



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, 10 November 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.

4 November 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, 10 NOVEMBER 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, 10 NOVEMBER 2009, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFLICTS OF INTEREST**

The Council has acknowledged in its Code of Conduct that 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, 13 October 2009

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

**Receive** the minutes of the meeting of the Planning and Regulatory Committee held on Tuesday, 13 October 2009, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 31 OCTOBER 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 31 October 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**

*(Changed)*

**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 been sealed and the demand for payment made. Payment was not received following the demand and accordingly bankruptcy notices have been filed with the High Court. Our process server has had difficulty serving Mr Mawhinney with the notices, and it is likely that a substituted service application will be necessary.

### **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 on 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.

**(Unchanged)**

**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 Councils 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 Filippo 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 defendant did not enter a plea at the first call on 12 October 2009. The matter was adjourned until 17 December 2009 for pleas to be entered.

**(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. On 12 October 2009 the matter was transferred to the Auckland District Court to be heard on 26 November 2009. A request for a Mandarin interpreter has also been made with the Court.

**(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 defendant did not enter a plea at the first call on 12 October 2009. The matter was adjourned until 21 December 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 18m<sup>2</sup> 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 48m<sup>2</sup>. The total unauthorised building works measured 64m<sup>2</sup>.
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 defendant did not enter a plea at the first call on 12 October 2009. The matter was adjourned until 21 December 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. On 5 October 2009 the property was inspected and photographed by a Council officer who noted some improvement in the state of the exterior and the interior of the dwelling. The Court has granted a second adjournment to enable remedial works to continue. The next call of the matter will be on 17 December 2009.

**(Changed)**

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

48. 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.
49. The defendant was not present in Court for the first call on 28 September 2009 and the Court directed the matter to proceed by way of formal proof on 19 October 2009 in the event that the defendant did not appear. In the interim a defect in the information was fixed by Counsel arranging for the defendant to be served with a new information.
50. The defendant did appear on 19 October 2009 and was accompanied by a Court appointed Korean interpreter. He received legal advice from a duty solicitor and entered a guilty plea. Counsel suggested to the Court that an appropriate starting point fine in this case was \$2000 which was accepted by the Judge. The result was a fine of \$1750 plus \$130 Court Costs and \$226 Solicitor's Costs. This matter is now at an end.

**(Unchanged)**

**Leslie Comer – 164 Statehighway 16 (April 2009)**

51. 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.
52. 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.
53. 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.

54. 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)**

55. 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.
56. 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. The Council filed a Motion for Strike-out on 19 December 2008 on the basis that the appeal discloses no reasonable or relevant case, and/or that the Appeal involves an abuse of the process of the Environment Court.
57. The Court heard all matters together and requested the parties 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.
58. 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.
59. 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)**

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

60. 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.

61. 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**

#### **Current Claims**

62. Claim statistics are as follows:
- (a) There are 21 unresolved leaky building claims being handled by Council's lawyers as at 31 October 2009. The 21 claims represent 342 units, with 9 multi unit claims representing 330 units:
- High Court: 10 (including 5 multi unit claims)
  - Weathertight Home Resolution Service (WHRS) 3
  - Weathertight Homes Tribunal (WHT) 8 (including 4 multi units claims)
- (b) The total number of WHRS claims recorded on the DBH website relating to properties in Waitakere City as at 30 September 2009 was 177, one less than the number reported in last months update. The total number of properties affected has decreased by 1 from that reported last month to 350. 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**

63. To date the total amount paid by Council to Claimants to settle claims, inclusive of contributions by Riskpool, is \$780,000.

#### **October 2009**

No claims settled during October.

**September 2009**

64. 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**

65. No claims were settled during August 2009.

**July 2009**

66. No claims were settled during July 2009.

**June 2009**

67. No claims were settled during June 2009.

**May 2009**

68. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

**April 2009**

69. No claims settled during April 2009.

**Claims Received**

**October 2009**

70. The Council's lawyers have opened a file for 123A Hobsonville Road, West Harbour after a District Court Statement of Claim was received on 15 October. The property is one of two free-standing units built under a single consent.
71. Applications for Assessor's reports were accepted by the WHRS on 1 October 2009 in respect of 121B Hobsonville Road, West Harbour. The property is one of two free-standing units built under a single consent

**September 2009**

72. 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.
73. 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 Wakarua Avenue, Te Atatu Peninsula. The property is one of two free-standing units built under a single consent

**August 2009**

74. 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.
75. 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

76. 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.
77. 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

78. 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**

#### **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 as attached at pages A4 to A6.

An up-to-the-minute progress report will be brought to each meeting outlining the status of the appeals.

#### **RECOMMENDATION**

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

Report prepared by: Eryn Shields, Principal Planner.



### **7 RECOMMENDATIONS ON SUBMISSIONS TO PLAN CHANGE 26 - LIVING ENVIRONMENT BULK AND LOCATION RULES**

#### **GLOSSARY**

New Zealand Transport Agency	(NZTA)
Proposed Plan Change 26 – Living Environment Bulk and Location Rules	(Plan Change 26)
The Resource Management Act 1991	(RMA)

#### **EXECUTIVE SUMMARY**

The purpose of this report is to seek approval from the Planning and Regulatory Committee on the content of submissions on Proposed Plan Change 26 – Living Environment Bulk and Location Rules (Plan Change 26). This report also makes recommendations on the submissions.

## **RECOMMENDATIONS**

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

1. **Receive** the Recommendations on Submissions to Plan Changes 26 – Living Environment Bulk and Location Rules report.
2. **Agree** to accept, accept in part, or reject the submissions to Plan Change 26 – Living Environment Bulk and Location Rules.
3. **Agree** to make minor or consequential amendments to Plan Change 26 – Living Environment Bulk and Locations Rules in accordance with Clause 16 of the First Schedule of the Resource Management Act 1991.
4. **Agree** that pursuant to Clause 10 of the First Schedule to the Resource Management Act 1991, the Planning and Regulatory Committee approves Plan Change 26 – Living Environment Bulk and Location Rules.
5. **Agree** that a decision notice stating approval of Plan Change 26 – Living Environment Bulk and Location Rules, shall be notified on or about 17 November 2009.
6. **Agree** that Plan Change 26 – Living Environment Bulk and Location Rules, shall be publicly notified as operative on a date set in accordance with the provisions of the Resource Management Act 1991.

## **BACKGROUND**

1. Plan Change 26 was notified for submissions on 12 June 2008. Eight submissions were received. A summary of submissions was notified for further submissions on 26 July 2008. The period for further submissions closed on the 22 August 2008. No further submissions were received.

## **DECISION MAKING**

### **Issues**

2. The Council has received submissions on Plan Change 26. Some submitters wish to be heard and a hearing is required. The Council is required under the Resource Management Act 1991 (RMA) to respond to the submissions in one of the three ways set out under the heading “options identified” below.

### **Options Identified**

3. The RMA provides that the Council may either accept in part or reject a submission. It may also accept or reject a submission in part.
4. The Council may also defer making decisions on submissions but must make decisions within two years of public notice of Plan Change 26. That period will expire on 12 June 2010.
5. The Council also has the option of withdrawing Plan Change 26.

### **Assessment of Options**

6. The options of either deferring decision making or withdrawing Plan Change 26 are inappropriate because:
  - there has been no change in environmental circumstances since the notification of Plan Change 26;

- Plan Change 26 will not adversely affect future preparation of a single district plan for the Auckland Council as a whole; and
- people have submitted on Plan Change 26 in good faith, both in support and in opposition, and a response from Council to those submissions is appropriate.

7. Therefore it is recommended that the Planning and Regulatory Committee proceed to make decisions on the submissions as recommended below.

### Submissions and Recommendations

A7-A63

8. Eight submissions were received on Plan Change 26. The submissions are attached at pages A7 to A32. A detailed analysis of the issues raised in submissions is attached at pages A33 to A63.

9. A submission from E B Greensmith opposes Plan Change 26. The submitter is concerned that removing the exclusions of uncovered terraces and decks from the definition of building coverage will make it harder to fit single storey dwellings on smaller sites. The submitter believes that this may disadvantage some people, such as the elderly, who prefer single storey dwellings. The submitter also wants confusing definitions and rules clarified.

A61-A62

10. Jane Greensmith and John Lenihan lodged an almost identical submission to that of E B Greensmith. Jane Greensmith has viewed an earlier draft of the staff recommendations and has commented on them. A copy of those comments is included in the attachment at pages A61 to A62. The submitter's remaining concerns are confined to the Bush Living Environment. The submitters want decks and terraces excluded from building coverage in the Bush Living Environment.

11. The revised staff recommendation in response to the submissions of Jane Greensmith, John Lenihan and E B Greensmith, is that uncovered decks be excluded from building coverage on Bush Living Environment sites of less than 1000m<sup>2</sup> and that all decks less than 2.0 metres in height be excluded from building coverage on sites of more than 1000m<sup>2</sup> in area. Other changes to the rules for building coverage and outdoor space are recommended to clarify the effect of the rules. The submitters will present evidence in support of their submission at the hearing.

12. A submission from Suzanne Dunne requests:

- an extension of the deadline of submissions;
- a summary of effects of Plan Change 26 on coastal villages; and
- full community consultation.

13. Suzanne Dunne has viewed an earlier draft of the staff recommendations and has commented on them. The submitter's remaining concerns relate to the Coastal Villages Environment. The submitter wants decks excluded from building coverage on small sites in the Coastal Villages Environment. The revised staff recommendation is that uncovered decks be excluded from building coverage on Coastal Villages Environment sites of less than 1000m<sup>2</sup> and that all decks less than 2.0 metres in height be excluded from building coverage on sites of more than 1000m<sup>2</sup>. The submitter may be present at the hearing to present evidence in support of her submission.

14. A submission from the Waitakere Ranges Protection Society requests that Council limit changes to the Human and Natural Area rules of the District Plan to those proposed by the Council under Plan Change 26. No change is recommended in response to this submission.
15. A submission from the Piha Residents and Ratepayers Association states support for Plan Change 26 if there is no impact to either weaken or make more permissive the District Plan planning regulations for Coastal Villages. Changes are recommended in response to other submissions. These changes will not make the Coastal Villages Environment Rules more permissive.
16. A submission from the Protect Piha Heritage Society Inc:
  - opposes the amendments to Coastal Villages and Waitakere Ranges Environment Rule 2.1: Building Location – Natural Landscape Elements;
  - requests an additional height in relation to boundary rule 5.1(iii) in the Waitakere Ranges Environment and Coastal Villages Environment;
  - requests that activities that do not comply with the new Rule 5.1(iii) are a discretionary activity;
  - supports an additional assessment criterion 5(e) and requests that it apply to limited discretionary activities as well as discretionary activities; and
  - seeks unspecified control over earthworks.
17. In response, changes are recommended to require resource consent for the enclosure of decks on sensitive ridgelines. Changes to the definition of buildings are recommended to ensure that the yard rules apply to decks.
18. A submission from the Council requests a number of amendments including:
  - additional regulation of minor household units and building between existing buildings;
  - clarification of some of the amendments;
  - deletion of the height in relation to boundary control on road boundaries;
  - amend the parking and driveways rules so that they do not apply to minor household units;
  - providing an exception to the height in relation to boundary rule for renewable energy devices;
  - various submissions on outdoor space, screening and height in relation to boundary rules; and
  - requiring an entrance passing bay on shared driveways accessing major roads.
19. In response, the following recommendations are made:
  - additional regulation of minor household units and other building within the Living 2 Environment;
  - amendment of the rules and definitions relating to building coverage, outdoor space and shared driveways; and
  - a height in relation to boundary exemption for solar panels.
20. A submission by Transit New Zealand requests adoption of a road noise area with all new development in that area to meet the internal sound standard AS/NZ 2107:2000. No change is recommended in response to this submission.

### Consideration of Community Views

21. The submission and further submission process has provided sufficient opportunity for community input and no additional consultation process is required.

### Preferred Option

A33-A94

22. The preferred option is to make decisions on the submissions as follows:
- It is recommended that the submissions by E B Greensmith, Jane Greensmith and John Lenihan be accepted in part for the reasons set out in the attachment at pages A33 to A42 and pages A61 to A62;
  - It is recommended that the submission by Suzanne Dunne be accepted in part for the reasons set out in the attachment at pages A42 to A44;
  - It is recommended that the submission by the Waitakere Ranges Protection Society be accepted in part for the reasons set out in the attachment at page A44;
  - It is recommended that the submission by the Piha Residents and Ratepayers Association be accepted in part for the reasons set out in the attachment at page A45;
  - It is recommended that the submission by the Protect Piha Heritage Society Inc be accepted in part for the reasons set out in the attachment at pages A45 to A52;
  - It is recommended that the submission by the Council be accepted in part for the reasons set out in the attachment at page A52 to A61;
  - It is recommended that the submission by Transit New Zealand be accepted in part for the reasons set out in the attachment at pages A62 to A63; and
  - A copy of the amended text is attached at pages A64 to A94.

### Section 32 of the RMA

A33-A63

23. The Council is required to apply section 32 of the RMA in making decisions on submissions and update its section 32 report accordingly. The analysis provided in the attachment at pages A33 to A63 fulfils the requirements of section 32 of the RMA.

### STRATEGIC CONTEXT

24. The Long Term Council Community Plan 2009-2019 contains the strategic priorities for the City. Plan Change 26 as amended in response to submissions, will be consistent with the Council's strategic priority of sustainable management. Plan Change 26 will also assist in implementation of Council's Environment and Growth Management strategies.

### CONSULTATION

25. The submission process provided opportunities for submissions and further submissions. No further consultation process is appropriate under the RMA.

### IMPLEMENTATION ISSUES

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

## AUCKLAND COUNCIL TRANSITION ISSUES

27. 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:** Christopher Turbott, Senior Planner: Policy Implementation.



## 8 TREE PROTECTION UNDER THE DISTRICT PLAN

### GLOSSARY

The Resource Management (Simplifying and Streamlining) Amendment Act 2009

(the Amendment Act)

### EXECUTIVE SUMMARY

The approval of the Planning and Regulatory Committee is sought to undertake work required to expand the list of individually protected trees in the District Plan.

The Resource Management (Simplifying and Streamlining) Amendment Act 2009 (the Amendment Act) requires blanket tree protection rules to be removed from district plans on or before 1 January 2012. Deletion of these rules will remove protection for many trees within the urban environment. Ongoing protection for the most significant of these trees can be achieved by including them in an expanded list of trees specifically protected by the District Plan.

Approval is also requested to seek a declaration from the Environment Court, in order to assist the Council with its interpretation of the tree related provisions of the Amendment Act. In particular, it is proposed to ask the Court whether areas of regenerating native forest that are mapped in the District Plan can remain protected without the need for any changes to the Plan. There is potential to make a joint application for declaration with several other councils within the Auckland region.

### RECOMMENDATIONS

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

1. **Receive** the Tree Protection under the District Plan report.
2. **Agree** that staff commence work on identifying trees within the urban environment that should be considered for protection under the District Plan.
3. **Direct** that the final list of trees be reported back to the Planning and Regulatory Committee prior to public notification of a Plan Change.
4. **Approve** that a declaration be sought from the Environment Court, to clarify whether areas of vegetation that are mapped in the District Plan would continue to be protected by blanket tree protection rules.

## **BACKGROUND**

1. The Government recently enacted the Resource Management (Simplifying and Streamlining) Amendment Act 2009. The Amendment Act introduced wide-ranging changes to the Resource Management Act, aimed at improving the efficiency of resource management processes and reducing compliance costs.
2. Among the more high-profile reforms introduced by the Amendment Act were provisions requiring the removal of blanket tree protection rules from district plans. The Amendment Act deferred the commencement of those provisions until 1 January 2012, to provide sufficient time for councils to make any necessary changes to their district plans.

## **DECISION MAKING**

### **Existing District Plan Tree Protection Rules**

3. The Waitakere District Plan contains two layers of protection for trees.
4. Firstly, the Plan includes blanket tree protection rules. These rules require resource consent for the removal of any tree exceeding six metres in height within the urban area, or for the removal of trees of lesser height in more sensitive environments.
5. In addition, the District Plan contains a schedule of heritage vegetation. This schedule mainly identifies individual trees, although it also includes several groups of trees. The heritage vegetation schedule provides a mechanism to protect only 115 trees, which are considered to be the most valued specimens in the City. Resource consent is required to remove any listed tree.

### **Future District Plan Tree Protection Rules**

6. The Amendment Act requires councils to delete blanket tree protection rules from district plans, where those rules apply to an 'urban environment'. Blanket tree protection rules can still be used to protect trees located on reserves and roads, and on private land which is not fully serviced by reticulated water and wastewater infrastructure.
7. The implication of this legislative change is that, from 1 January 2012, suburban trees will no longer be protected unless they are one of the limited number of trees specifically listed in the schedule of heritage vegetation.

### **Options for Responding to Removal of Blanket Tree Protection Rules**

8. The Council has two options in response to the impending deletion of blanket tree protection rules from the District Plan.
9. The first option is to 'do nothing'. This would leave the vast majority of suburban trees unprotected after 1 January 2012. While the Amendment Act's tree-related provisions aim to make it easier for people to manage trees on their properties, there are many trees within the urban environment that are still worthy of protection. The limited schedule of protected trees does not encompass all those trees that are of significant value to the community. For this reason, the 'do nothing' option is not considered to be appropriate.
10. The alternative option is to undertake a Plan Change in order to expand the list of specific trees that are protected through the heritage vegetation schedule. Although an expanded heritage vegetation schedule would only safeguard a small fraction of those trees protected by the current blanket tree protection rules, it would ensure that the most significant and highly valued trees in the suburban areas of the City were protected. This is the preferred option.

### Plan Change Process

11. Work on a proposed Plan Change would need to commence in the relatively near future in order for the Plan Change to be publicly notified prior to 1 January 2012. The timeline and process for this work is complicated by the amalgamation of the existing Auckland councils in November 2010.
12. It is proposed that the first step in this work would be a call for public nominations of trees that should be specifically protected. This could occur through use of advertising in local newspapers, the Council's website, and the Waitakere City News.
13. Once the list of potential trees has been compiled, Council's staff would view each of the trees to determine if they are worthy of protection. If possible, this assessment process would use a methodology that is common to all of the existing Auckland councils. This approach would ensure that the final list of trees is developed in a way that can be adopted by the new Auckland Council in any future Plan Change process.
14. Council staff would then consult the owners of each tree that appears on the list, in order to ascertain their view on whether the tree should be protected under the District Plan. The owners' responses would be considered when compiling the final list.
15. The next step would normally be to publicly notify the proposed Plan Change. However, in the circumstances of an impending amalgamation of councils it may be more sensible to defer public notification until after amalgamation. Many of the other councils in the region are also proposing to identify additional trees that should be protected. As such, the new Auckland Council could review the various lists of trees and publicly notify a consolidated region-wide Plan Change.
16. For this reason, it is proposed to report back to the Planning and Regulatory Committee once a final list of trees has been developed and consultation with tree owners has occurred. A decision can be made at that stage to either publicly notify the proposed Plan Change or defer any further processing to the new Auckland Council.

### Environment Court Declaration

17. Blanket tree protection rules will no longer apply in the urban environment after 1 January 2012. The Amendment Act defines "urban environment" as allotments no greater than 4000m<sup>2</sup> which are connected to reticulated water supply and sewerage systems, and which contain a dwelling or commercial building.
18. Much of the forested areas of Titirangi and Laingholm would fall under this definition.
19. It is not entirely clear whether the District Plan's blanket tree protection rules would continue to protect native forest that is established in these areas of the Waitakere Ranges. The Amendment Act permits the use of such rules for the protection of groups of trees, where those trees are specifically identified in the Plan.
20. The Waitakere District Plan identifies the extent of regenerating native vegetation in areas such as Titirangi and Laingholm through the Natural Area maps. On the face of it, the mapped bush areas would constitute a group of trees that have been specifically identified in the District Plan. However, it could be suggested that this identification is not sufficiently specific.

21. The risk of assuming that blanket tree protection rules can continue to apply in these circumstances is that such an interpretation could be successfully challenged after 1 January 2012. If this occurred, a window of opportunity would exist for landowners to remove native bush from their properties before Council could initiate a Plan Change to remedy the loophole. The potential would exist for a dramatic reduction in the landscape and ecological values of the Waitakere Ranges.
22. It is considered that Council should address this risk by seeking a declaration from the Environment Court. Other councils in the region have similar interpretation issues that require clarification, so a joint application for declaration is proposed. This would have the benefit of reducing costs for each council involved.

### **STRATEGIC CONTEXT**

23. Protection of the natural environment is a key element of the Council's strategic direction. In particular, the Green Network Community Outcome seeks to ensure that people live in harmony with the natural environment and exercise stewardship over it.
24. The Resource Management Act 1991 recognises the importance of maintaining and enhancing amenity values. Trees make a significant contribution to the character and amenity of the urban environment.

### **CONSULTATION**

25. Consultation would be undertaken with the wider community, in order to receive public nominations for trees that should be added to the heritage vegetation schedule. It is also proposed that the owners of identified trees would be canvassed to ascertain whether they support or oppose the protection of their trees.
26. Consultation has occurred with other Auckland councils, both in relation to the methodology for identifying trees worthy of protection, and in respect of the proposal to seek a declaration from the Environment Court.

### **RESOURCES**

27. The work required to identify trees for protection can be undertaken within existing staff resources and budgets.
28. Legal costs for the declaration application would be met through budgets held by Legal Services. It is estimated that the Council's share of the cost would be up to \$30,000. Every effort would be made to minimise costs incurred.

### **IMPLEMENTATION ISSUES**

29. There are no particular implementation issues.

### **AUCKLAND COUNCIL TRANSITION ISSUES**

30. 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:** Philip Brown, Group Manager – Planning & Community Services.



## **PART D - ENVIRONMENTAL MANAGEMENT**

### **9 KAURI DIEBACK - NOVEMBER 2009 UPDATE**

#### **GLOSSARY**

Auckland Regional Council (ARC)

#### **EXECUTIVE SUMMARY**

The purpose of this report is to update the Planning and Regulatory Committee on *Phytophthora Taxon Agathis* (PTA or kauri dieback).

A surveillance programme was initiated in 2008 by the Auckland Regional Council (ARC) to determine the distribution of kauri dieback in the Waitakere Ranges Regional Park. This was undertaken as part of the ARC management programme to mitigate the impact and spread of the disease. A targeted survey of trees identified five significant disease zones along the track network. A general decline of kauri health and other physical and stress damage to trees was also observed on this survey.

A range of measures to help mitigate disease spread have been developed and implemented by the ARC and Council. Further phytosanitary measures are being progressively deployed, and the ARC performance is being measured internally.

#### **RECOMMENDATIONS**

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

**Receive** the Kauri Dieback - November 2009 Update report.

#### **BACKGROUND**

1. To aid the ARC's management of kauri dieback on its parklands, an active surveillance programme was initiated to survey the two most significant kauri forests in the region, i.e. those contained in the Waitakere Ranges and Hunua Ranges (including regional parkland and adjoining forest). Targeted surveys were undertaken to monitor tree health, determine distribution of symptomatic trees, and extent of disease damage.
2. Given the large area of kauri stands within both parks, surveys were targeted to trees designated as having a high potential risk of infection. In particular, trees were targeted at park entrances and along the track network where there are exposure to relatively high levels of soil disturbance. The survey aimed to assess all of the factors contributing to declining tree health and kauri dieback along tracks.
3. The ARC produce regularly updated maps of diseased and symptomatic kauri trees in the region. Council staff obtained copies of these maps and undertook surveys of any Council parks adjacent to infected trees in regional parks. For all parks within 100 metres of a diseased tree, and containing kauris and walking tracks, signage was installed in these parks advising users to keep footwear clean. To date Shona Esplanade Reserve has been identified as containing diseased kauri trees.

#### **DECISION MAKING**

4. From January to April 2009, 55 tracks in the Waitakere Ranges were surveyed for kauri dieback. The health of all trees within 10 metres of the walking tracks were checked for health and symptoms of the disease.

5. Approximately 108 kilometres of track was surveyed with at least 92 trees very likely to be infected and another 149 showing symptoms but needing further investigation.
6. There are particular areas of infection across the Regional Park with at least five zones being identified within the track network. These disease zones include areas of High Conservation Value kauri which include iconic/ taonga trees such as the Cascades Kauri. A correlation between diseased trees and the proximity to water was also evident.
7. The ARC is considering rerouting tracks where diseased trees and their roots are exposed on the track.
8. Tree health surveys of kauri stands contained on private land outside the park boundary were also undertaken within Waitakere over the same period. Site visits were made in response to all public complaints about sick or dead kauri trees reported to ARC or the national response phone line. This survey has shown there is a significant kauri dieback problem for many private landowners in the general Waitakere area with results being to date that:
  - A total of 129 sites within Waitakere were inspected;
  - Twenty four sites had no observed signs of kauri dieback;
  - Fifty three sites had general kauri decline (i.e. ill health due to a range of environmental factors or soil health issues but kauri dieback cannot be ruled out in all these cases as some symptoms may be indicative of early stage infection);
  - Fifty two sites had trees with symptoms of kauri collar rot and likely to have kauri dieback infection;
  - Results clearly indicate that West Auckland, particularly Titirangi, is the disease epicentre of kauri dieback in the Auckland region. Despite the development of containment measures on parkland, implementation of these methods are also urgently needed on other land as the disease is continuing to spread locally where there is ongoing advancement of above ground symptoms and tree death.
9. In response to this widespread problem ARC has undertaken the following actions:
  - Advice and information on containment measures has been provided to all affected landowners;
  - A standard operational procedure for removal of hazardous dead/dying trees has been produced;
  - A "Care For Kauri Guide" has been produced to provide landowners, gardeners and the general public with information and methods on how to grow kauri and improve kauri tree health;
  - Collation of currently available agricultural tools and methods that are being trialled by private landowners to treat their sick trees;
  - Conducted a range of advisory and industry workshops to educate key stakeholders, contractors, arborists, recreational and community groups about operational and hygiene methods required to slow the spread of kauri dieback on private and reserve land.

## Issues

### Joint Agency Response Group

10. The Joint Agency Response Group (consisting of MAF Biosecurity New Zealand, Department of Conservation, and four regional Councils) is now preparing a coordinated Long Term Management Plan for kauri dieback across the natural range of kauri in New Zealand. This plan incorporates an operational, research and communications programme to increase management of kauri dieback nationally. The plan has determined three objectives:
  - Protection of high conservation value areas;
  - Ensuring the integrity of kauri ecosystems remains; and
  - Protection of iconic (large or trophy) kauri trees.
11. A business case to fund these long term management objectives has been presented to cabinet for central government funding. A decision is pending on the exact budget allocation to each workstream. It is unclear how much funding will be allocated to the kauri dieback programme in the Auckland region, as a prioritisation process for what locations have high kauri conservation or iconic status is also pending.

### Auckland Regional Council Operational Changes

12. The ARC is continuing to take kauri dieback very seriously and has implemented a number of operational changes:
  - Installation of permanent barrel and grate sanitary stations at major prioritised track entrances;
  - Installation of crate and spray bottle sanitary stations at all other track entrances and kauri dieback disease zones;
  - Use of large sweetmats for large recreational events;
  - ARC Biosecurity audits of these measures;
  - Signage and communication;
  - Provision of updated disease location survey results;
  - Research into the disease characteristics and epidemiology;
  - Testing of a variety of fungicides; and
  - Development of Best Practice Guidelines for track maintenance.
13. The ARC has the legal requirement to manage biosecurity issues in the region and actively work with local councils to help with any response plans.

### Waitakere City Council Recommended Actions

14. Council will continue to work closely with the ARC and local territorial authorities to manage the spread of the disease in the most effective way and within the existing resources. This will involve officer workshops to develop a Waitakere Kauri Dieback Response Plan, identifying any actions that can help reduce spread of the disease, and a gap analysis for how these actions can be achieved.

### Consideration of Community Views

15. There has been no direct consultation with the community over this disease. If required this will likely be lead by the ARC.

## STRATEGIC CONTEXT

16. Council's response to biosecurity issues such as the Kauri Dieback align with the Waioira and Green Network community outcomes, and meet the goals and objectives of the Environment Strategy 2008 which looks to manage native forest pests to support native biodiversity, the Biodiversity Strategy and Action Plan 2006 which looks to provide for the maintenance and long term viability of the City's indigenous biodiversity, and the Waitakere Parks and Open Space Strategic Plan 2009 which looks to protect and enhance a resilient Waitakere Ecosystem.

## CONSULTATION

17. Consultation has been undertaken with the Parks Open Space and Assets team.
18. Consultation has been undertaken with the ARC.
19. Consultation has not been undertaken with Maori, including Te Taumata Runanga/ iwi.

## RESOURCES

20. There is currently no funding available within the Annual Plan for biosecurity response for kauri dieback. All actions to date, and until national funding is made available, are to remain within current staff and park maintenance contracts.
21. The ARC is actively supporting local councils to implement kauri dieback response. To date, the ARC has provided perspex warning signs to be erected at park entrances and along tracks, as well as educational resources and expert site visits and staff training. Council officers will continue to work with ARC to formulate a Waitakere Kauri Dieback Response Plan, including a gap analysis of resources.
22. The Long Term Management Plan that is being prepared by the Joint Agency Response Group may require Council to re-prioritise Parks maintenance contracts, staff resource and budgets, in order to implement and meet the required actions. Any significant requests for resources will be brought back to the appropriate Council committee for consideration.

## IMPLEMENTATION ISSUES

23. There are no implementation issues likely to occur with this report.

## AUCKLAND COUNCIL TRANSITION ISSUES

24. 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:** Danielle Hancock, Parks Ecology and Policy Coordinator.



10 **ALTERATION TO EXISTING RAILWAY DESIGNATION IN HENDERSON TOWN CENTRE**

**GLOSSARY**

Auckland Electrification Project	(AEP)
Resource Management Act 1991	(RMA)
New Zealand Rail Corporation	(NZRC)

**EXECUTIVE SUMMARY**

The purpose of this report is to seek approval from the Planning and Regulatory Committee to an alteration of the current railway designation, NZR1, on the North Auckland Line, in the vicinity of the Henderson town centre. The alteration will extend the current designation in order to provide access for the stabling of trains as part of the Auckland Electrification Project (AEP).

The report outlines that approval is sought by the New Zealand Rail Corporation (NZRC) who trade as ONTRACK under s181(3) of the Resource Management Act 1991 (RMA), as the alteration to the designation is considered to be minor, has relevant land owner approvals and accordingly can be approved to proceed on a non notified basis. The requiring authority, NZRC, currently owns the subject land and has issued termination of lease notices to the parties operating businesses on the affected land.

**RECOMMENDATIONS**

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

1. **Receive** the Alteration to Existing Railway Designation in Henderson Town Centre report.
2. **Agree** that railway designation, NZR1 within the District Plan be amended, in accordance with the plans being: Sliver SO1 - RAILSIDE AVENUE STABLING YARD, Sheet 01, contained in the Auckland Electrification Project, S181(3) Alteration to NZR1 Designation within Waitakere City, submitted by Barker & Associates Ltd.
3. **Approve** that ONTRACK be advised that the Council agrees with the alteration to railway designation, NZR1 within the Henderson Town Centre.

**BACKGROUND**

1. ONTRACK is a 'requiring authority' under the RMA which gives it the power to 'designate' land for public works. It is important to note that the Council does not have the power to grant or refuse consent to the designation alteration. Rather it is the requiring authority who is also the decision making body in respect of the designation, and the Council only has the ability to make requests and recommendations to the requiring authority.

A95-A116

2. The existing railway designation, NZR1, encompasses the entire railway line from New Lynn to Waitakere Township. ONTRACK has a programme of works related to the AEP that is being undertaken throughout the Auckland region. Some of the works for this project will be able to take place through Outline Plans of Work and the remainder of the works will be facilitated through changes to the existing designation. It is proposed to alter the designation within the Henderson town centre area, in the following manner (diagram Sliver SO1 - RAILSIDE AVENUE STABLING YARD, in Appendix 1 of the attachment. The designation is to be enlarged with the addition of the area SO1, which will be located on the eastern side of the existing rail line and immediately adjacent to the existing designation. The sliver of land runs over three adjacent pieces of land for a length of 63 metres and a width of 22m reducing to 0m (triangular shape). The collective area totals 547m<sup>2</sup>. The three titles and their individual size are; Lot 11 DP 19746 (337m<sup>2</sup>), Lot 12, DP 19746 (158m<sup>2</sup>) Lot 13, DP 19746 (52m<sup>2</sup>). A full copy of ONTRACK's application and maps are attached at pages A95 to A16.

## DECISION MAKING

3. The proposed AEP taking place within the Auckland region is an important priority in the development of a more efficient rail service. The AEP project involves numerous work streams including new stabling yards at Papakura, Henderson and The Strand or Tamaki Drive. In Henderson the, stabling yard will be adjacent to Railside Avenue.
4. The proposed alteration to the designation will be used to facilitate train access to the stabling yard for commuter trains that will occupy a site directly south of the subject site (which is already designated for rail purposes). The alternative was that the requiring authority could have undertaken the works through resource consent for the area outside the designation, however as the works to take place within the area of the proposed alteration are integral to the rail operation process it was considered a more appropriate option to seek an alteration to the designation.

## Issues

### Statutory Process

5. Once a designation is in place, the RMA provides a relatively simple procedure for making minor alterations. Section 181(3) of the RMA states as follows:

*“181(3)A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if –*

- (a) The alteration -*
  - (i) Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
  - (ii) Involves only minor changes or adjustments to the boundaries of the designation or requirement; and*
- (b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*
- (c) Both the territorial authority and the requiring authority agree with the alteration- and sections 168 to 179 shall not apply to any such alteration.”*

6. Provided that the proposed alteration complies with the matters set out in s. 181(3) (a), (b) and (c), the designation in the District Plan can be amended without further formality. The information provided by ONTRACK, through their consultants Barker & Associates Ltd, in support of the designation alteration proposal, addresses all the relevant issues. Council officers are satisfied that the correct procedure has been followed in relation to the proposal.
7. The alteration is minor in terms of its environmental effects for the following reasons:

### The Extent of the Alteration of the Designation

8. The actual physical area of the alteration of the designation is minor when compared to the actual area of the existing designation, being the 18km of the western rail line. The proposed triangle shaped addition to the designation at the Henderson town centre is only 22m at the widest point and tapering to 0m, covering a total area of 547m<sup>2</sup>. The alteration of the designation in the vicinity of Railside Avenue will not affect the functioning of Railside Avenue as the alteration is within existing NZRC land and does not extend to the road reserve area of Railside Avenue.

### Character and Amenity

9. The subject site that is currently owned by NZRC has been previously used for railway purposes. In more recent times, however, the land has been leased for private commercial purposes. While some of the land has remained vacant, the remainder of the land has been used by a panel and paint operation for the storage of old cars and scrap metal. The surrounding land uses consist of storage yards and manufacturing premises. The stabling of the trains in this area will not be inconsistent with these uses and will therefore not detract from the existing amenity and character of the area.

### Contaminated Soils

10. ONTRACK has lodged an application for the AEP to the Auckland Regional Council, in recognition of the potential contamination that may exist along the entire rail corridor. ONTRACK seeks consent to authorise the discharge of contaminants to ground. It is anticipated that the resource consent will guide the management of contaminated soil that may be disturbed through the course of the works. The application for the discharge of contaminants to ground or groundwater has been prepared under Chapter 5 of the Proposed Regional Plan: Air Land and Water. It is anticipated that this consenting process will address any concerns that may arise with regard to contaminated soils. It is noted that in the event that built works are required within the designated area for the stabling yards that an outline plan, processed through either the Council or the new Auckland Council, will be required.

### Landowner Approvals

*A114-A115*

11. NZRC is the owner of the land. They have issued three month termination of lease notices to those parties that are currently operating businesses on the land. A copy of the termination of lease notices have been included in a copy of the application at pages A114 to A115.
12. Accordingly the proposed alteration will comply with all three matters set out in s. 181(3) (a), (b) and (c).

### STRATEGIC CONTEXT

13. The Council's Transport Strategy has a vision of "a sustainable multi model transport system that is integrated with land use and contributes to Waitakere as an eco city". The proposed addition to the current designation will allow for the efficient functioning of the future stabling area and by association the rail component of the multi model transport system within the Waitakere area.
14. The proposed AEP is an important priority for future development of the City, and the region. The current project to electrify the Auckland Metro Network reflects a continuation of recent substantial investment in Auckland's rail infrastructure. The past decade has seen a renaissance in rail passenger transport within the Auckland region. After many years of under funding and declining patronage, the past five years have seen patronage increase from approximately two million to six million passenger trips per annum. The Auckland Regional Transport Authority's short-term goal is to see this number further increase to more than 10 million trips by 2010. The increased use of passenger rail in Auckland has been driven by significant capital investment in the network in recent years including significant investment in double tracking and station renewal.

**CONSULTATION**

15. The NZRC owns the land that is the subject of this s. 181(3) alteration to the designation application. As the owners of the sites they have given notice for the termination of the leases to the business occupiers of the land. It is considered that they are not required to undertake any additional consultation.

**RESOURCES**

16. No resources are required other than staff time involved in amending the map sheet of the plan and distributing copies to District Plan holders.

**IMPLEMENTATION ISSUES**

17. There is no implementation issues associated with this report.

**AUCKLAND COUNCIL TRANSITION ISSUES**

18. 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 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:** Carolyn McAlley, Senior Planner, Policy Implementation.



**PART E - PUBLIC EXCLUDED MATTER**

**11 PROPOSED RESOLUTION OF APPEAL: PLAN CHANGE 15 - MASSEY NORTH**

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

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, namely Proposed Resolution of Appeal: Plan Change 15 - Massey North report.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Proposed Resolution of Appeal: Plan Change 15 - Massey North report.	The withholding of information is necessary in order to: <ul style="list-style-type: none"> <li>enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7 (2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *This report contains information which if released could affect the Council's negotiations.*

