



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, 13 October 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.

7 October 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)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

(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, 13 OCTOBER 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, 13 OCTOBER 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, 8 September 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, 8 September 2009, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 SEPTEMBER 2009)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
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)
Networth Developments Limited	(Networth)
National Trading Company	(NTC)
Metropolitan Urban Limit	(MUL)

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 September 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 District 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.

(Unchanged)

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.

(Unchanged)

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 claims 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

(Unchanged)

Mawhinney & Others v Waitakere City Council (May 2008)

9. This proceeding relates to 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.
10. The matter has been the subject of proceedings in the High Court and Court of Appeal, which have now concluded. Mr Mawhinney has been unsuccessful at all levels and costs awards have been made in both Courts. Formal orders have now been sealed and the demand for payment made. Assuming payment is not made within seven days, bankruptcy notices will be prepared and lodged in the High Court.

ENVIRONMENT COURT

(New)

Duaphorma Pacific v Waitakere City Council (August 2009)

11. The proceedings involve an Appeal under s. 120 of the Resource Management Act 1991 (RMA). The appeal seeks to overturn a Council decision (made through commissioners). The Council's decision was to decline consent for an 8 level apartment block with ground floor commercial space in Te Atatu Peninsula (543 Te Atatu Road). The proposal was classified as a non-complying activity and the Commissioners for the Council (one independent and two Councillors) were of the view that the effects of the proposal were more than minor and were unable to be remedied or otherwise mitigated. The Decision of the Commissioners recorded that a reduced scale proposal may be more appropriate for the area. There are a number of s. 274 parties to this appeal.
12. The appellant now wishes to put forward through mediation a reduced scale development, of 6 levels with more landscaping and reduced overall height. This proposal will be put to the parties at the mediation of 12 October 2009. If all parties to the mediation accept that the reduced scale proposal is acceptable, the matter will be brought back to the Planning and Regulatory Committee for determination on any consent order agreed, or any other option that is proposed to resolve the appeal.

(Unchanged)

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

(Unchanged)

Swanson Structure Plan Decisions (October 2008)

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

18. 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 had until 14 April 2009 to respond to the costs applications filed by the Council and Preserve Piha Limited.
19. 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 had until 17 September 2009 to lodge an appeal in the High Court against those costs. There has been no appeal lodged and the costs remain unpaid. A member of PPHS Inc. has contacted the Council to meet with the Chief Executive, the member claims that PPHS Inc. cannot afford to pay the costs. It is understood, that the consent holders who are owed \$10,000 will be pursuing recovery of the debt owed to it.

(Unchanged)

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

20. 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.

21. 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 this month that Judge Jackson is working on the costs decision currently.

Mawhinney Matters in the Environment Court

22. There are a number of matters being dealt with currently relating to Mr Mawhinney's companies. The matters are addressed below at paragraphs 31-39 of this report. The current status of Mr Mawhinney's companies referred to is as follows:

- London & Greenwich Trading Company Limited – Struck off;
- Perceptus Limited – Struck off; and
- Waitakere Resource Consents Limited – Struck off.

(Unchanged)

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

23. 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.
24. The applicant companies dispute the need for the further regional consents.
25. 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.
26. 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 Council's costs - in the event that appeals are unsuccessful. Further directions from the Court are awaited on Mr Mawhinney's application.

(Unchanged)

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

27. 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.
28. 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)

29. 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

30. 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.
31. In addition to appeals on the Council's Plan Changes 13 to 18, the Council has filed its own appeals regarding some decisions of the Auckland Regional Council 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.
32. 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.
33. 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 Metropolitan Urban Limits (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.
34. 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, ARC, 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. 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.

DISTRICT COURT

(Changed)

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

35. 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.
36. 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.
37. 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. The matter is set down for a first call on 12 October 2009.

(Changed)

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

38. 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.
39. 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.
40. 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. The matter is set down for a first call on 12 October 2009.

(Changed)

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

41. 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.

42. 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. The matter is set down for a first call on 12 October 2009.

(Changed)

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

43. 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.
44. 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. 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. The matter is set down for a first call on 12 October 2009.

(Changed)

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

45. 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.
46. 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.
47. 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 Court accepted the request from both parties for an adjournment until 19 October 2009 to enable remedial works to continue.

(Changed)

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

48. 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.

49. 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 s. 9 of the RMA.
50. Charges against the defendant were withdrawn on 28 September 2009 and substituted for an infringement notice due to the fact that the case was finely balanced on the facts, and a prosecution would not provide a significant deterrent given pending changes to the RMA which would permit pruning without consent in the urban environment from 1 October 2009.

(Changed)

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

51. A routine food inspection undertaken by a Council officer on 27 May 2009 revealed dirty and unhygienic premises, with evidence of 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 was set down for a first call on 28 September 2009.
52. The defendant failed to appear in Court on 28 September 2009 and the matter is to proceed by way of formal proof on 19 October 2009 in the event that the defendant does not appear.

(Unchanged)

Leslie Comer – 164 Statehighway 16 (April 2009)

53. 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.
54. 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.
55. 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.

56. 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.

(Unchanged)

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

57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.

(Changed)

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

63. 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.
64. 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.

65. The matter was heard by Judge Taumanu on 7 September 2009. The informant withdrew the Notice to Fix charge as it had not been issued to Mr Hafeez personally. In relation to the unauthorised building works charge, Mr Hafeez entered a guilty plea after consulting the Court's duty solicitor. The Judge fined Mr Hafeez \$7,500.00 for the offence and also imposed Court costs of \$130.00 and Solicitor's costs of \$226.00. This matter is now at an end.

(Changed)

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

66. 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.
67. 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.
68. 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.
69. 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.
70. 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.
71. On 21 September 2009 the matter was heard by Judge McElrea. The Judge considered the defendant's culpability to be moderate due to the role played by the defendant's agent Totalspan, but he also considered that the building works undertaken were extensive. The Judge identified a starting point fine of \$18,000.00 reduced to \$10,000.00 taking into account the defendant's guilty plea and poor financial position. His honour also awarded \$904.00 Solicitor's Costs to Council and \$260.00 Court Costs.

(Changed)

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

72. Charges were laid under the RMA and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 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.

73. 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 four 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 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

74. Current Claims

Claim statistics are as follows:

- (a) There are 20 unresolved leaky building claims being handled by Council's lawyers as at 30 September 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 Service (WHRS) 4 (including 1 multi unit)
- Weathertight Homes Tribunal (WHT) 6 (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 31 August 2009 was 178, two more than the number reported in last months update. The total number of properties affected has increased by 3 from that reported last month to 351. 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

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

September 2009

76. The claim relating to 33 Chamari Close, Titirangi has been closed by the WHRS due to inaction, and consequently the Council's lawyers have closed their file.

August 2009

77. No claims were settled during August 2009.

July 2009

78. No claims were settled during July 2009.

June 2009

79. No claims were settled during June 2009.

May 2009

80. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

April 2009

81. No claims settled during April 2009.

Claims Received

September 2009

82. The Council's lawyers have opened a file on 20 Belvedere Court, West Harbour after the claim, which is for \$175,466, moved to the WHT.
83. Notification of acceptance on the 22 September 2009 by the WHRS for the purposes of an assessor's report has been received in respect of 9 Wakaroa Avenue, Te Atatu Peninsula. The property is one of two free-standing units built under a single consent

August 2009

84. 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.
85. 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

86. 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.
87. 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

88. 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.

Report prepared by: David Collins, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

A4-A6

A Council officer 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 the Planning and Regulatory Committee resolve to:

Agree that the District Plan Appeals Update Table be received.

Report prepared by: Desiree Tukutama, Committee Secretary.



PART D - ENVIRONMENTAL MANAGEMENT

7 UPDATE ON THE RESOURCE MANAGEMENT (SIMPLIFYING AND STREAMLINING) AMENDMENT ACT 2009

GLOSSARY

The Resource Management Act 1991	(the RMA)
The Resource Management (Simplifying and Streamlining) Amendment Bill 2009	(the Bill)
The Resource Management (Simplifying and Streamlining) Amendment Act 2009	(the Act)
Environmental Protection Agency	(EPA)

EXECUTIVE SUMMARY

This report informs the Planning and Regulatory Committee of the recently enacted Resource Management (Simplifying and Streamlining) Amendment Act 2009 (the Act), which amends the Resource Management Act 1991 (the RMA).

The report also updates the Planning and Regulatory Committee on the changes to the RMA and seeks approval to the approach for the trimming of vegetation protected by the general tree protection rules of the District Plan.

RECOMMENDATIONS

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

1. **Receive** the Update on the Resource Management (Simplifying and Streamlining) Amendment Act 2009 report.

2. **Approve**, under the Resource Management (Simplifying and Streamlining) Amendment Act 2009 the definition of ‘tree trimming’ to be utilised as follows:

“The pruning (trimming) of native and exotic vegetation greater than 6 metres in height and greater than 600mm in girth (measured at 1.4 metres above the ground), if done in accordance with accepted modern arboricultural practice and no more than 20% of the foliage of the plant is removed in any one calendar year, is a Permitted Activity.”

BACKGROUND

1. The National Party had signalled an intention to review the RMA if elected to government. The Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (the Bill) was introduced on 19 February 2009. The purpose of the Bill was to reduce delays and costs by simplifying procedures and rationalising processes. Waitakere City Council made a submission on the Bill on 3 April 2009. The Bill was enacted on 1 October 2009.

DECISION MAKING

2. The Act contains a number of provisions that will directly impact on the Council. The main changes can be most easily described in two parts, those affecting the Processing of Resource Consents and those affecting Plan Making Processes.

Issues

Processing of Resource Consents

3. Requests for further information (s. 92) and the ability to “stop the clock” in terms of statutory processing timeframes:
 - The changes allow for the processing clock to be stopped only once (with two exceptions) in the course of processing a non-notified application.
 - If deemed necessary to make an informed decision on the application, further requests for information may be made to the applicant at any time during the assessment of the application; however the clock would only stop on the first request. The clock would start again upon receipt of sufficient information to satisfy the first section 92 letter.
 - The one exception to this single stop of the clock is following close of submissions on a notified application, where a further request for information may be issued, if deemed necessary, and the processing clock would stop again at this point.
 - The second exception is that the clock will also stop when applicants are seeking affected parties consents, a report has been commissioned as agreed with the applicant, and where additional consents are required to be applied for and heard together.
 - The right to object to further information requests by way of a s357 objection has been removed. If an applicant does not respond or declines to provide the information then the application must be publicly notified if no notification decision has been undertaken. No discretion will be afforded to Council. This may mean all types of consents, including Controlled and Limited Discretionary Activities may be notified as a consequence.
4. In this regard, enhancements to processes are being made to ensure a higher standard of application is lodged in the first instance through better use of checklists and provision of information to applicants. In addition, all officers (including specialists) have been communicated the change in order to ensure that the first section 92 request details all of the information required to be provided (where possible) in order to fully assess the application. It should be noted however that in some instances further requests for information will be unavoidable depending on the complexity of the application.

5. The tests for notification:
 - The changes in the Act have essentially overhauled the notification decision in terms of the thresholds being set and the considerations that are required to be followed.
 - Previously the Act required applications to be publicly notified, unless, based on certain parameters, the application could be processed on a limited or non-notified basis. The recent changes to the Act essentially reverses this position, with the tests being whether or not an application should be notified on a full or limited basis.
 - In addition the threshold for when an application should be notified to immediate neighbours (limited notification) has been raised from adverse effects being minor to a requirement that they be more than minor.
 - Applications will therefore only be publicly notified if the activity will have, or is likely to have, adverse effects on the environment which are more than minor on parties beyond the immediate neighbours, and limited notification if the more than minor effects are limited only to the immediate neighbours.
 - The changes have also defined who is to be treated as an “affected person”. This will be when the activity’s adverse effects on that person are minor or more than minor (but are not less than minor). Current practice means an “affected person” experiences adverse effects that are more than “de minimis”. The benchmark has therefore been raised.
6. An applicant, or a person who has made a submission on a notified application may request that the local authority delegate its functions, powers and duties to one or more hearing commissioners who are not members of the local authority. The local authority must delegate its functions accordingly.
7. The introduction of sanctions for failure to meet statutory timeframes:
 - The Act introduces the ability for Central Government to impose a financial penalty to councils in the form of a partial or full fee refund to the applicant if the statutory processing timeframes are not adhered to and Council is at fault for not meeting the timeframes.
 - The Discount Policy will be set up by the Minister for the Environment who is required to set up the regulations by 1 July 2010 following consultation with local authorities. It is therefore not mandatory for councils to set their own policy, but might provide a further discount policy at its discretion.
 - The implication of this clause is not clear at present. However it may result in a need for additional resources as staff’s capacity to process a number of applications is difficult to achieve.
 - Changes to be made to the lodgement checklist to enable a more rigorous checking system prior to lodgement to ensure that applications which are accepted for processing are of a high standard so as to ensure that sufficient information is available for staff to make an informed and robust decision within the statutory timeframe.
8. Stricter controls over using section 37 to increase the statutory timeframes have been introduced. Section 37 still provides, under certain parameters, for statutory timeframes to be increased by no more than double. Timeframes will only be able to be extended with the agreement of the applicant or where “special circumstances” apply. Extension decisions must also be documented.
9. Other changes include:
 - a) Ability for direct referral to the Environment Court.
 - b) The required content of decisions.

- c) Limiting the ability of trade competitors to engage in the resource consent process.
- d) Removal of the requirement for councils to file replies to appeals.
- e) Reintroducing the ability of the Environment Court to award security for costs.
- f) Raising the cost of lodging an appeal.
- g) Allowing certain, appropriate notices of requirement to be dealt with on a non-notified basis.

Plan Making Processes

10. The appeal process - appeals in relation to National Policy Statements will now be limited to points of law. The change that was originally proposed sought to limit appeals to plan changes generally. This will not proceed except in respect of appeals on amendments to give effect to a National Policy Statement, which will be strictly limited to points of law only.
11. The requirement to review plans every ten years is to be repealed, and replaced with a provision requiring local authorities to assess whether a review is required for each provision that has remained unchanged for ten years. However there are broad Ministerial powers to direct a review to be undertaken, whereby the Minister for the Environment can direct the review of district and regional plans, and the Minister of Conservation can direct the review of regional coastal plans. Section 79 of the Act is replaced with a provision that applies to all local authorities, requiring an ongoing programme of assessment for all plan and policy statement provisions that have not been changed or reviewed during the previous 10 years. After assessing the plan and policy statement if the local authority considers that it requires alteration, such alteration must be proposed in the manner set out in the First Schedule of the Act. The same requirement applies even when the local authority determines that alteration is not required (i.e. the provision must be notified as if it were a change).
12. The timing of plan rules becoming operative is to be changed as follows:
 - Six new sections are to be added addressing the legal effect of rules, specifically when rules in proposed plans and changes have legal effect.
 - In essence, unless one of the stated exceptions exists, plan rules are of no effect until decisions on submissions on them have been made and notified (unlike now, when rules have effect from plan notification).
13. There are three classes of exception:
 - A local authority will still be able to delay a proposed rule from becoming legally effective until the plan becomes operative. There are new procedural requirements introduced for local authorities wishing to either exercise this power or subsequently rescind the rule.
 - Rules that protect or relate to water, air or soil (for soil conservation); or protect areas of significant indigenous vegetation, or habitats of indigenous fauna, historic heritage; or provide for or relate to an aquaculture management area. Something missing here – is a fragmented sentence.
 - Where the Environment Court has made orders directing that the rule become operative at a different date, but no earlier than the date of public notification.
14. It is noted that the Act contains consequential changes to the definition of "district rule" and "regional rule" to reflect the new section 86B but the definition of "proposed plan" remains unchanged. This means that although the rules in a proposed plan will generally have delayed effect, everything else (objectives, policies, and other issues, reasons or methods) still have effect from notification. This is expressly clarified in a new section.

15. Consultation requirements for preparation of new plans, plan changes and variations have been relaxed. The First Schedule of the Act is amended allowing consultation undertaken within 36 months (rather than 12 months) of the notification of the plan to be sufficient compliance with the consultation requirements of the First Schedule of the Act.
16. The process for making submissions is to change. The allowable content of submissions is to be curtailed (particularly in relation to submissions that could confer a "trade advantage"), and the "further submissions" aspect of the current process is to be streamlined and brought into line with the section 274 process. Therefore the First Schedule is to be amended to include a limitation on the ability of trade competitors to make submissions. All other people, including local authorities, remain able to make submissions. There are drafting and structural issues associated with this that will require some further consideration.
17. Additional limits are to be placed upon the ability to address the effects of trade competition in regional and district plans. Sections 61, 66, and 74 are amended to ensure that the effects of trade competition are treated in the same way as trade competition itself. Drafting and structural issues are apparent and it is likely that the issue of trade competition will remain an ongoing issue within the RMA. Further clarification is anticipated.
18. Blanket tree protection rules within the Urban Environment are proposed to be phased out by 1 January 2012 and trimming of vegetation is permitted within the Urban Environment from 1 October 2009.
19. The Waitakere District Plan currently provides for pruning (trimming) to occur without Resource Consent within specified parameters. For example within the General Natural Area pruning is a permitted activity provided not more than 20% of the foliage is removed in any one calendar year and that the works are undertaken in accordance with modern arboricultural practice.
20. Although the District Plan does not include a definition of trimming, legal advice has been provided that supports the position that the level of pruning currently permitted by the District Plan aligns with the intention and intended meaning of Trimming under the Act. It is worth noting that trimming applications beyond the 20% threshold currently make up less than 1% of all tree consent applications lodged with Waitakere City Council.
21. It is noted that many of the other Auckland councils previously only permitted trimming with hand held secateurs. They therefore did tend to get a lot of applications for the trimming of generally protected vegetation. Most of the council's have indicated that they will use a similar 20% allowance for trimming.
22. It is noted that Auckland City Council has adopted a slightly different definition as follows:

"Trimming of the canopy (excluding the roots) of any tree which does not damage its health. Such works shall be limited to no more than 20% of live growth removal in any one year and must be in accordance with currently accepted arboricultural practice, ensuring that the natural form and branch habit of the tree species is maintained.

If the trimming is undertaken by a qualified arborist or arboriculturalist, such works shall be limited to no more than 30% of live growth removal in any one year and must be in accordance with currently accepted arboricultural practice, ensuring that the natural form and branch habit of the tree species is maintained."

23. As noted above, the number of “trimming” applications currently lodged with Waitakere City Council is minimal (1%). It would not be expected that the Auckland City Council definition would give rise to any noticeable change in application numbers. This is consistent with our current approach.
24. Overall, it is considered that little has changed in the short term with respect to vegetation alteration. In the medium term Council will need to determine how best to proceed with the phasing out the general tree protection rules in the Urban Environment. The Act indicates that the Urban Area, in relation to determining vegetation controls, includes sites over 4000m² that are connected to the water supply and wastewater network. This definition generally accords with areas currently inside the Metropolitan Urban Limits such as Titirangi and Laingholm. Council will need to consider a number of options to determine whether or not to identify and list specific trees or groups of trees for protection and establish a work programme where necessary.
25. A separate report will be provided on this matter in due course.
26. New provisions relating to combined planning documents have been included and a new section sets out the circumstances under which combined regional and district documents may be prepared, implemented and administered. These amendments are intended to simplify new plan provisions and encourage collaboration.
27. The Act has established a new body called the Environmental Protection Agency (EPA) within the Ministry for the Environment. The EPA will provide efficient and timely administration of proposals of national significance, including the consideration, and decision making of the same. This is similar to a call in type process for large projects of National Significance.

Phase II Reforms

28. The above details the Phase I reforms which seek to ensure that costs were reduced and timeliness improved, Phase II seeks to introduce more substantive changes as follows:
29. Phase II of the reform would cover:
 - Improving infrastructure provisions;
 - Consideration of better freshwater management;
 - Exploring approaches to better urban planning;
 - Sustainable and cost effective aquaculture planning and development; and
 - Addressing the establishment, role and functions of the new EPA.
30. In addition there is also the opportunity to address other issues including:
 - Alignment of processes under the RMA with processes under other legislation where there is overlap; and
 - Possible further amendments to the RMA to deal with complex issues that could not be dealt with in Phase I.
31. Given the complex array of inter-related issues the Ministry for the Environment has commenced detailed analysis in 10 related work streams:
 - a) addressing barriers to sustainable and cost-effective aquaculture development;
 - b) alignment of consenting processes under the RMA and the Building Act 2004;
 - c) alignment of consenting processes under the RMA and the Conservation Act 1987;
 - d) developing further the scope, functions and structure of the EPA;

- e) alignment of consenting processes under the RMA and the Forests Act 1949 and Forests Amendment Act 1993;
 - f) investigating generic issues in the RMA that were too complex to be dealt with in Phase I;
 - g) alignment of consenting processes under the RMA and the Historic Places Act 1993;
 - h) improving infrastructure provisions, including the application of the Public Works Act 1981;
 - i) exploring better approaches to urban planning; and
 - j) establishing a fairer and more efficient water management system.
32. There has been no firm timeframes provided in regard to the Phase II reforms at this stage, a further report and updates will be provided to the Planning and Regulatory Committee when more information is made available.

STRATEGIC CONTEXT

33. The RMA provides a significant tool for the Council to utilise in achieving a number of its strategic objectives. The District Plan plays a major role in managing growth, maintaining and enhancing amenity, fostering economic development, and protecting the natural environment.

CONSULTATION

34. No external consultation is necessary in terms of implementing the changes to the RMA, however updates have been undertaken to Council's existing information available to applicants to reflect the relevant changes.
35. Council has also undertaken to advise ratepayers of the pending changes to vegetation rules and confirmed that the current District Plan rules continue to apply.

RESOURCES

36. The changes to processes as outlined above can be accommodated within existing budgets does this include retraining staff – need to include and staff resources. There will need to be some changes to the Council's Pathway (computer) system to ensure changes to the RMA, in terms of resource consent processing, are complied with. Ongoing monitoring of performance post changes will be required to ensure that the Council continues to enhance its service delivery in terms of Resource Consent processing.

IMPLEMENTATION ISSUES

37. As noted above, some changes to Pathway will be required and changes to the District Plan. Associated work programmes may also be required to address Urban Tree provisions. The future plan change issues relating to the tree protection (scheduling) will be reported in due course.

AUCKLAND COUNCIL TRANSITION ISSUES

38. 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: Michael Campbell, Group Manager: Consent Services.



PART E - PUBLIC EXCLUDED MATTERS

8 REGIONAL PLANNING APPEALS

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of the proceedings of this meeting, namely Regional Planning Appeals and

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of each 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 each of the matters to be considered.	Reason for passing this resolution in relation to each of the matters.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Regional Planning Appeals	The withholding of information is necessary in order to: <ul style="list-style-type: none">• Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	That the public conduct of the whole 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)(i) of that Act which would be prejudiced by the holding of the whole of the proceedings of the meeting in public as follows:

- *These reports contain information which if released could affect the Council's negotiations.*

