



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, 9 March 2010 **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.

3 March 2010

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, 9 MARCH 2010,
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, 9 MARCH 2010, 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 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, 9 February 2010

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, 9 February 2010, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 28 FEBRUARY 2010)

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)
metres squared	(m ²)

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 28 February 2010) report.

HIGH COURT

(New)

T Muir v Rodney DC, Waitakere CC, Auckland Regional Council (January 2010)

1. This is an application for judicial review of the Rodney District Council's decision to grant consent jointly to Rodney, Waitakere City Council (Council) Auckland Regional Council (ARC) and Department of Conservation for the removal of a species of willow trees in Bethells/Te Henga which is considered to be a weed. The works are adjacent to private property; the property owners were in support of the application. No ARC consent was required because the spraying is a permitted activity under the Auckland Regional Air Land and Water Plan. Land use consent was required from Rodney District Council as Rodney was concerned as to the area of clearance, being 23 hectares. No other rules were infringed. The consent was granted to the joint councils by an independent commissioner without the application being notified.

2. The Applicant, Mr Muir, has sought to review the decision of the Rodney District Council on the basis that he should have been notified of the application because he was affected. The Council is involved because it is one of the bodies that now cannot exercise its right under the consent. Evidence is currently being exchanged and the matter may be heard in April 2010 as it is on the Fast Track list.

(Unchanged)

Wilton Joubert Ltd and AR Wilton v Waitakere City Council (December 2008)

3. Council 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.
4. 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.
5. 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).
6. 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)

7. 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)

8. The Council was served with seven sets of proceedings under the Public Works Act 1981 (PWA) in the High Court claiming the Council breached its duty to offer back land on Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that: the events which triggered an obligation under the PWA occurred prior to the offer back obligation coming into force, and the PWA should not apply retrospectively.
9. 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 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.
10. Statements of Defence on all seven proceedings have now been finalised and will be served shortly. The plaintiffs have also been asked for information about their financial position to assess whether an application for Council's costs is necessary and details of any third party funders.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

11. 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.
12. 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 had difficulty serving Mr Mawhinney with the notices, and a substituted service application was made to the Court and has now been granted.
13. Following service of the bankruptcy notices, Mr Mawhinney has applied to the High Court to set aside the notices on the basis of alleged counterclaims or set offs against Council. This application has been opposed and affidavit evidence filed with the Court this month. There was a callover of the setting aside application on 11 February 2010 during which Mr Mawhinney filed further evidence in reply. A defended hearing has been set down for 10 May 2010.

ENVIRONMENT COURT

(New)

**Laidlaw College of New Zealand v Waitakere City Council (February 2010)
Canam Construction v Waitakere City Council (February 2010)
New Zealand Retail Property Group Management Limited v Waitakere City Council (February 2010)
New Zealand Transport Agency v Waitakere City Council (February 2010)
Mitre 10 Mega v Waitakere City Council (February 2010)**

14. These appeals relate to the Council's decision to grant consent to a Mitre 10 Mega on Lincoln Road, Henderson. The appellants oppose the consent because they consider the scale of the proposal is inappropriate for the area. The consent holder has also appealed the decision on the basis that the consent conditions need to be amended to better reflect the intentions of the applicants.
15. The appeal period has now closed. However, the period for s. 274 parties to lodge their interest is now open. This period closes in mid-April 2010, given the varying dates during which the appeals were lodged.
16. The Council has to report to the Court by 27 April 2010 as to its position and the position of the other parties.

(New)

Titirangi Residents and Ratepayers Association v Waitakere City Council (January 2010)

17. The Titirangi Residents and Ratepayers Association ('the appellants') have appealed the decision of the Council to grant consent to Rotcol Enterprises Ltd to develop a parcel of land being 408 – 416 Titirangi Road, Titirangi into a three storey mixed use facility with retail, commercial and apartment units.
18. The appellants would like to see the scope of the proposal reduced from three storeys to two storeys. The appellants do not consider that the proposed development is able to be integrated into Titirangi. The Council has requested the Court to grant an evidence exchange timetable so that the appellants' evidence can be considered prior to any mediation or hearing being held. The proposed evidence exchange timetable would ensure the matter is ready for mediation / hearing by mid-June 2010.

(New) Kane Holdings Limited v Waitakere City Council (January 2010)

19. This appeal relates to the Council's decision to decline consent to the appellant for a retrospective consent to enlarge the existing business of cutting and supplying firewood from a site along State Highway 16. There are two s. 274 parties, the Herald Island Residents and Ratepayers Association and John Tabak. The Council has been in discussions with the appellants and is in the process of putting forward an evidence exchange timetable.

(Changed) Waitakere City Council v Neil Milbank (November 2009)

20. The Council has applied to the Environment Court to make an enforcement order requiring the property owner to remove a large quantity of inorganic materials from the property. The activity constitutes a contravention of Rule 1.1(b) of the Citywide rules relating to Maintenance and Condition of Land and Buildings rules. 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 Mr Milbank for this activity.
21. The Council initially elected for the matter to be dealt with at mediation between the parties. The defendant failed to respond to correspondence from the Court in relation to the proposed mediation and so the Council has requested that the matter be put before a Judge to resolve the application. At a pre-hearing conference on 28 January 2010 the defendant was not in attendance. At the hearing of the matter on 24 February 2010, Judge Smith granted the enforcement orders subject to some minor modifications. The order is likely to be issued in early March 2010.

(Unchanged) Duaphorma Pacific v Waitakere City Council (August 2009)

22. 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 eight 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.
23. The appellant now wishes to put forward through mediation a reduced scale development of six levels with more landscaping and reduced overall height. This proposal was 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. At present the appellant is considering its position, and mediation may resume this year.

(Unchanged) Swanson Structure Plan Decisions (October 2008)

24. 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)

25. 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.
26. 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 claiming that PPHS Inc. cannot afford to pay the costs and seeking agreement to write off the debt. There is no obvious basis for that action. The debt will continue to be pursued.

(Unchanged)

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

27. 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 seven-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.
28. The Court has 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 that Judge Jackson is working on the costs decision.

Mawhinney Matters in the Environment Court

29. There are a number of matters being dealt with currently relating to Mr Mawhinney's companies. The matters are addressed below at paragraphs 31-39 of this report. The current status of Mr Mawhinney's companies referred to is as follows:
 - London and Greenwich Trading Company Limited - Struck off;
 - Perceptus Limited - Struck off; and
 - Waitakere Resource Consents Limited - Struck off.

(Unchanged)

Alex Simpson Limited and Peter Mawhinney (substituted plaintiffs) v Waitakere City Council (August 2008)

30. This was a proceeding lodged in the Environment Court by three companies associated with Mr Mawhinney on 25 August 2008. The original appellant companies were London and Greenwich Trading Limited, Perceptus Limited, and Waitakere Resource Consents Limited (all now struck off the register). Alex Simpson Limited and Peter Mawhinney have now been substituted as parties following a defended interlocutory application.
31. The application seeks to revoke a determination made by Council to defer two subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application has been made to the Court under s. 91(3) of the RMA. The applicant companies dispute the need for the further regional consents.
32. A Notice of Opposition has been filed and a timetable for exchange of submissions and evidence put forward. An affidavit explaining the reasons for the deferral, and legal submissions have been filed with the Court. The proceedings will now be referred to the judge for a decision 'on the papers'.

(Unchanged)

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

33. 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.
34. 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 has opposed this application on the same basis as above.
35. The Court has made the same orders in this proceeding as in the London and Greenwich Trading Company Limited case. Alex Simpson Limited has been permitted to substitute as an appellant, but Mr Mawhinney has also been required to become a party (and he will be liable for Council's costs). The proceedings will now be referred to the judge for a decision.

(Unchanged)

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

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

Plan Change Hearings

(Unchanged)

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

- A1-A3*
37. A summary of appeals against Plan Changes 13 to 18 is set out in Annexure 1 attached at pages A1 to A3. The summary identifies the appellants and the plan changes appealed. There are 53 appeals lodged by 27 parties. Further reports will be provided as time goes by.
38. In addition to appeals on the Council's Plan Changes 13 to 18, the Council had filed its own appeal regarding some decisions of the ARC in respect of Change 6 to the Auckland Regional Policy Statement (ARPS). The Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with the Council's appeal.
39. The appeals have been separated into topics, with each council having its own topic groups and the region as a whole creating a topic for Commercial Appeals which address the appeals by the large format retail appellants, which are concerned with whether retail should be located in city centres or corridors. A judicial conference was held on 23 May 2008 where all parties, including the councils, put forward their strategies for managing the appeals. There are no appeals to the Council's plan changes which seek whole plan changes to be cancelled or withdrawn. Only certain rules in each of the plan change areas are under challenge. There are no appeals to the Metropolitan Urban Limit (MUL) and the ARC is working through the process of announcing new MUL, which includes Hobsonville Peninsula, Hobsonville Village and Massey North. The ARC Strategy and Policy Committee had a meeting on 2 February 2010 to determine how it will progress the matter.
40. The Council has commenced negotiations with all the parties and is progressively working through the appeals.
- In respect of Plan Change 13 (Hobsonville Peninsula) there are only two appeals outstanding which relate to Precinct H of Hobsonville Peninsula. These appeals relate to the retail provisions in the plan and the appellants are the National Trading Company (NTC) and Progressive Enterprises.
 - The appeal to this plan change by ARC has been resolved by way of consent order.
 - The appeal to this plan change by North Shore City Council has been resolved by way of consent order.
 - In respect of Plan Change 14 (Hobsonville Village) there are a number of appeals. The appeal by NTC as to the location of a supermarket in Hobsonville Village is subject to a draft consent order in respect of which mediation has commenced.
 - The appeal to this plan change by ARC has been resolved by way of consent order.
 - The appeal from the Ockleston Family Trust has been resolved by way of consent order.

- In respect of Plan Change 15 (Massey North) there are a number of appeals. The appeal by NTC as an additional supermarket in Massey North is subject to a draft consent order in respect of which mediation has commenced. Similarly the appeal by the Midgley family regarding a retail cap in Precinct C of Plan Change 15 is subject to mediation and if unresolved may proceed to a hearing next year. Mediation was conducted between the parties to both of these appeals on 27 and 28 August. The parties agreed to exchange the evidential basis for their positions prior to mediation resuming. This has occurred and mediation will be resuming. The Court is yet to set the matter down for mediation, although it is expected it will do so soon. If these appeals are not resolved at mediation they will proceed to hearing. The appeal to this plan change by ARC is proposed to be resolved by way of consent order; the ARC Strategy and Policy Committee had a meeting on 2 February 2010 to determine how it will progress the matter. They agreed to the consent order with some minor amendments.
- In respect of Plan Change 16 (Managing City Growth), there are a number of appeals. The appeals that relate to retail within centres and corridors are to be considered now that the appeals relating to this subject have been resolved by way of consent order between the parties. This means that the Council no longer has an appeal against the ARC in respect of Plan Change 6. The appeal by the Waitakere Ranges Protection Society has also been resolved by way of consent order which was lodged with the Court last week.
- In respect of Plan Change 17 (New Lynn) there are a number of appeals. The Council is progressing the resolution of a number of appeals. However some of the relief is subject to the resolution of appeals to Plan Change 18.
- In respect of Plan Change 18 (Urban Design) there are a number of appeals. Most of the appeals relate to the requirements of large format retailers. The Council is meeting with the appellants to attempt to resolve these appeals. If required, a number of appeals may be set down for mediation in the next few months with the possibility of hearing later in the year.

DISTRICT COURT

(New)

Philip Tamahori – 2 Aio Wira Road, Te Henga (December 2009)

41. On 15 September 2009, a Council Environmental Monitoring Officer lodged a customer service request alleging that a dwelling had been constructed at the site without building consent. Council's Building Enforcement Officer inspected the property on 21 September 2009 and noticed a number of structures at the site that had been constructed without building consent. These structures included a dwelling (116 metres squared (m²), a carport (40m²), a water tank structure (2 m high) and conversion works to a consented shed at the property. RMA compliance issues at the site were also investigated by Council officers. However, the owner has largely addressed these issues by way of a retrospective resource consent application. On 16 December 2009, Council laid an information against the owner for undertaking unauthorised building works at the property.

(New)

Adrian Leaney / Gordan Brkic / Michael Fahey / Michael Sullivan / D & H Steel Construction Limited / D & H Assets Limited / A J Russell Bricklayers Limited / Clearwater Construction Limited / DHC Consulting Limited – 42 Brick Street, Henderson (December 2009)

42. The owners of the property (D & H Assets Limited) applied for a two stage building consent to construct a large workshop/office at the property in 2007-2008. The project was significant with gross floor area under the consents measuring approximately 12,000m². The workshop was to be occupied by D & H Steel Construction Limited. On 18 August 2009, a Council building inspector was asked to inspect grids 16-19 of the workshop/office, a part of the building site which was not authorised by building consent. The inspector issued a written stop work notice to the site manager requiring that all unauthorised building works at the site cease.

43. On 28 August 2009, Council's Building Enforcement Officer inspected the extension and met the project manager, Mr Leaney and the General Manager of Clearwater Construction Limited Mr Fahey. He instructed the men to stop all work on the unauthorised section of the workshop. He was advised that the unauthorised extension has a building coverage of approximately 1200m². On the same day Council issued a Notice to Fix to Clearwater Construction Limited and D & H Assets Limited requiring all unauthorised works to cease, and requiring compliance with the Building Act 2004.
44. On 8 September 2009, Council's Building Inspector observed building works continuing on the unauthorised section of the workshop. He notified the Council's Building Enforcement Officer who immediately went to the site. The Building Enforcement Officer advised the acting site manager to stop all unauthorised building works at the site as required by the Notice to Fix. The manager advised that he was under instruction from Mr Fahey to proceed regardless and so the officer left the site.
45. On 9 September 2009 Council's Building Enforcement Officer returned to the site with a second Notice to Fix requiring all unauthorised building works to cease. He hand delivered a copy to the acting site manager and re-stated the requirement to stop unauthorised building works. Again the site manager advised he was under instruction from Mr Fahey to continue working. The officer also encountered workers from AJ Russell Bricklayers installing blockwork on the unauthorised part of the workshop. He instructed one of their workers to stop work but he refused on the grounds that he was under instructions from Clearwater Construction Limited.
46. As a result of a meeting later that day, Clearwater Construction Limited agreed to stop working on the unauthorised part of the building and apply for a Certificate of Acceptance/Building Consent to complete the works. On 15 September 2009, Council's Building Inspector observed the installation of a beam on the unauthorised part of the workshop.
47. On 18 December 2009 the Council laid charges under s. 40, 168 and 365 of the Building Act against the construction company, the owners of the property, the owners of the building, engineering contractors and the blocklayer contractors as well as a number of individual defendants who had an involvement in the offending.

(Unchanged)

Sabrni Properties Limited / Christopher West / Glenda West - 91 Mountain Road, Henderson Valley (November 2009)

48. Council received a complaint on 19 June 2009 in relation to the construction of two additional dwellings at the site without building consent. Council officers inspected the site and discovered a newly built 30m² household unit at the site. In addition, an existing 45m² "outbuilding" at the site had been extensively renovated to create another household unit at the site. The works undertaken on both units required a building consent but the owners did not apply for one. Council officers are also concerned that there is inadequate provision for the disposal/treatment of wastewater at the property. As a result there is a risk of environmental contamination given that the two buildings are in close proximity to the western boundary of the property.
49. A Notice to Fix was issued to the owners of the property on 29 June 2009 giving the owners a number of options to ensure the buildings could comply with the Building Act and Building Regulations by 5 October 2009. The owners have not complied with the Notice to Fix. On 19 November 2009 the Council laid informations against the owners for undertaking unauthorised building works at the property. On 25 January 2010 the defendant's solicitor entered not guilty pleas to the charges. The matter is set down for a status hearing on 4 March 2010.

(Changed)

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

50. 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.
51. 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 by 11 May 2009.
52. 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 defendant did not enter a plea at the first call on 12 October 2009. On 17 December 2009 the defendants entered guilty pleas to the unauthorised building works charges. The Notice to Fix charges were withdrawn by leave of the Court.
53. At the sentencing hearing on 22 February 2010, Judge Recordan accepted the Council's proposal for a \$32,000 starting point for the three defendants. Taking into account a discount for an early guilty plea, the resulting fines were \$22,000, or \$8,000 for Geoffrey Muliaga, and \$7,000 each for Palepa Muliaga and Filipo Muliaga who are owners of the property. This matter is now at an end.

(Changed)

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

54. 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.
55. 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.
56. 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 was made with the Court.

57. Information has come to light which indicates that the unauthorised building works were first observed by a Council officer in October 2008. As a result of this new information, it is arguable that the charge under the Building Act 2004 was statutorily barred. At the callover on 2 February 2010, the defendant entered a guilty plea to the RMA charge and the Building Act charge was withdrawn by leave of the Court. The defendant will be sentenced on 3 May 2010.

(Changed)

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

58. 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.
59. 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.
60. On 12 August 2009 informations were laid against the defendant for failing to comply with a Dangerous Building Notice. The defendant entered a not guilty plea on 21 December 2009. At a status hearing on 25 January 2010 the defendant failed to appear and so the matter was set down for formal proof on 22 February 2010. The defendant attended Court on 22 February 2010 and advised that he wished to defend the charge. The Court adjourned the matter until 26 March 2010 in order for a defended hearing date to be set.

(Changed)

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

61. 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 66m².
62. 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. On 21 December 2009 the defendant entered a guilty plea to the charge. The matter is set down for sentencing on 22 February 2010.

63. On 22 February 2010, the defence applied for a discharge without conviction under s. 106 of the Sentencing Act. The Council indicated a neutral position to the application. After hearing submissions Judge Recordan granted the discharge without conviction but ordered the defendant to pay \$1,000 to Council plus \$226 Solicitor's costs and \$130 court costs. This matter is now at an end.

(Changed)

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

64. 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 and 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.
65. 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.
66. 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 granted a second adjournment to enable remedial works to continue.
67. During an inspection of the property on 4 December 2009 Mr Green advised Council's officer not to inspect the interior as he had not undertaken further works to comply with the insanitary building notice. Counsel subsequently advised Mr Green that he would need to attend Court on 17 December 2009 to enter a plea to the s. 124 charge and that he should seek legal aid. Mr Green did not attend Court on 17 December 2009 despite being notified. At the callover, the matter was set down for formal proof to occur on 22 February 2010.
68. On 22 February 2010 Mr Green attended Court and entered a guilty plea to the charge. Counsel has suggested to Mr Green that he meet with Council's building officer to agree to a remedial works plan which can be presented to the Court at sentencing. Sentencing has been set down for 26 March 2010.

(Changed)

Leslie Comer – 164 Statehighway 16 (April 2009)

69. 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.
70. 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.

71. 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.
72. 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.
73. At the pre-depositions hearing the matter was adjourned until 18 December 2009 to enable the defendant's Counsel to advise the informant which of the informant's witnesses are to provide oral evidence at the depositions hearing. The parties have agreed to file all written statements and exhibits by 12 March 2010. The next call of the matter will be the post-committal conference on 16 April 2010.

(Changed)

Leaky Building Claims

Current Claims

74. Claim statistics are as follows:
- (a) There are 18 unresolved leaky building claims being handled by Council's lawyers. The 18 claims represent 339 units, with nine multi unit claims representing 330 units:
- High and District Court: 9 (including 5 multi unit claims)
 - Weathertight Home Resolution Service (WHRS) 2
 - Weathertight Homes Tribunal (WHT) 7 (including 4 multi units claims)
- (b) The total number of WHRS claims recorded on the Department of Building and Housing (DBH) website relating to properties in Waitakere as at 31 January 2010 was 185. This is two more than the number reported in the January update (based on DBH figures for a previous period). The total number of properties affected has increased by four from that reported in the January update to 358. 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 to Claimants to settle claims, inclusive of contributions by Riskpool, is \$1,005,000. This includes an amount of \$25,000 which remains outstanding in respect of the 1/175A Titirangi Road claim (see November 2009 below). There remain four claims, including one multi unit, with the Council's lawyers which are not covered by RiskPool.

February 2010

76. 20 Belvedere Court settled at mediation on the 23 February 2010, 29C Kamara Road failed to settle at mediation, but appears subsequently to have settled with an assignment of the claim being taken against the builder, who would not contribute a sufficient share to settle the claim at mediation. Settlement consumed the Council's \$50,000 RiskPool excess in both matters.

January 2010

77. No claims have settled or been closed during January 2010.

December 2009

78. Two claims settled on 14 December 2009. These relate to 32 Turanga Road, Henderson Valley and 16 Courtneys, Hobsonville. In both cases the Council's RiskPool excess of \$50,000 was consumed in settling the claims.

November 2009

79. The Claimants in respect of 1/175A Titirangi Road accepted the Council's offer of \$25,000 to settle this claim on the 6 October 2009. However, settlement offers are subject to acceptance of the Council's settlement terms, which are contained in an agreement that remains unexecuted. Nevertheless, this claim may be regarded as being closed as the Council learned in early November 2009 that the Claimants have withdrawn their claim with the WHRS. A further claim cannot now be made because the limitation period during which claims must be brought has expired.
80. The Council has also learned that the claim relating to the Christian Mandarin Church at 78 Central Park Drive is to be discontinued. This is because the Claimants have accepted that recent case law has established that a viable building defects claim cannot be made against a building consent authority with respect to a non-residential property. The Council will recover \$7,000 of its legal costs.

October 2009

81. No claims settled during October 2009.

September 2009

82. 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

83. No claims were settled during August 2009.

July 2009

84. No claims were settled during July 2009.

June 2009

85. No claims were settled during June 2009.

May 2009

86. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

Claims Received

February 2010

87. Applications for Assessors reports were accepted by the WHRS in relation to 121A, 129C and 131 Hobsonville Road.

January 2010

88. No claims were received during January 2010.

December 2009

89. Two claims have been filed with the Council's lawyers. They are 16 Beach Road, Te Atatu and 121B Hobsonville Road, West Harbour. The first is with the Weathertight Homes Tribunal, while the latter is with the District Court.
90. Applications for Assessor reports accepted by the Weathertight Homes Resolution Service related to 7A Gill Avenue, Te Atatu Peninsula; 5 Kona Crescent Henderson; 5 Rakich Place Ranui and 8 Hornsby Avenue Henderson

November 2009

91. The Council's lawyers have opened a file for 40 Danica Esplanade, Te Atatu Peninsula. Both the Council as the building control authority, and Waitakere Properties Ltd as developer, are Respondents to the claim. Waitakere Properties Ltd are covered by the same insurance arrangements as the Council, which means that both the Council and Waitakere Properties Limited may have to contribute an excess of up to \$50,000 each to resolve the claim. This claim is a matter which had previously been notified to RiskPool. There is no longer insurance cover for leaky claims which come in which had not been notified to RiskPool prior to the 1 July 2009. At the moment there is only one such claim in respect of 17 Crown Lynn Place which is a multi unit claim in respect of which the estimated quantum for repairs alone currently stands at \$2,000,000.
92. Applications for Assessor's reports were accepted by the WHRS on 28 and 29 October 2009 in regard to 143A Hobsonville Road, West Harbour and 2/485 Don Buck Road, Massey (after the figures for last month's update were compiled). The Hobsonville Road property is one of 10 units built under a single consent under the control of private certifiers, while the Don Buck Road property is one of 14 free-standing units built under a single consent.

October 2009

93. 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.
94. 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

95. 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.

96. 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

97. 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.
98. 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

99. 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.
100. 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

101. 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 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

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

Receive the District Plan Appeals Update Table as attached at pages A4 to A6 be received.

Report prepared by: Eryn Shields, Principal Planner.



7 PROPOSED PLAN CHANGE 28: HERITAGE

GLOSSARY

New Zealand Historic Places Trust	(NZHPT)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
Proposed Plan Change 28	(PPC28)
Waitakere District Plan	(WDP)
Resource Management Act 1991	(the Act)

EXECUTIVE SUMMARY

The purpose of this report is to seek approval from the Planning and Regulatory Committee to consider the submissions, and further submissions, relating to Proposed Plan Change 28 (PPC28).

PPC28 seeks to amend the Heritage Appendix in the Citywide Rules section of the Waitakere District Plan (WDP), to add four additional heritage buildings to the list. PPC28 has been prepared in response to specific requests from one landowner and a local historian from the West Auckland Historical Society.

RECOMMENDATIONS

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

1. **Receive** the Proposed Plan Change 28: Heritage report.
2. **Agree** that having considered Proposed Plan Change 28: Heritage against the relevant statutory criteria, and having regard to the submissions received, that subject to any contrary or additional evidence submitted at the hearing, Proposed Plan Change 28: Heritage be approved as attached at pages A7 to A10.
3. **Agree** that the exteriors of the following buildings for Proposed Plan Change 28; Heritage be listed in the Heritage Appendix of the Waitakere District Plan:
 - The Donner house and studio at 50 Kohu Road, Titirangi;
 - The Swanson Railway Station building (excluding the platform, and outdoor seating); and
 - The dwelling at 170 Hepburn Road, Glendene.
4. **Decline** to list the interiors of buildings or surroundings for Proposed Plan Change 28: Heritage in the Waitakere District Plan.

BACKGROUND

1. The Planning and Regulatory Committee approved PPC28 for notification in 2008. PPC28 was publicly notified on 19 June 2009 with five submissions being received. A summary of submissions was notified with further submissions closing on 28 August 2009. A total of three further submissions were received. A fully copy of the submissions are attached at pages A11 to A28.
2. The issues raised in submissions related to the following matters:
 - Various submissions opposing or supporting the listing of the Donner House and studio(s) at 50 Kohu Road;
 - Submissions seeking to list the interiors of buildings;
 - Submissions supporting PPC28;

A7-A10

A11-A28

- A submission seeking clarification on the extent of heritage listing for the Swanson Railway Station; and
 - A submission requesting that another site should have a heritage listing.
3. The submissions were evenly divided between support and opposition to PPC28. The New Zealand Historic Places Trust (NZHPT) and the Auckland Regional Council (ARC) supported the PPC28 but sought protection of interiors of buildings and their entire sites.

DECISION MAKING

Issues

Land affected by the Proposed Plan Change

4. PPC28 applies to specific sites around the City as follows:
- Brick Villa, 170B Hepburn Road, Glendene, legally described as Lot 1 DP 89599, Category II;
 - Donner House (Category I) and studio (Category II) at 50 Kohu Road, Titirangi, legally described as Lot 46 DP 19360; and
 - Swanson Railway Station building (Category II) at 760 Swanson Road, legally described as Lot 1 DP 188043.
5. There are no other sites that are proposed to be listed in the PPC28.

Waitakere District Plan

6. The WDP provides for protection of heritage buildings, trees and archaeological sites/waahi tapu. The WDP provides protection for the specific item listed in the Plan and does not limit the ability of the landowner to subdivide a property or otherwise develop it. This is an important consideration, as many buildings in the City that are listed are located in urban areas that are earmarked for future growth. The Waitakere response is different to some other councils in the Auckland region where there are heritage character areas that have specific density controls. Broader protection of heritage buildings and sites is possible in suburbs of Auckland City and parts of North Shore City because entire precincts were built at the same time and there is a defined neighbourhood character.
7. The WDP does not generally list the interiors of heritage buildings because the majority of them are residential dwellings where flexibility is desirable. There are a few notable exceptions such as Lopdell House, the Sextons House at Waikumete Cemetery and two of the water filter stations. The distinction that can be drawn is that those buildings where the interiors are protected are in public ownership (Council or Watercare Services).
8. Waitakere's heritage has been mostly rural (orchards, vineyards, gum-diggers camps, forestry and farming, brickworks) or bach type settlement in coastal villages. Therefore, the buildings tend to be spread out or nestled amongst later post-war suburbs. A general protection of entire sites is not considered appropriate as this would have the effect of limiting development potential of sites with an historic building on it. Therefore, it would be a financial disadvantage to a landowner to own such a site. The Council has also established non-regulatory support for landowners through its heritage fund that complements the regulatory controls under the WDP.

Auckland Regional Policy Statement

9. The Auckland Regional Policy Statement (ARPS) seeks to maintain a quality environment for the Auckland region and at the same time, maintain and enhance opportunities for the region's future growth. The ARPS comprises four parts: Regional Overview and Strategic Direction; Resource Management Matters of Significance to Iwi; Transport and Energy; and Environmental Protection. Each part identifies issues, objectives, policies, methods, reasons and the environmental results anticipated as a result of implementation of the ARPS. It is considered that PPC28 will give effect to the ARPS by protecting historic heritage.

Statutory Requirements and Planning Framework – Resource Management Act 1991

10. The purpose of the Resource Management Act 1991 (the Act) as outlined in Part II is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Councils' functions are outlined in section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.
11. The Act provides a statutory framework for the management of natural and physical resources. The purpose of the Act is *'to promote the sustainable management of natural and physical resources'*.
12. Section 5(2) defines the purpose of the Act, sustainable management as:
- "managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*
- i. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - ii. Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
 - iii. Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

13. Section 6 of the Act outlines matters of national importance that must be recognised and provided for:

"6. Matters of National Importance-

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*

- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
 - (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
 - (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, site, waahi tapu and other taonga:*
 - (f) *The protection of historic heritage from inappropriate subdivision, use and development.”*
14. Section 7 of the Act sets out other matters that must be given particular regard including:
- “(a) *Kaitiakitanga;*
 - (b) *The efficient use and development of natural and physical resources;*
 - (c) *The maintenance and enhancement of amenity values;*
 - (d) *Intrinsic values of ecosystems;*
 - (e) *Maintenance and enhancement of the quality of the environment;...”*
15. Section 8 of the Act requires that managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.
16. Part IV of the Act relates to functions, powers and duties of Central and Local Government.
17. Section 31 of the Act sets out functions of territorial local authorities for giving effect to the Act within its boundaries. These functions include the integrated management of the natural and physical resources of the district and the control of the effects of the use or development of land.
18. Section 32 of the Act imposes a statutory responsibility to evaluate the options available to achieve the Council’s particular objectives or policies.
19. Part V of the Act relates to Standards, Policy Statements and Plans. Section 73 of the Act provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.
20. Section 74 of the Act states the matters Council must have regard to when changing its District Plan and includes its functions under the Act and any ARPS. Under section 75 a District Plan must not be inconsistent with the ARPS.
21. Section 76 of the Act requires that when making a rule that Council must have regard to the actual or potential effect on the environment including adverse effects of that rule.
22. Section 35 of the Act requires that a local authority monitor the suitability and effectiveness of its plan in managing the City’s environment. Council therefore has a duty to ensure that the WDP remains relevant in order to achieve integrated management of its natural and physical resources.

Current Waitakere District Plan Provisions – Policies and Rules

23. The WDP provides for protection of heritage resources, archaeological sites/waahi tapu, buildings and trees. The WDP, in Part 3: The City’s Environment identifies a range of places, objects, buildings and other structures, which the City’s residents value to the degree that they would like to see them passed on to future generations.

24. Part 5: Objectives, Policies and Methods specifically examines effects on heritage. Objective 12 aims:

“To manage the effects of activities on the City’s valued heritage in a way that:

- *Maintains its variety and complexity;*
- *Recognises and protects its national, regional and local significance;*
- *Protects the links between particular heritage objects and the surrounding context;*
- *Integrates that heritage with people’s everyday lives; where possible and appropriate.”*

25. The remaining policies relate to vegetation, demolition or partial demolition of buildings, additions and alterations to buildings, activities on sites containing heritage items and adjacent site, archaeological sites, earthworks and subdivision. The objectives and policies are supported by rules relating to heritage items in the Citywide Rules Heritage Appendix. It should be noted that this Proposed Plan Change does not alter or change any objectives, policies or rules relating to heritage management, it only aims to add four items to the Heritage Appendix. However, the listing of those items means that the existing rules will apply to items that were not previously recognised as being of heritage value.

Section 32 Considerations

26. Section 32 of the Act requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted.
27. Council’s obligations under section 32(3) are divided into five parts that comprise the following:
- Examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
 - Examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
 - Taking into account the benefits and costs of the policies, rules or other methods;
 - Taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
 - Summarising the evaluation and providing reasons for that evaluation.
28. The section 32 analysis completed prior to notification identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act. That section 32 analysis has been updated in this report where recommendations are made in response to submissions that would amend the PPC28.

Analysis of Submissions

A11-A28

29. A total of five submissions and three further submissions were received in respect of the PPC28. A full copy of the submissions is attached at pages A11 to A28. A summary of the submissions are as follows:

Submissions from H Faesenkloet (submission 28/1) and Eanna Doyle (submission 28/2), further submissions P Jenkin (28/1/1 and 28/2/2)

30. The submitters oppose listing the Donner House and studio at 50 Kohu Road in the Heritage Appendix of the WDP on the basis that:

- the experimental studios have no historic value;
 - the house is in poor condition and has been altered;
 - the management of the house by the owner has made it an issue of ridicule;
 - the house is similar to a few thousand other houses of that age in Waitakere ;
and
 - the studios/sheds are in a dangerous condition and have no historic or other value.
31. The further submissions by the owner of the house oppose the submissions and support the heritage listing.

Discussion

32. The Donner House and studios at 50 Kohu Road, Titirangi have been assessed by a heritage architect. The architect was a noted modernist architect in mid-twentieth century Auckland and the designs are well regarded. The architect left his mark on Auckland's landscape with a range of designs such as the Savage Memorial, the Ellen Melville Hall, the Civic Administration Building in Auckland City and the Parnell Baths re-development.
33. The Council has inspected one of the two studios on site and has issued a notice pursuant to sections 124 and 125 of the Building Act 2004 deeming it to be a dangerous building. This studio is not the one that is subject to a heritage listing. The Council's heritage assessment indicates that the house and the remaining studio should be protected through a heritage listing. The studio and house are highly regarded amongst architects. The Donner house is carefully detailed to provide subtle visual effects and is a distinctive and very good example of a mid-century modern house. Like other notable modern houses, it is experimental in nature. The house and studio meet the WDP criteria for listing.

It is recommended that:

34. The submissions of H Faesenkloet and Eanna Doyle be **rejected**.
35. The further submissions of P Jenkin be **accepted** to the extent that the exteriors only of the house and studio are listed.

Submissions from ARC (submission 28/3/3), (NZHPT) (submission 23/5/2 and 28/5/3), further submissions from P Jenkins

36. These submitters and further submitters support the listing of the Donner House and studio but request that Council should also list the second studio and protect the interiors of the buildings. These were supported by P Jenkins, although subsequently withdrawn by correspondence.

Discussion

37. The WDP does not generally seek to protect the interiors of residential dwellings because landowners require the flexibility to be able to renovate houses for changing trends in interior decorating, or changes in family circumstances without the requirement to apply for resource consents. Applications for resource consents require scale drawings detailing the proposed modifications, building materials to be used and other matters. It is considered that residential dwellings in private ownership should not be subjected to this level of assessment by Council. The main public benefit to listing buildings is that they continue to contribute to the amenity of the area and future changes are in keeping with the exterior design. However, the public would only ever generally view a building in private ownership from the exterior because a heritage listing does not imply public access.

38. Similarly, the Council does not list entire sites/surrounds with heritage buildings because landowners may wish to subdivide or have another use on the land. A heritage listing over the entire land would become an economic impediment and may potentially lead to landowners resisting listing rather than the preferred method of protecting the heritage feature itself.
39. The second studio has not been listed at 50 Kohu Road because it is known to be a dangerous building and Council cannot issue consents to repair it. However, the other studio is in good condition and clearly has heritage value and significance.

It is recommended that:

40. The submissions of ARC (submission 28/3) and NZHPT (submission 28/5) and the further submission of P Jenkins **be rejected** in so far as the interiors and entire sites of the nominated heritage items are included in the Heritage Appendix.

Submission from NZHPT (submission 28/5/1) and ARC (submission 28/3/2)

41. The submitters seek that the property at 172 Hepburn Road should be added to the Heritage Appendix.

Discussion

42. When the Planning and Regulatory Committee considered a report on PPC28, it recommended that Council officers should consult with landowners to obtain their approval prior to publicly notifying PPC28. Council staff contacted Delegates Wines and explained the proposed listing and its implications. Delegates Wines advised Council officers that whilst they had undertaken a restoration of the villa, they did not wish to preclude future development on the site and did not support a heritage listing of the building. On the basis of that advice from the landowner, Council did not proceed with listing the building.
43. It is considered that it would be inappropriate at this stage to list the building as a result of the submissions from ARC and NZHPT as the landowner would be unable to challenge the listing through the Environment Court or be heard at this hearing. The Council must operate in accordance with the principles of natural justice enabling a landowner to be heard in relation to a matter concerning their land.

It is recommended that:

44. The submissions of the ARC (28/3/2) and NZHPT (28/5/1) **be rejected**.

Submission from ONTRACK trading as Kiwirail (submission 28/4)

45. The submitter supports the proposal to register the Swanson Station as a Category II building but seeks clarification on the extent of the external area to be listed. The submitter seeks the following outcomes:
- That Council specifically schedules the exterior of the station building and canopy only. The station platform and outdoor seating should be excluded; and
 - That Council accurately defines the extent of the historic site.
46. The submitter seeks confirmation that PPC28 will not impact on its ability to operate, access, maintain and renew the station platform at Swanson station.

Discussion

47. The heritage listing is intended to only apply to the exterior of the building and canopy. It is suggested that wording can be added to the description to clarify that matter. The heritage assessment clarifies that the building, whilst developed as a part of the Auckland rail line, was originally built at Avondale. Its history in Swanson is relatively recent. The station platform and any respective seating is not listed. The platform has been altered over time with re-surfacing occurring as part of ongoing maintenance. Any street furniture is non-original and therefore should not be included. The heritage listing does not interfere with the designation for rail purposes. The designation acts as a form of "spot zoning" that overrides other District Plan matters.

It is recommended that:

48. The submission from Kiwirail (28/4) should **be accepted** and the description in the Heritage Appendix should be amended to state:
49. The Swanson railway Station was relocated from Avondale. The exterior of the building is listed excluding the seats and surrounding platform. The original design was as a Class 4 station (designed by Julius Vogel). Significance attributed to historical and architectural values.

Submission of the NZHPT relating to Swanson Railway Station (23/5/3)

50. NZHPT has requested that not only the station but the site surrounds should have a heritage listing.

Discussion

51. NZHPT plays a significant role in heritage advocacy, provides authorities to alter historic sites and manages a portfolio of heritage buildings and sites across the country. Those sites that are owned and administered by NZHPT are generally open to the public and the interiors and entire sites are offered protection. NZHPT also has a schedule of buildings that it lists throughout the country, however, those listings do not carry any statutory weight. ONTRACK trading as Kiwirail has a designation that enables it to operate its business efficiently and it acts as a "spot zoning" for rail purposes. It is considered that a heritage listing over the station surrounds would create confusion as to the extent of that listing and the range of activities that could occur in that area without resource consent. It is considered that the heritage listing should only apply to the building and specifically exclude the platform, seating and surrounds.

It is recommended that:

52. The submission of NZHPT **be accepted in part** in so far as the station is listed but excluding surrounds.

Submissions of NZHPT (25/5/3) and ARC (28/3/4) relating to listing the interior of the brick villa at 170B Hepburn Road

53. Both submitters request that Council should list the interior of the brick villa at 170B Hepburn Road.

Discussion

54. The interior of 170B Hepburn Road has not been scheduled as this is consistent with the rest of the Waitakere District Plan. It is considered too restrictive on private landowners to list the interiors of dwellings. The only buildings with interiors that are protected are in public ownership.

It is recommended that:

55. The submission of NZHPT and the ARC be **rejected**.

Consideration of Community Views

56. The community has been consulted through the public notification of PPC28 culminating in this hearing report to consider submissions.

Preferred Option

57. The preferred option is to approve PPC28 with minor amendments included in the Table of Changes.

STRATEGIC CONTEXT

58. Historic heritage is a matter of national importance under section 6(f) of the Act. ARC and Council have specific duties and functions to protect historic heritage in accordance with the Act. NZHPT also has duties to protect heritage through the provisions of the Historic Places Act 1993.

CONSULTATION

59. Consultation has been with the Resource Management and Planning department of the Council.

RESOURCES

60. There are no resources required other than staff time.

IMPLEMENTATION ISSUES

61. There are no issues involved in implementing the recommendation in this report

AUCKLAND COUNCIL TRANSITION ISSUES

62. 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.

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