



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, 8 September 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.

2 September 2009

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	DQ	Battersby, QSM, JP
	BA	Brady, JP
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper, JP
	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, 8 SEPTEMBER 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, 8 SEPTEMBER 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, 7 July 2009
Monday, 20 July 2009
Tuesday, 21 July 2009
Wednesday, 22 July 2009

RECOMMENDATION

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 July 2009, Monday 20 July 2009, Tuesday 21 July 2009, Wednesday 22 July 2009 as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 31 AUGUST 2009)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Rodney District Council	(RDC)
Waitakere City Council	(Council)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Weathertight Homes Tribunal	(WHT)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Protect Piha Heritage Society Incorporated	(PPHS Inc.)
Swanson Structure Plan	(SSP)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Hobsonville Land Company	(HLC)
Comprehensive Development Plan	(CDP)
Sentencing Act 2002	(Sentencing Act)
Summary Proceedings Act 1957	(Summary Proceedings Act)
Metropolitan Urban Limit	(MUL)
Memorandum of Understanding	(MoU)
Minor Household Unit	(MHU)
Networth Developments Limited	(Networth)
National Trading Company	(NTC)

EXECUTIVE SUMMARY

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

RECOMMENDATION

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

Receive the Legal Update (As at 31 August 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 High 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. We have had informal indications that the appeal may yet be withdrawn.

(Changed)

Waitakere City Council v Networth Developments Limited (November 2008)

5. The Council commenced 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 second liquidator's report that it is unlikely there will be a distribution to creditors, which includes the Council.

(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 1991 (PWA) in the High Court claiming the Council breached its duty to offer back land on Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that: the events which triggered an obligation under the PWA occurred prior to the offer back obligation coming into force, and the PWA should not apply retrospectively.
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.
8. The plaintiffs have served replies to Council's application for further and better particulars of the claims. Statements of Defence to each of the claim are currently being prepared and further information is being sought about the financial position of the individual plaintiffs. Discovery of documents is also being advanced. There are various other interlocutory matters including priority of individual proceedings and security for costs which are also being negotiated between the parties.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

9. 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.
10. 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.

11. 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.
12. Mr Mawhinney lodged an application for leave to appeal in the Court of Appeal against the High Court Judgment on 11 March 2009. The special leave application was heard by the Court of Appeal on 21 July 2009. The application was declined and the Council was awarded costs. Steps are now being taken to enforce the costs awards in both the High Court and Court of Appeal.

ENVIRONMENT COURT

(Changed)

Britten v Waitakere City Council (March 2009)

13. An application was 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".
14. The matter was heard on 26 May 2009 and the Court granted interim enforcement orders to be complied with by 8 June 2009. These orders require the Britten's to submit a site remediation plan to be approved by the Council. The remediation plan must include:
 - what materials are to be removed and from where;
 - where that material is to be placed to remediate the site;
 - the method by which the work is to be done, measures to assist in the stabilisation of the site; and
 - include a report on what caused the slip with a detailed assessment and proposal of how to remediate the cause and prevent future slips onto the Council's land.
15. On 18 June 2009 the Court directed that the expert witnesses acting for the Applicant and the Respondents confer and agree a methodology and timescale for remediating the failed slope and stabilising the remainder of the slope to ensure the safety of Council owned land and the Swanson Stream at the slope toe. The two experts appointed by the parties: Rodney Hutchison and Don Buchanan met with Commissioner McConachy on 18 June 2009 and produced a joint witness statement recording their agreement.
16. In a joint statement dated 7 July 2009, the experts agreed that the works would be undertaken over nine stages to begin in October 2009, with progress reports generated monthly until the completion of the restoration works at the end of May 2010. The stages include the following:
 - Form an access to the lower slip area/extend existing access track;
 - Clear base of embankment/excavate slip material/install drains;
 - Fill excavated area and base of embankment with concrete rubble to form a working platform;
 - Clear damaged and leaning pine trees;
 - Remove remaining slip debris from slope/stream bank and streambed/reinstate stream bank to original line;
 - Reconstruct embankment to profile required for railway;
 - Re-profile western zone of embankment;

- Topsoil and plant surface of reconstructed embankment;
- Clear remaining debris from golf course if requested.

(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)

17. These were all appeals against the decision of this Council through independent commissioners, to grant consent to the 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).
18. The appellants raised issues in the appeal as to the nature of the proposed development, the ability of the CDP to comply with the RMA, the provision of community infrastructure (such as parks, playing fields and shops) and the provision of social housing by HLC.
19. All appeals will now have been resolved by way of two consent orders. The Environment Court issued executed the consent orders on 24 July 2009. The matter is now resolved and there are no outstanding appeals against the CDP.

(Unchanged)

Swanson Structure Plan Decisions (October 2008)

20. The Court has delivered its decision on the Swanson Structure Plan (SSP). At an extraordinary meeting of the Planning and Regulatory Committee on Tuesday, 10 February 2009 it was resolved not to appeal the decision. No other party has appealed.

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)

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

21. Following the Council's decision being upheld and the appeal from the appellant Protect Piha Heritage Society Incorporated (PPHS Inc.), 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 2010 to respond to the costs applications filed by the Council and Preserve Piha Limited.
22. The appellant has filed a memorandum opposing the application for costs from the Council and the applicant. The Court determined the matter in Chambers without a hearing. The Court ordered the appellant PPHS Inc to pay costs of \$5,000 to the Council and \$10,000 to the applicant in a decision of 26 August 2009. The Court noted that although costs are not granted as of right in the Environment Court regime, this was a case where the appeal lodged by PPHS Inc and the manner in which the case was conducted in Court could have been more narrow; therefore given the broad range of matters appealed, and the end result, the Council and the applicant were entitled to some costs. The appellant, PPHS Inc has until 17 September 2009 to lodge an appeal in the High Court against those costs.

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

23. 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.
24. 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. We have been advised in August 2009 that Judge Jackson is working on the costs decision currently.

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

25. 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.
26. 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.
27. 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 have been regular timetable directions made on all outstanding matters. There has also been significant progress in relation to the resolution of appeals and the withdrawal of significant appellants. Council planners have been regularly attending mediation dates to ensure that the Council's position is represented in the finalisation of the district plan rules.

(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)

28. 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 have been finalised and lodged with the Court.

Mawhinney Matters in the Environment Court

29. 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)

30. 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 (all now struck off the register). 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.
31. The applicant companies dispute the need for the further regional consents.
32. 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.
33. As all the corporate appellants have been struck off, Mr Mawhinney has applied to have another company, Alex Simpson Limited, substituted as the appellant in the proceedings. A memorandum has been filed with the court opposing this application on the basis that there is no evidence of any link between this company and the subdivision applications, or the land. Alternatively we have submitted that Mr Mawhinney should be added as an additional party - to ensure that he becomes personally liable for Councils costs - in the event that appeals are unsuccessful. Further directions from the Court are awaited on Mr Mawhinney's application.

(Changed)

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

34. These proceedings involve Mr Mawhinney seeking an enforcement order under s. 314 of the RMA directing the Council to give public notice on its decision to reserve control over "roads" under the subdivision rules. The Council amended the subdivision rules in 2001, and it is now opposing the application on substantive and procedural grounds.
35. Mr Mawhinney advised the Court on 16 January 2009 that he has no further evidence to file other than that which was originally filed, namely submissions and affidavit evidence. Council served legal submissions and an affidavit from Philip Brown on 17 February 2009. 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. Mr Mawhinney has applied to have another company, Alex Simpson Limited, substituted as the appellant in the proceedings and the Council is seeking to oppose this application on the same basis as above.

(Unchanged)

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

36. 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 recommenced.

Plan Change Hearings

(Changed)

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

- A1-A3*
37. 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.
 38. 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.
 39. 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.
 40. 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.
 41. 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 NZRPG, ARC, ARTA, NZTA, Progressive Enterprises and Garelja Brothers. All parties aside from Garelja Brothers have refused to sign on to the draft consent order. The Council has requested that this matter be dealt with through mediation. A mediation was conducted between the parties on 27 and 28 August. Another mediation will be conducted prior to these matters going to a hearing in 2010.
 42. The Council must file a progress report with the Court by 1 October 2009.

DISTRICT COURT

(New)

F Muliaga / P Muliaga / G Muliaga – 20 Islington Avenue, New Lynn (August 2009)

43. Mr Geoffrey Muliaga lodged an application for building consent with Council on 14 January 2009. The application was lodged on behalf of the owners to seek consent to undertake significant alterations and extensions to an existing garage at the property. The application was rejected on 15 January 2009 due to inadequate supporting information. On 1 April 2009 Council received an enquiry from the public in relation to work being undertaken at the property.
44. On 3 April 2009 a Council officer visited the site and noticed that building works were underway at the property despite the building consent application being denied. The works included significant extensions to the garage which appeared to be designed to convert the garage into a larger domestic building. A notice to fix was issued to the owners on the same day requiring work at the site to cease immediately and the owners to achieve compliance with the requirements of the Building Act 2004 by 11 May 2009.

45. At a site visit by a Council officer on 23 June 2009, Mr Filipo Muliaga admitted to undertaking further building works at the property which was a contravention of the notice to fix issued on 3 April 2009. Informations were laid against the owners for failing to comply with a notice to fix, and informations were laid against all three defendants for undertaking unauthorised building works at the site.

(New)

Stephen Chai – 109 Gardner Avenue, New Lynn (August 2009)

46. Council received a complaint alleging that unauthorised building works were taking place at the property on 20 March 2009. On 22 April 2009 Council officers went to the site and met the owner. The owner admitted to creating two additional units at the site by undertaking works to split the two existing units. The work had been undertaken without obtaining building consent or resource consent from Council. At the time of the visit, three of the four units were tenanted.
47. On 24 April 2009, a dangerous building notice was issued to the owner requiring him to vacate two of the units at the property due to fire safety issues arising from non-compliance with the Building Code. During subsequent correspondence with the owner he agreed to vacate the units as requested. On 17 June 2009 the owner advised that he would apply for a building consent to return the building to its original state.
48. On 12 August 2009, informations were laid against the owner for carrying out unauthorised building works at the property and breaching Rule 2 of the Living Environment Rules in the District Plan which defines limits to residential density in the Living Environment.

(New)

Neil Milbank – 185a Metcalfe Road, Ranui (August 2009)

49. On 28 August 2008, a Council officer inspected the property in response to a complaint from the public in relation to lack of stormwater control at the property. A number of photographs were taken of the property including of the upper deck which was estimated to be three metres above the ground but lacked any kind of safety barrier. A dangerous building notice was issued to the owner requiring him to immediately install a safety barrier to the upper deck that would comply with the Building Code. The notice was issued to the owner in person on 1 September 2008, and the safety issues were explained to him by the Council officer.
50. The site was re-inspected on 3 November 2008 by the Council officer who saw that no safety barrier had been installed. A second dangerous building notice was issued to the owner by affixing it to the fence at the property. Another inspection took place on 29 December 2008 and a third notice was issued to the defendant by post the following day. A fourth notice was issued to the owner on 1 May 2009 following another inspection. On 10 June 2009 the property was inspected again and a sofa was noticed situated on the upper level deck which was the subject of the notice. On 12 August 2009 informations were laid against the defendant for failing to comply with a dangerous building notice.

(New)

Peter Butler – 55 Riverlea Road, Whenuapai (August 2009)

51. On 13 May 2009, the Council received a complaint in relation to unauthorised building works at the site. On 14 May 2009 a Council officer visited the property and noticed that an 18m² relocatable building had been attached to the existing dwelling at the property, and extensive renovations had been undertaken to link the two buildings including the construction of a large covered verandah measuring 48m². The total unauthorised building works measured 64m².
52. A letter was sent to the owner requesting an explanation for the unauthorised works on 15 May 2009, and included a notice to fix requiring the owner to stop work immediately and achieve compliance with the Building Act 2004. On 18 June 2009 the owner applied for a Certificate of Acceptance to legalise the unauthorised works at the property. Informations were laid against the owner on 12 August 2009 for undertaking unauthorised building works at the property.

(Changed) Harvey Green – 125 View Road, Sunnyvale (June 2009)

53. Council has received ongoing complaints in relation to the property which is in an overwhelming state of disrepair. Mr Green refused entry to the property until the property was inspected under a search warrant on 12 March 2008. The inspection revealed accumulations of faecal matter, urine, waste food, rubbish within the interior, the building itself was dilapidated and the land around the dwelling was overgrown covered with large quantities of household refuse and inorganic waste.
54. On 4 April 2008 an unsanitary building notice was issued to Mr Green requiring repair of various aspects of the interior and exterior of the dwelling by 30 May 2008. An abatement notice was also issued on 7 April 2008 requiring Mr Green to repair the state of the building and property by 30 May 2008.
55. Informations were filed against Mr Green on 10 June 2009 for committing an offence against s. 124 of the Building Act for failing to comply with an unsanitary building notice. The offence is a continuing offence. The matter is set down for a first call on 28 September 2009.

(Changed) Lindsay Green – 8 Herrings Cove Place, Titirangi (June 2009)

56. Council was advised in February 2009 that native vegetation had been cut down on the property. The property is within the Managed Natural Area under the District Plan. Council officers sought Dr Green's permission to inspect the property but were refused. A search warrant was obtained and the property inspected on 12 March 2009 by Council officers who noticed one native tree had been felled, and a number of other native trees heavily pruned.
57. On 9 April 2009, Council officers undertook a second inspection accompanied by a qualified arborist and a surveyor. As a result of this visit the arborist produced a report establishing that one native kanuka tree was recently felled and that four other kanuka trees were heavily pruned in breach of the district plan. Informations were laid against Dr Green on 17 June 2009 for committing an offence against s 338 of the RMA for contravention of section 9 of the RMA. The matter has a first call on 28 September 2009.

(Unchanged) Kwan Sik Kim – San Jang Limited, 22-24 Upper Harbour Drive, Hobsonville (June 2009)

58. A routine food inspection undertaken by a Council Officer on 27 May 2009 revealed a dirty, unhygienic premises with evidence of a rodent infestation. The officer determined there was a risk of food contamination and required the premises to close. The owner contracted a registered pest control firm who treated the premises the same day and initiated a thorough clean of the premises. The premises were allowed to re-open with an E-grading the following day after re-inspection. Informations were laid against the owner on 18 June 2009 for breach of s. 239 of the Local Government Act 2002 for contravention of Council's Food Bylaw 2005 which carries a maximum penalty of \$20,000. The matter is set down for a first call on 28 September 2009.

(Changed) Suwat Seemawong / Kanjana Suksa – Thai Flavour, 572A Te Atatu Road, Te Atatu Peninsula (May 2009)

59. A routine food inspection undertaken by a Council Officer on 19 February 2009 revealed dirty, unhygienic premises with a cockroach infestation. The premises was given an E-grading and required to close until a registered pest control officer company could treat the location. The premise was reinspected on 20 February 2009 after being treated and thoroughly cleaned by the owners and was allowed to re-open. Following a re-inspection on 21 April 2009 the premises was given a B-grade. Informations were laid against the owners on 26 May 2009 for breach of s. 239 of the Local Government Act 2002 for contravention of Council's Food Bylaw 2005 which carries a maximum penalty of \$20,000.

60. Miss Seemawong appeared on 30 June 2009 and entered a guilty plea to the charge. The charge against Miss Suksa was withdrawn on the basis that she had only been employed at the restaurant for three months last year and was now residing in Christchurch. A sentencing hearing took place on 13 July 2009 before Judge Clarkson. The Judge accepted Counsel's submissions that a previous D-grading was comparable to a previous conviction and awarded a significant fine of \$1200.00 plus \$130.00 Court Costs and \$226.00 Solicitor's Costs. The matter is now at an end.

(Changed)

Leslie Comer - 164 Statehighway 16 (April 2009)

61. 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.
62. 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.
63. Informations were laid on 8 April 2009 and the first call of the matter was heard by Judge Tremewan at Waitakere District Court on 25 May 2009. Mr Comer entered a plea of not guilty and indicated that he would have legal representation at the substantive hearing. Judge Tremewan agreed to counsel's request to transfer the matter to Auckland District Court to be heard by a judge with an Environment Court warrant. The matter was set down for a status hearing at Auckland District Court on 10 August 2009.
64. At a status hearing on 10 August 2009, Counsel for the defendant requested an adjournment until the retrospective consent application relating to the property is processed. Counsel for the informant opposed the adjournment application on the basis that the retrospective consent is not relevant to the defendant's culpability for the offence and an adjournment would unnecessarily delay the proceedings. The defendant elected a trial by jury and the matter was set down for a pre-depositions hearing date for 16 November 2009. The date has been moved to 17 November 2009 due to a clash in the Court schedule.

(Changed)

Trustee Management Services Ltd and OAAIP Investments Ltd – 10-16 Pohutukawa Road, Whenuapai (December 2008)

65. The parties are trustees of the above property. The individual trustees have been charged under s. 338 of the RMA for a contravention of s. 9 of the RMA namely that they allegedly permitted the conversion of a Minor Household Unit (MHU) into a second residential dwelling on the property by increasing the size of the MHU to 96m², 30m² over the permitted Ground Floor Area under the rules of the District Plan for that location.
66. One of the defendants, Mr Dean Thompson, has twice previously been prosecuted for similar offences.

67. The first call of the matter was on 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 the Council requested affidavits from the trustees advising their involvement with the property. Affidavits were provided by the trustees establishing that that they were at arms length from the offending. Mr Thomson is settlor, 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 was adjourned for pleas to be entered on 15 June 2009.
68. On 15 June 2009, the Council withdrew charges against the professional trustees on the basis of the affidavits. The charge against Mr Thomson was heard by Judge Newhook in a defended hearing on 14 August 2009. The Judge decided that there was no case to answer, dismissed the charge against Mr Thomson and awarded \$3,800 costs against the Council. The reasons for the Judge's decision are being reviewed to see whether the Council should appeal the Judge's decision.

(Changed)

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

69. 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.
70. 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.
71. 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.
72. The Court heard all matters together and requested the parties meet and arrange a timetable for the clean-up, and then report back to the Court for endorsement. The parties agreed that if the works were attended to within the timeframe, the abatement notice would be cancelled. If the work was not completed as agreed, Council could request Court intervention and seek an order for costs. Council's officers were instructed to check compliance at the end of May 2009.
73. Mr Philpott's property was inspected by a Council officer on 28-29 May 2009 and it was discovered that there had been no noticeable progress in relation to cleaning up the property. The stay on the abatement notice expired on 29 May 2009 and the Council applied to the Court to have the abatement notice reinstated and sought an order for costs against Mr Philpott.
74. The Court dismissed Mr Philpott's appeal on 25 August 2009 and awarded \$3,000 costs in favour of the Council. An application for enforcement orders to require Mr Philpott to clean up his property is being prepared.

(Unchanged)

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

75. 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 had a first call on 3 November 2008.

76. 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 was set down for a status hearing on 4 June 2009. The matter was adjourned by the Court until 7 September 2009 due to new Counsel being instructed in the matter.

(Unchanged)

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

77. 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.
78. 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.
79. 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 on 3 November 2008.
80. 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 was 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 has withdrawn the two charges laid against her.
81. Mr Knight appeared at the Auckland District Court on 15 June 2009 and substituted a guilty plea for both RMA and Building Act charges. A sentencing hearing was set for 21 September 2009, and the informant's submissions are due by 7 September 2009.

(Changed)

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

82. 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 seven 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.
83. 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 five unauthorised sleep outs on the property, but that if the property owners did undertake certain works then four of the five 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 discharged Mr Cottingham without a conviction but ordered him to pay reparations to the Council of \$9,600.

(Changed)

Leaky Building Claims

Current Claims

84. Claim statistics are as follows:

(a) There are 20 unresolved leaky building claims being handled by Council's lawyers as at 31 August 2009. The 20 claims represent 342 units, with 9 multi unit claims representing 331 units:

- High Court: 9 (including 5 multi unit claims)
- Weathertight Home Resolution (WHRS) 6 (including 1 multi unit)
- Weathertight Homes Tribunal (WHT) 5 (including 3 multi units claims)

(b) The total number of WHRS claims recorded on the DBH website relating to properties in Waitakere City as at 2 August 2009 was 176, the same number reported in the legal update for 31 July 2009. The total number of properties affected has increased by 15 to 348. 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

85. To date the total amount paid by Council, after contributions to settlements by Riskpool is \$780,000.

August 2009

86. No claims were settled during August 2009.

July 2009

87. No claims were settled during July 2009.

June 2009

88. No claims were settled during June 2009.

May 2009

89. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

April 2009

90. No claims settled during April 2009.

March 2009

91. No claims settled during March 2009.

February 2009

92. There were 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.

Claims Received

August 2009

93. The High Court claim relating to the multi units at 17 Crown Lynn Place, New Lynn has now been received but relates to only 38 of the units.
94. We have received two WHRS notifications of acceptance for the purposes of an assessor's report since the last update. The first relates to a 16 multi unit claim at Cedarwood, 103 Swanson Road, Henderson accepted for an assessors report on 29 July 2009. The second relates to 201A Titirangi Road, Waitakere, and was accepted by the WHRS for an assessor's report on the 25 August 2009.

July 2009

95. We have received one WHRS notification of acceptance for the purposes of an assessor's report since the last update. It relates to 4 Twin Wharf Road, Herald Island, and was accepted by the WHRS on 20 July 2009.
96. We also understand that a further multi unit court claim in respect of 17 Crown Lynn Place, New Lynn is imminent; in that our lawyers have been asked if they will accept service of papers. The property is a 72 unit development, but the precise details are not known yet, and are not included in the above statistics.

June 2009

97. We have received one WHT notice of adjudication claim this month covering 89 units in a 97 unit development at Tuscany Towers, 1 Ambrico Place, New Lynn. The claim is for \$15,734,695.

March 2009

98. There was 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

99. There were 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.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

A4-A6

The Principal Planner will provide a verbal update to the Planning and Regulatory Committee on progress in dealing with the appeals on the Proposed District Plan.

An up-to-the-minute progress report will be brought to each meeting outlining the status of the appeals. A copy of the District Plan Appeals update table is attached at pages A4 to A6.

RECOMMENDATION

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

Receive the verbal update and the District Plan/Appeals Update Table.

Report prepared by: Desiree Tukutama, Committee Secretary.



7 PROPOSED PLAN CHANGE 34: RE-IDENTIFICATION OF PART OF ROYAL RESERVE

GLOSSARY

The Resource Management Act 1991	(the Act)
Planning and Regulatory Committee	(the Committee)
Proposed Plan Change 34: Re-identification of Part of Royal Reserve	(proposed Plan Change)
Auckland Regional Policy Statement	(ARPS)
Auckland Transition Agency	(ATA)

EXECUTIVE SUMMARY

A7

The purpose of this report is to present to the Planning and Regulatory Committee (the Committee) a proposed plan change which will re-identify part of the Council owned Royal Reserve located at 5 Beauchamp Drive from 'Open Space' to 'Living' Environment. A plan showing the area of land to be re-identified is attached at page A7.

The re-identification is part of a proposed land exchange with the adjacent owner and developer of 74B and 76 Royal Road, Massey. The exchange involves swapping part of Royal Reserve for an equivalent, more useable piece of land (currently identified as Living Environment) adjacent to the eastern part of Royal Reserve. This will assist the Council to give effect to its strategic plan to expand and upgrade Royal Reserve. That part of Royal Reserve which is subject to the exchange will be re-identified as Living Environment, enabling residential activities to be established on part of the existing reserve.

The Proposed Plan Change 34: Re-identification of Part of Royal Reserve (Plan Change) is necessary to achieve the purpose of the Resource Management Act 1991 (the Act) which is to promote the sustainable management of natural and physical resources. The proposed Plan Change is the most effective and efficient means of fulfilling the Council's function under section 31 of the Act and will better enable the people and communities of Waitakere to provide for their social wellbeing (in this case their recreational needs).

In this regard, the proposed Plan Change will give effect to proposed improvements to the existing Royal Reserve in terms of the recreational amenities offered to the surrounding neighbourhood and wider Massey North catchment area. The proposed Plan Change is consistent with the existing District Plan policies and objectives and will not result in any significant adverse effects on the environment that cannot be adequately avoided, remedied or mitigated.

A8-A76 A copy of the draft 'Background Report and Section 32 Analysis' for the proposed Plan Change, including changes to the relevant Planning Map, is attached at pages A8 to A76.

This report seeks approval from the Committee to enable proposed Plan Change 34 to be publicly notified.

RECOMMENDATIONS

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

1. **Receive** the Proposed Plan Change 34: Re-identification Of Part Of Royal Reserve report.
2. **Agree** that pursuant to the First Schedule to the Resource Management Act 1991, that the proposed Plan Change 34: 'Re-identification of part of Royal Reserve from Open Space to Living Environment' be publicly notified.

BACKGROUND

A77 1. The proposed Plan Change seeks to re-identify part of Royal Reserve from Open Space to Living Environment, shown as A1 on the plan titled 'Proposed Reserve Land Swap Plan - Indicative Areas' attached at page A77. The reason for re-identifying this land is so that it can be exchanged for an equivalent, more useable area of land adjacent to the eastern boundary of Royal Reserve shown as A2 on the plan attached at page A77.

2. The subject land is approximately 1.8 hectares and is located adjacent to the southern boundary of Royal Reserve, behind the existing changing/toilet block. The land is elevated above the rest of Royal Reserve and is currently in grass. Adjacent to the south-west corner of the subject land is an existing Kohanga Reo pre-school 'Puawairua'. To the south is an established 'standard' residential area identified as 'Living Environment' in the District Plan. Adjacent to the southern boundary are two large existing lots (42 [2023m²] and 48 [4254m²] Royal Road). Due to its elevation, the subject land has extensive views north to the Massey North Town Centre and east to the Upper Waitemata Harbour and Auckland's Central Business District.

A78 3. The exchange of land at Royal Reserve forms part of a wider strategic objective the Council has to improve and expand recreational facilities at Royal Reserve. The future of Royal Reserve formed part of a Council strategic workshop for Westgate and Massey North held in 2004. The outcomes from this workshop were approved by the Council envisaging an expanded Royal Reserve including the provision of larger sports fields, a children's playground, a wetland and boardwalk area, an expanded car parking area and new road access. A copy of the 'Royal Park Development Concept Plan' that resulted from the workshop is attached at page A78.

A79-A82 4. Since the workshop the owner of the adjacent land at 74B and 76 Royal Road (MC2 Ltd and Royal Property Ltd) has, in consultation with Council Parks Planning staff, prepared a landscape and survey plan identifying the areas of land to be exchanged, the new road layout and the future wetland area. The development of Royal Reserve including the proposed land exchange forms part of a larger development plan the adjacent owner has to develop land to the east for residential purposes. The adjacent land is currently identified as 'Living Environment'. The survey plan prepared by the developer is consistent with the Council's updated Royal Reserve Concept Plan (February 2009) which will form the basis of the future upgrade of Royal Reserve. A copy of the developers' survey plan and Council's Royal Reserve Concept Plan is attached at pages A79 to A82.

5. Under delegated authority, pursuant to section 15 of the Reserves Act 1977, the Council's Infrastructure and Works Committee approved notification of Council's intention to enter into an exchange of reserve land at its September 2008 meeting. The Infrastructure and Works Committee resolved as follows:

The Infrastructure and Works Committee resolved to:

- “1. **Receive** the Proposed Land Exchanges – 76 Royal Road And 60 Tudor Road report.
2. **Approve** the notification of Council's intention to enter into an exchange of reserve land under section 15 of the Reserves Act 1977 of approximately 1.8ha of Royal Reserve (being more or less the area marked A on the plan attached at page A13 of the agenda) with approximately 1.8ha of 76 Royal Road, Massey (being more or less the area marked B on the plan attached at page A13 to the agenda) and that objections, if any, be reported back to the Infrastructure and Works Committee for consideration and further recommendations.
3. **Approve** the exchange of reserve land referred to in resolution 2 above where no objections are received in accordance with the public notification carried out under resolution 2 above.
4. **Approve** that prior to the exchange referred to in resolution 2 above being given effect, that subdivision consent and land use consent has been granted in respect of 76 Royal Road to the satisfaction of the Service Manager, Parks Planning.”

1467/2008

6. Seven objections were received raising a number of issues including traffic management, effects on the amenity of landowners, effects on the Kohanga Reo, suitability of the land for development, proposed new road frontage and future high density development. These issues have been addressed by Parks Planning staff and a revised Concept Plan (referred to in paragraph 4 above) has been developed to address the concerns of objectors.

A83-A93

7. The Infrastructure and Works Committee considered the objections and the revised Concept Plan at its March 2009 meeting and resolved to visit the Royal Reserve to consider the exchange. A copy of that agenda report and minutes is attached at pages A83 to A93.

8. At its April 2009 meeting the Infrastructure and Works Committee resolved as follows:

The Infrastructure and Works Committee resolved to:

- “1. **Receive** the Proposed Land Exchange – 76 Royal Road and Part of Royal Reserve Report.
2. **Approve** the exchange of reserve land under section 15 Reserves Act 1977 of approximately 1.8 hectares of Royal Reserve (being more or less the area marked A1 on the plan attached at page A69 of the agenda) with approximately 1.8 hectares of 76 Royal Road, Massey (being more or less the area marked A2 on the plan attached at page A69 of the agenda).
3. **Agree** that, where possible, the berm along Beauchamp Road adjacent to Royal Reserve be increased to a width of around 2 metres.
4. **Agree** that Council officers hold a workshop with local residents for input into the design for Royal Reserve and the proposed new road.
5. **Agree** that Council officers work with the developer (being the existing owner of 76 Royal Road) to consider, if practicable, view shafts through the development of 76 Royal Road.”

501/2009

A94

9. Since that meeting, Committee Delegations to exercise all of the Council's powers and functions under the Reserves Act 1977 in respect of Citywide parks and reserves have been amended. As the Royal Reserve is Citywide reserve, a decision regarding the proposed land swap has been delegated to the Policy and Strategy Committee (as at 18 March 2009). At its 6 August 2009 meeting, the Policy and Strategy Committee resolved to approve the proposed land exchange subject to approval from the Auckland Transition Agency. These resolutions are attached at page A94. It is noted that since the August 2009 Policy and Strategy Committee meeting, Council officers have been advised by the Director of City Services that Auckland Transition Agency (ATA) approval of the proposed land exchange is not required.
10. In order for the land exchange to be completed, the subject Royal Reserve land must now be re-identified as Living Environment to enable the residential development identified by the developer on the Concept Plan. Once the proposed re-identification is operative and the necessary subdivision and land use consents approved, the land exchange can be finalised. The area of land to be exchanged with the Council for reserve purposes will at that point be vested as 'reserve' under the Reserves Act 1977. Re-identification of the new reserve area from Living Environment to Open Space Environment will occur automatically as a result of this process and is not subject to the plan change process set out in the Act.

DECISION MAKING

Issues

11. The re-identification of the subject Royal Reserve land is necessary to enable future development of Royal Reserve in accordance with the Council's Royal Reserve Concept Plan (February 2009). The re-identification of this land will enable a mutually acceptable land exchange to take place resulting in the Council acquiring an equivalent more useable area of land adjacent to the eastern boundary of Royal Reserve.
12. The acquisition of this land will enable the existing sports fields to be upgraded for multi-use purposes, a new children's playground to be developed along with the provision of attractive boardwalks through wetland areas. In addition, the proposed new road will provide greater road frontage (approximately 300 metres in length) and access to Royal Reserve as well as a strategic road connection between Beauchamp Drive and Richfield Crescent linking Royal Reserve with the Massey North Town Centre.
13. If the Committee does not approve this Plan Change to re-identify the subject Royal Reserve land, the Council has fewer options in terms of upgrading the existing Royal Reserve land. Additional useable land is necessary to expand the existing sports fields (currently not full size) and to provide the proposed children's playground and walkway areas. Furthermore, the proposed road connection is dependent upon a mutually beneficial land exchange as this will be formed as part of the developers' proposal for residential activities on the exchanged land and on adjacent land further to the east.

Statutory Framework

Resource Management Act 1991 and Section 32 Requirements

14. The Act provides for changes to the District Plan. The attached report, 'Background Report and Section 32 Analysis' clearly identifies the relevant sections of the Act, and other statutory documents, that must be taken into account when making changes to an operative District Plan.

15. The Council's obligations under section 32 of the Act are divided into five parts that comprise the following:
- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
 - examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives of the District Plan;
 - taking into account the benefits and costs of the policies, rules or other methods;
 - taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the Policies, Rules or other methods; and
 - summarising the evaluation and reasons for evaluation.

A8-A76

16. An evaluation under each of the above subsections has been undertaken in the 'Background Report and Section 32 Analysis' which is attached at pages A8 to A76. This evaluation fulfils the Council's requirements with regard to section 32 of the Act.

Relevant District Plan Objectives and Policies

17. The relevant District Plan objectives and policies as they currently apply to the subject land are concerned with managing the environmental effects of land use activities within the Open Space Environment of Waitakere City. However, the area of land proposed to be exchanged will no longer be subject to the objectives and policies relevant to the Open Space Environment as it is proposed that this land be re-identified as Living Environment. The Living Environment is the predominant land use zoning for land to the west, north, east and south of Royal Reserve. Royal Reserve itself has been located in this area to serve residents in the local neighbourhood and the wider Massey North catchment.
18. It is entirely appropriate that the land subject to the exchange be re-identified as Living Environment. The subject land is currently under utilised as reserve space and is not easily developed for recreational purposes due to its elevation above the rest of Royal Reserve. By exchanging this land for more useable land to the east of Royal Reserve, the Council will be able to realise its future plans to develop and upgrade Royal Reserve, in particular the existing sports fields.
19. In order to facilitate a mutually agreeable land exchange, the subject land must be re-identified as Living Environment as it will be incorporated into plans the developer has to develop vacant land to the east for residential purposes. The land exchange will not be able to proceed without a suitable land use zoning.
20. The Living Environment refers to land shown on the Human Environment Maps as Living Environment and to which the Living Environment Rules apply. The Living Environment is that part of the City where residential activities are deemed most appropriate and where the effects of such activities can be best managed. The objectives and policies that apply to the Living Environment are concerned with managing the environmental effects arising from residential activities including a variety of densities provided for throughout this zone. Key District Plan objectives and policies relevant to the re-identification of the subject land to 'Living Environment' are concerned with:

- managing urban growth in such a way that ensures the City develops and redevelops to achieve a sustainable compact urban form. Growth is to be focussed in and around town centres and high density corridors (proposed Objective 0);
 - achieving higher household unit densities in areas within a 10 minute walk of the Massey North/Westgate Town Centres (proposed Policies 0.1, 0.2 and 11.1);
 - providing a variety of development forms and incorporating access to open space from new urban development including interconnected vehicle, walking and cycling routes (proposed Policy 0.4);
 - ensuring access from all new developments to public open space which is readily visible and accessible, located to provide visual relief, integrated with the surrounding development, sized according to community and neighbourhood needs, and developed so that it is practicable, relevant to local needs and usable (proposed Policies 0.7 and 11.5);
 - avoiding adverse effects on natural resources such as water quality and quantity, native vegetation, soils and air quality (Policies 1.1, 1.2, 1.6, 1.7, 1.10, 1.11, 1.12, 1.17, 3.1 and 4.2); and
 - ensuring that settlement is of a type and density that protects amenity values, including neighbourhood character of different parts of the City (Policy 11.1).
21. The subject land is situated close to the Massey North Town Centre and will therefore enable residential activities to establish where they are well served by commercial/retail services and public transport as well as having convenient access to the north-western motorway. Where residential land is situated within a 700 metre radius of the Massey North Town Centre, greater densities may be achieved through the provision of more intensive housing than would otherwise be allowed in standard residential areas. The subject land to be exchanged is situated just south of the proposed and expanded Massey North Town Centre 1000 metre radius circle.
22. While there is not yet a definite subdivision proposal from the developer for the subject land, conceptually this is likely to include a mix of residential densities to reflect the Council's Concept Plan and its proximity to the Massey North Town Centre. The desire to achieve higher population densities close to main town centres is a key objective for the Council and is well articulated in the District Plan. Equally, there is a need to maintain the amenity and character of existing neighbourhoods and to improve access to useable public open space. Integrating the existing residential area with the proposed new areas will be a key design issue for the future development of the subject land. It is considered that an opportunity exists to develop the subject land in a manner consistent with the objectives and policies of the District Plan, particularly given its elevation, views towards the Upper Waitemata Harbour and its proximity to the Massey North Town Centre.

Auckland Regional Policy Statement

A8-A76

23. It is considered that the proposed Plan Change is entirely consistent with the objectives and policies of the Auckland Regional Policy Statement (ARPS). A more detailed assessment of the relevant ARPS objectives and policies is provided in the background report which is attached at pages A8 to A76.

STRATEGIC CONTEXT

24. The working draft of the Waitakere Growth Management Strategy (August 2006) aims to ensure that the City remains a great place to work, live and play well into the future. The Waitakere Growth Management Strategy provides a blueprint for how the City might best accommodate growth pressures particularly targeted growth areas such as Massey North.
25. These issues are also documented and influenced by the ARPS Statement (updated 2005), the Auckland Regional Growth Strategy 1999, the Northern and Western Sectors Agreement 2001 and the Local Government (Auckland) Amendment Act 2004.
26. In addition, the Long Term Council Community Plan has six strategies that set out the Council's vision for managing the social, economic and environmental wellbeing of the City. The Urban and Rural Villages Platform is about ensuring people have choices in housing, transport, employment and recreation in their neighbourhoods and town centres. The objective is to make the City a vibrant and enjoyable place to live, work and play by creating attractive urban places that encourage growth and economic development, with minimal environmental impacts.
27. Under the recently adopted Parks and Open Spaces Strategic Plan, the Council seeks to provide one Citywide park for every 10,000 people in the catchment. Royal Reserve is classified as a Citywide park and serves a broader geographical area than just the immediate neighbourhood. In addition Royal Reserve has a multi-use function in that it provides both active (existing sports fields) and passive (walking, informal recreation) forms of recreation.
28. The objective of this land exchange is to improve and add to the range of recreational uses within Royal Reserve. This is consistent with the Council's draft Waitakere City Parking Plan which states that it will develop multi-use parks to help increase efficient and flexible use of reserve land. In addition, the policies in the Parks and Open Spaces Strategic Plan seek to provide playgrounds within walking distance of 90% of residents.
29. Under the recently adopted Parks and Opens Spaces Strategic Plan, provision is made for exchanges of land in circumstances where there is a benefit to the public (in this case as a Citywide reserve – to residents of Waitakere as a whole) subject to undertaking a public consultation process. As set out above, significant benefits will arise as a result of the land exchange and the upgrading of Royal Reserve.
30. There is an existing reserve management plan for Royal Reserve which was adopted in 1993. However this plan was developed prior to considering the future development of the Massey North/Westgate area. The Reserve Management Plan is programmed for renewal. This will be carried out following the approval of the land exchange, the approval of this Plan Change and the necessary subdivision and land use consents.
31. The strategic plan that was developed as a result of the Westgate and Massey North Design Workshop in March 2004 addressed the future development of Royal Reserve including the proposed land exchange. The draft Concept Plan for Royal Reserve attached at pages A79 to A82 will form the basis for future development of the Royal Reserve and the review of the existing Reserve Management Plan.

CONSULTATION

A83-A93

32. Clause 3 to the First Schedule to the Act states that during the preparation of a proposed Plan Change, a local authority shall consult with the Minister for the Environment, other Ministers of the Crown deemed to be affected, other local authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a Plan Change.
33. Pursuant to section 15 of the Reserves Act 1977, the Council is required to publicly notify its intention to exchange the subject reserve land as Royal Reserve has reserve status under the Reserves Act 1977.
34. The proposed exchange was notified in the local newspaper as well as directly to the properties neighbouring that part of Royal Reserve subject to the exchange. Seven objections were received. These objections, along with the Council responses were set out in a report to the Infrastructure and Works Committee in March 2009 which is attached at pages A83 to A93.
35. Council officers have consulted with iwi representatives from Te Kawerau a Maki and Ngati Whatua about the proposed land exchange and the future redevelopment of Royal Reserve. Both iwi are supportive of the exchange and are interested in having further input into the design of Royal Reserve.
36. Since the April 2009 meeting of the Infrastructure and Works Committee, Council officers have invited objectors to the proposed land exchange to attend a meeting held on the 15 May 2009 to input into the design for Royal Reserve and the proposed road. However none of the objectors chose to attend the meeting.
37. No further consultation has been undertaken to date in respect of this proposed land exchange. The public notification of this proposed Plan Change will however provide an opportunity for any person interested in the proposal to make a submission and have their concerns considered by the Council. The Minister of Conservation, the Auckland Regional Council and tangata whenua will also be notified about this proposed Plan Change.

RESOURCES

38. No specialist reports are required for the proposed Plan Change. Processing the Plan Change through the statutory process will be resourced from existing budgets. No additional staff funding or resources are required. The costs associated with the land exchange will be funded in part by the Council and partly by the developer.

IMPLEMENTATION ISSUES

39. There are no implementation issues associated with this report and the proposed Plan Change to re-identify the subject land to Living Environment.

AUCKLAND COUNCIL TRANSITION ISSUES

40. The decision making proposed in this report is not constrained by section 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, as it does not directly or because of its consequences: significantly prejudice the reorganisation, significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.

Report prepared by: Deanne Rogers, Senior Planner: Policy Implementation.



PART D - ENVIRONMENTAL MANAGEMENT

8 NOTICE OF REQUIREMENT FOR A DESIGNATION: HOBSONVILLE ROAD WIDENING

GLOSSARY

Long Term Council Community Plan 2009 -2019	(LTCCP)
New Zealand Transport Agency	(NZTA)
Notice of Requirement for a Designation	(NOR)
The Resource Management Act 1991	(the Act)

EXECUTIVE SUMMARY

This report seeks the approval of the Planning and Regulatory Committee to publicly notify a Notice of Requirement for a Designation (NOR) to enable the Council to widen portions of Hobsonville Road, Hobsonville. Approval to notify this NOR will enable the Resource Management Act 1991 statutory process to occur. The widening of Hobsonville Road is necessary to enable better integration of car and non-car travel, and the development of adjacent land in this area of Waitakere.

RECOMMENDATIONS

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

1. **Receive** the Notice Of Requirement For A Designation: Hobsonville Road Widening report.
2. **Note** that the Notice of Requirement seeks to designate Hobsonville Road from the Westgate Interchange to the vicinity of 130 Hobsonville Road for road widening purposes.
- A131-A136* 3. **Agree**, subject to resolution 3 below, that in accordance with section 168A of the Resource Management Act 1991, the land identified in the plan attached at pages A131 to A136 be publicly notified under the Resource Management Act 1991 as soon as practicable.
4. **Note** that resolution 3 above be subject to confirmation by the Auckland Transition Agency.

BACKGROUND

1. Hobsonville Road is currently a Strategic Arterial Route in the Council roading hierarchy, and is administered by the New Zealand Transport Agency (NZTA) as State Highway 18. While it currently carries a high volume of traffic, that traffic is largely commuter traffic between North Shore City and Waitakere utilising the Upper Harbour Bridge.
2. Following the extension of the North Western Motorway to join Upper Harbour Drive, coupled with the land developments envisaged along Hobsonville Road and at the Hobsonville Airbase, it is expected that the function of Hobsonville Road will change. While the daily volume of traffic is likely to decrease, the spread of traffic throughout the day is likely to be more even with the Hobsonville area becoming more of a destination rather than thoroughfare. The road widening will enable the Council to construct an improved lay out for the road carriageways, bus stops, pedestrian footpaths, cycleways and re-aligned intersections.

3. A designation is a provision in a district plan that gives effect to a NOR (the formal proposal to carry out a public work or project) made by a requiring authority. In this instance, Council is the requiring authority that proposes to widen Hobsonville Road. A designation enables the requiring authority to undertake the necessary public works (in this instance widening a road to provide for cycleways, bus stops, pedestrian access ways and improving the alignment of the road). The works arising from the NOR are included in the Long Term Council Community Plan (LTCCP). It should be noted that once in place, Council can withdraw a designation at any time if it considers the public work to be unnecessary, too expensive or unable to be completed.

DECISION MAKING

Issues

A95-A160

4. Council has identified the need to widen portions of Hobsonville Road to enable the construction of an improved lay out for the road carriageways, bus stops, footpaths, cycleways and re-aligned intersections. While the majority of the existing road can accommodate the revised road layout, the road does need to be widened in some places. Where this widening traverses private property, a NOR is the appropriate statutory tool to provide the certainty Council requires to complete detailed design of the realigned road and intersections. The NOR and the maps that identify the general location of the NOR are attached at pages A95 to A160. The specific aerial photographs detail the extent of the designation (including areas of private land that are required) will be provided to the Planning and Regulatory Committee at its meeting.
5. Hobsonville Road is currently administered as a State Highway by NZTA. It is expected that following completion of the new State Highway 18 Motorway, that NZTA will relinquish its administrative control of Hobsonville Road. Council will then become the road controlling authority, and be responsible for maintenance and any improvements to the road. A designation enabling those works to occur along Hobsonville Road will assist Council to undertake the required works now and into the future.
6. A designation has an interim effect from the time that the Council publicly notifies it. The interim effect protects the land from other activities that may hinder or prevent the work that the designation seeks to achieve. However, lodging a NOR does not give the requiring authority (Council) any rights to undertake work immediately. Works are able to occur once the requiring authority has obtained a subsequent approval to an Outline Plan of Works under section 176A of the Resource Management Act 1991 (the Act).

Options Identified

A111-A113

7. Council is somewhat limited in terms of planning options available to it other than the NOR. Section 168A of the Act, does, however, require that Council as the requiring authority must consider alternatives if it does not have an interest in the land. The consideration of the alternative planning processes is provided in the NOR attached at pages A111 to A113.

Consideration of Community Views

8. The community (both affected land owners and other interested parties) will have the opportunity to make a submission on the NOR. This process will provide sufficient opportunity for community input, and no additional consultation process is required. The Council has held open days during August 2009 to inform the community about the forthcoming designation.

Preferred Option

9. It is recommended that the Council progress the NOR to provide the certainty that in the future it has the ability to undertake works along Hobsonville Road.

STRATEGIC CONTEXT

10. The Best of the West - Waitakere's Ten Year Plan contains six strategies. The NOR will be consistent with the Council's Strategies for Environment, Growth Management and Transport.
11. The NOR will enable Council to undertake future alterations to improve the functionality of Hobsonville Road. Alterations could range from widening of the existing carriageway, construction of pedestrian footpaths, construction of dedicated cycleways, construction of future road connections to Hobsonville Road and adjustment to several existing intersections along Hobsonville Road. This aligns with the Environment Strategy approach of retrofitting the City, the Growth Management Strategy approach of coordinating urban expansion, and the Transport Strategy approach of integrating land use and transport and providing better passenger transport infrastructure.
12. The NOR will provide certainty, to both Council and existing and future landowners in the area, about the functionality and provisions for all transport modes along Hobsonville Road. The NOR will improve the functionality of the road so that it also aligns with the Quality Transit Network envisaged for the area by Auckland Regional Transport Authority.

CONSULTATION

13. Following public notification, the submission process provides opportunities for the public to have a say on the proposed Notice of Requirement. This will include the opportunity for NZTA to make a submission. Council has already individually contacted all land owners offering the open days as an opportunity to explain the purpose of the designation. That included details about how each property will be affected (in terms of land being taken, if any), and advising land owners that they will have the opportunity to make a submission once the NOR is notified.

RESOURCES

14. The costs associated with the implementation of the NOR (the statutory process of submissions and consideration of those submissions through to a decision) are able to be met within existing budgets. The costs of the works enabled by the NOR are identified in the Council's LTCCP.

IMPLEMENTATION ISSUES

15. There are no issues involved in implementing the recommended decision.

AUCKLAND COUNCIL TRANSITION ISSUES

16. The Local Government (Tamaki Makaurau Reorganisation) Act 2009 imposes restrictions on Waitakere City Council's decision making capabilities in respect of Council expenditure in the Northern Strategic Growth Area. The NOR seeks to commence the implementation of some expenditure provided for in the Best of the West – Waitakere's Ten Year Plan. The NOR statutory process will commence the need to enter into contracts (land acquisition and physical works) that will impose obligations after 30 June 2011. This means that this report is subject to section 31(4)(i) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009.

Report prepared by: Eryn Shields, Principal Planner.



PART E - REPORTS OF THE SUBCOMMITTEE

9 SWIMMING POOL EXEMPTION SUBCOMMITTEE

THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORTS OF ITS MEETINGS HELD ON FRIDAY, 29 MAY 2009, THURSDAY, 16 JULY 2009 AND THURSDAY, 30 JULY 2009.

MATTERS CONSIDERED

A161-A182

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 meetings are attached at pages A161 to A182.

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

Receive the meeting reports of the Swimming Pool Exemption Subcommittee held on Friday, 29 May 2009, Thursday, 16 July 2009 and Thursday, 30 July 2009.

WW Flaunty, QSM, JP

CHAIRMAN



PART F - RECOMMENDATIONS FROM OTHER COMMITTEES

10 RECOMMENDATION FROM THE POLICY AND STRATEGY COMMITTEE

ECONOMIC WELLBEING IN THE WAITAKERE RANGES HERITAGE AREA

The Policy and Strategy Committee recommends:

1. **Agree** to recommend to the Planning and Regulatory Committee that Economic Wellbeing in the Waitakere Ranges Heritage Area plan change is a priority that should be notified during 2009 if possible.
2. **Direct** the Chief Executive Officer to keep both the Policy and Strategy Committee and the Planning and Regulatory Committee updated with progress on the preparation of the Economic Wellbeing in the Waitakere Ranges Heritage Area plan change and issues arising.

