years before a proposed new area can be used for burials.
16. The Assets team has undertaken a preliminary study regarding the possible range of options for the future development of the Cemetery. The range of options varies from a do nothing approach, to a significant alteration to the WCCDP regulations to allow large new areas to be developed for burials. A significant alteration to the WCCDP could potentially open up the area known as the Gumlands, an area of regional and national ecological importance further enhanced by its urban location and accessibility.
17. There is significant public interest in the Cemetery, and it is the focus for a range of interest groups related to such matters as heritage and ecology. It should be noted that the age of the cemetery results in approximately 5,000-6,000 genealogy enquiries a year. The Cemetery is the largest open space in Waitakere and is utilised as a recreation facility by walkers.

## DECISION MAKING

### Issues

A5-A10

18. The WCCDP rules constrain the area of the Cemetery that can be used for burials. The predominant burial methodologies will result in the existing capacity of the Cemetery being used within 10 years.
19. The preliminary work undertaken by the Assets team focused on using the plan change methodology to expand burial capacity. A report to the Infrastructure and Works Committee in April 2009 on the future of the Cemetery is attached at pages A5 to A10. Since the time of that report, officers now consider that an alteration to the Designation may be the more appropriate regulatory change option.
20. Any area available for burials can have its potential maximised by the use of the most intensive burial techniques, however currently the WCCDP does not regulate burial methods, rather ensures that land is available for burial development. The work to date anticipates that the preference for traditional type burial will continue, hence the quest for a larger area of land. Any success in the promotion or adoption of more high-technology techniques would obviously allow additional burial capacity into the future. It may be that the adoption of more intensive methodologies could be directed through the WCCDP. This aspect will be investigated.

21. The southern and western Gumland areas within the Cemetery are approximately 37.5 ha and account visually for most of the vegetated area in the western side of the Cemetery. The Gumlands are of regional and national ecological significance with either protected or managed natural environment zoning under the WCCDP. It is this area that will be investigated to provide additional burial areas and potentially be part of an alteration to the designation. It may be that some areas of the Gumlands could be conserved, which would free up other areas for future burial uses, hence achieving the goal of providing burials on the site until 2056.
22. It is anticipated that the regulatory change process will draw significant public interest from both community groups and statutory bodies, due to the high profile of the historic and ecological elements of the Cemetery. The requirements of the City to provide burial opportunities now and into the future will have to be balanced against the need to conserve areas of ecological, cultural and historical value.

### **Consideration of Community Views**

23. The Assets team has held a meeting with the Waitakere Cemetery Advisory Group (WCAG) that has representatives of the various groups with an interest in the Cemetery, among them, the Returned Services Association, Auckland Botanical Society, and the Friends of Waikumete Group. The WCAG have set up a sub group to deal specifically with this process. This will be in addition to any material that they may submit through any future statutory processes.
24. With regard to other statutory interest/concern in the proposed regulatory change these will be: the Department of Conservation as the owner of the Cemetery land, the HPT in relation to the heritage listings, and the ARC in relation to the ecological heritage.

### **Preferred Option**

25. At this stage further investigation is required before the exact nature of the alteration to the designation and the Council heritage listing can be defined. It is considered that Council should progress further investigation work relating to the development of areas of the Cemetery currently listed with Protected/Managed natural area, as a method of providing further burial capacity for the City.

### **STRATEGIC CONTEXT**

26. The BCA requires local authorities to establish and maintain appropriate cemetery facilities to provide for persons dying within its district (s. 4 BCA).
27. The Cemetery also provides a high value facility for public open space and heritage. Development of the Cemetery will be designed to give effect to Council's Environmental Strategy, Council's Strategic Platforms and Council's Community outcomes, being: Mauri Ora, Vibrant Arts and Culture, and Urban and Rural Villages.

### **CONSULTATION**

28. To date Council has advised various statutory bodies in Auckland via a mail out that work is about to commence on a change to the regulatory framework of the cemetery. In addition several meetings have been held with the WCAG and internal consultation has taken place with the Parks, and the Strategic Planning units within the Council.
29. Iwi have been advised that a regulatory change process is about to commence.

## RESOURCES

30. The proposed regulatory change can be resourced from existing budgets. All staff time and professional services can be met from the resource management budget.

## IMPLEMENTATION ISSUES

31. There are no issues associated with implementing the matters outlined in this report.

**Report prepared by:** Carolyn McAlley, Senior Planner: Policy Implementation.



## PART C - DISTRICT PLAN / STRUCTURE PLANS

### 8 REMOVAL OF DEFENCE PURPOSES DESIGNATION OVER PART OF THE LAND AT HOBSONVILLE AIRBASE

#### EXECUTIVE SUMMARY

The purpose of this report is to inform the Planning and Regulatory Committee of the removal of part of the Defence Force designation over a portion of land adjacent to Hobsonville Airbase, in the vicinity of Upper Harbour Drive.

#### RECOMMENDATIONS

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

1. **Receive** the Removal Of Defence Purposes Designation Over Part Of The Land At Hobsonville Airbase report.
2. **Note** that the "Defence Purposes" designation has been removed from the land identified in the Minister of Defence's Removal Notice.

#### BACKGROUND

1. The Defence Force is in the process of vacating the Hobsonville Airbase and the Minister of Defence has given notice that the "Defence Purposes" designation is no longer required over nine contiguous parcels of land in the vicinity of the Upper Harbour Drive.
2. A copy of the Notice of Removal, including a plan of the land to which it relates, is attached at pages A11 to A13.

A11-A13

#### DECISION MAKING

3. The Planning and Regulatory Committee does not need to make any decisions relating to this matter, and the District Plan can be amended to remove the designation without any further formality.

#### ISSUES

4. Section 182 of the Resource Management Act 1991 applies to any proposal to remove a designation. This section of the legislation states:

*"182. Removal of designation -*

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

- (b) *Every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and*
  - (c) *Every other person who, in the opinion of the requiring authority, is likely to be affected by the designation.*
  - (2) *As soon as reasonably practicable after receiving a notice under subsection (1), the territorial authority shall without further formality, amend its district plan accordingly.*
  - (3) *The provisions of the First Schedule shall not apply to the removal of a designation or part of a designation under this section.*
  - (4) *This section shall apply, with all necessary modifications, to a notice by a territorial authority to withdraw its own designation or part of a designation within its own district.*
  - (5) *Notwithstanding subsection (2) to (4), where a territorial authority considers the effect of the removal of part of a designation on the remaining designation is more than minor it may, within 20 working days of receipt of the notice under subsection (1), decline to remove that part of the designation.*
  - (6) *A requiring authority may object, under section 357, to any decision to decline removal of part of a designation under subsection (5)."*
5. In summary, once a requiring authority gives notice that a designation is to be removed then it should be done "as soon as reasonably practical" and "without further formality".
6. When only part of a designation is to be removed, section 182 (5) of the Resource Management Act 1991 does give Council some ability to decline to remove the part of the designation if the "effect of the removal of part of the designation on the remaining designation is more than minor".
7. In this instance the Minister of Defence is seeking to remove a small part of the large designation identified in the District Plan as "MD1". The removal of this part of the designation is adjacent to the new Motorway (State Highway 18). Its removal has less than minor effect on the remainder of the MD1 Designation. Therefore the request to remove the designation should be undertaken without further formality, and the statutory timeframe required in section 182(5) of the Resource Management Act 1991 (above) does not apply.

## STRATEGIC CONTEXT

8. This portion of land is likely to be included in the forthcoming development of Hobsonville Airbase by the Hobsonville Land Company Limited. Following the removal of the Minister of Defence's designation, the land will be managed via the Policies and Rules of the Base Village Special Area within Proposed Plan Change 13 in the District Plan.

## CONSULTATION

9. No consultation is required in relation to this matter.

## RESOURCES

10. There are no additional or unbudgeted resources required in order to remove the designation.

## IMPLEMENTATION ISSUES

11. There are no significant implementation issues.

Report prepared by: Eryn Shields, Principal Planner.



**PART D - REPORT OF THE SUBCOMMITTEE**

**9 SWIMMING POOL EXEMPTION SUBCOMMITTEE**

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 23 APRIL 2009**

**MATTERS CONSIDERED**

A14-A20

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 A14 to A20.

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

**Receive** the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 23 April 2009.

WW Flaunty, QSM, JP

**CHAIRMAN**



**PART E - PUBLIC EXCLUDED MATTER**

**10 DISTRICT PLAN APPEAL RESOLUTION - OCKLESTON FAMILY TRUST**

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

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, namely District Plan Appeal Resolution - Ockleston Family Trust.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
District Plan Appeal Resolution - Ockleston Family Trust	The withholding of information is necessary in order to: <ul style="list-style-type: none"><li>maintain legal professional privilege;</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) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

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

