



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 August 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.

4 August 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, 10 AUGUST 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, 10 AUGUST 2010, 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 July 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, 13 July 2010, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 31 JULY 2010)**

#### **GLOSSARY**

Planning and Regulatory Committee	(the Committee)
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 <sup>2</sup> )
Rodney District Council	(Rodney)

#### **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 July 2010) report.

#### **HIGH COURT**

*(Unchanged)*

#### **Waitakere City Council v Networth Developments Limited (November 2008)**

1. 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)**

2. 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.

3. 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.
4. Statements of Defence on all seven proceedings have now been served. 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. Discovery of documents is currently in progress.

#### **Substantive hearings involving Mr Mawhinney**

**(Changed)**

#### **Mawhinney and Others v Waitakere City Council (May 2008)**

5. Costs of \$19,350.50 were awarded to Council following appeals by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three related appeals regarding purported applications for certificates of compliance and subdivision consents. The overall purpose of the application was seeking to establish 77 dwellings on the subject site in the foothills environment. Mr Mawhinney failed to pay the costs awards. Bankruptcy notices were issued and a substituted service application was necessary to serve Mr Mawhinney with the notices. Mr Mawhinney applied to set aside the bankruptcy notices alleging various counterclaims and set-offs against Council which were without merit. The matter was allocated a defended hearing on 10 May 2010.
6. Before the defended hearing, a settlement was reached with Mr Mawhinney. It was agreed that Mr Mawhinney's application to set aside bankruptcy notices would be dismissed and that Mr Mawhinney would pay Council the outstanding costs of \$19,350.50, plus further costs of \$14,649.50 (a substantial contribution to Council's costs of the application), \$34,000 in total on or before 9 July 2010. The matter was called on 22 July 2010 but Mr Mawhinney failed to appear. Judge Christiansen made an order adjudicating Mr Mawhinney bankrupt and awarded costs to Council to be paid out of Mr Mawhinney's estate. This matter is now at an end.

#### **ENVIRONMENT COURT**

**(Changed)**

#### **Trustees of the George Easton Family Trust v Waitakere City Council (April 2010)**

7. This an objection to the taking of land under the PWA. The property is situated at 19 Totara Ave, New Lynn. The property being acquired is in New Lynn and is part of the strategic acquisitions in New Lynn. The matter is yet to be allocated a date for next steps.

**(Changed)**

#### **Choong Huat Lai and Luan Joo Tan v Waitakere City Council (April 2010)**

8. This an objection to the taking of land under the PWA. The property is situated at 30 Totara Ave, New Lynn. The property being acquired is in New Lynn and is part of the strategic acquisitions in New Lynn. The Council filed it reply to the objection on 7 June 2010. The matter is yet to be allocated a date for next steps.

**(Changed)**

**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)**

9. These appeals relate to the Council's decision to grant consent for 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.
10. The Council reported to the Court on 27 April 2010 as to its position and the position of the other parties. Mediation took place on 13 July 2010. There was no resolution of any points of appeal but the parties are in ongoing discussions with the possibility of narrowing down the grounds of appeal. A preliminary evidence exchange timetable has been discussed but not finalised. The matter has not been allocated priority and if a hearing is required it may be heard in 2011 as no hearing time is available this year.

**(Unchanged)**

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

11. 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 three s. 274 parties; the Herald Island Residents and Ratepayers Association, John Tabak and Nevan Barbour. Primary evidence has been exchanged and rebuttal evidence will be exchanged during July 2010. The matter may go to mediation in August 2010 and is likely to go to hearing in December 2010 if it cannot be resolved in mediation (subject to hearing time being available).

**(Changed)**

**Duopharma Pacific Limited v Waitakere City Council (August 2009)**

12. 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.
13. The appellant has put forward through mediation a reduced scale development of five levels (four residential, one, ground floor, retail) with more landscaping and reduced overall height. This proposal was put to the parties at the mediation on 3 May 2010. The parties to the mediation in part accepted that the reduced scale proposal is acceptable. The Court is considering the Council's proposed approach of hearing the evidence, and then determining the matter on the evidence after hearing from all the parties. The Court's decision on how to proceed is expected within a couple of months.

**(Unchanged)**

**Swanson Structure Plan Decisions (October 2008)**

14. The Court has delivered its decision on the Swanson Structure Plan (SSP). At a special meeting of the Planning and Regulatory Committee on Tuesday, 10 February 2009 it was resolved not to appeal the decision. No other party has appealed. The Council has been directed to prepare a final version of the SSP along with the rules and policies that give effect to its decision by 31 July 2009, with amended provisions to be submitted three months thereafter.

**(Changed)**

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

15. The Society has paid the costs in full now. The Council received a cheque for \$4,500 on 18 July 2010. This amount along with the \$500 paid earlier means the \$5,000 Court costs have now been paid in full and the Council can close its file.

**(Unchanged)**

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

16. 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.
17. 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**

18. 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)**

19. 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.

20. 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.
21. 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)**

22. 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.
23. 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.
24. 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)**

25. 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
26. 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.

27. 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 Auckland Regional Council (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.
28. 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.
29. 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 2009. 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 has been resolved by way of consent order between the ARC and the Council. Parties to the appeal are yet to agree. The remainder of Plan Change 15 appeals are to be heard in the weeks of 15 and 29 November and 13 December 2010. If more time is required, the Court will allocate more time.
  - The Plan Change 14 appeals are to be heard in the weeks of 15 and 29 November and 13 December 2010. If more time is required, the Court will allocate more time.

- 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. Plan Change 17 is set down to be mediated for 14 September 2010.
- 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. Mediation occurred on 20 July 2010. The parties are in continuing discussions. Mediation will resume on 6 September 2010. Aspects of PC 18 that are relevant to PC 14 and 15 will be heard in the weeks of 15 and 29 November and 13 December 2010. The remainder of PC 18 issues that are under challenge will be set down for hearing after the PC 14 and 15 appeals have been heard.

#### **DISTRICT COURT**

**(New)**

#### **Muriel Ann Newnham – 765 South Titirangi Road, Titirangi (July 2010)**

30. The defendant is the owner of a property at which substantial unauthorised building works had been carried out. Council's officer attended the property on 31 April 2010 and discovered that the dwelling that was situated at the site had been substantially demolished without building consent. Further unauthorised works had been carried out to partially construct a new dwelling at the site, including the construction of two timber retaining walls with surcharge, a concrete block retaining wall complete with reinforced concrete footings within sub-floor area, timber framing to form the base of dwelling, and associated works. The owner has admitted to arranging the building works but has refused to provide details of the builder who carried out the project. On 8 July 2010 the Council laid one charge of carrying out unauthorised building works against the defendant. The matter is set down for a first call on 6 September 2010.

**(Changed)**

#### **Kamal Pradeep Singh / Roma Praneeta Singh – 73 Harmel Road, Glendene (June 2010)**

31. The Council's Building Enforcement Officer inspected the property in response to a customer service request alleging unauthorised building works. During the inspection which took place on 22 March 2010, the Officer discovered that the basement at the rear of the two storey dwelling was under construction and was at present held up by temporary props. A significant extension had also been made to the front of the dwelling involving the removal of a deck, and the installation of midfloor timbers and flooring to form an internal landing, installation of an outer load bearing wall framing to form a side wall beneath the roof and also roof framing. Mr Singh who is one of the owners of the property admitted that he had personally carried out the building works.

32. Council's Building Enforcement Officer had concerns about the structural stability of the works carried out and informed Mr Singh that he would need to engage an engineer to confirm that the building was not dangerous. Mr Singh did consult an engineer, however, the engineer was not willing to confirm that the building was safe. Consequently, Council has taken the precaution of issuing a dangerous building notice to the owners until they can provide evidence that the building works have structural stability. On 25 June 2010 the Council laid informations against Mr and Mrs Singh, the registered proprietors of the property for allegedly carrying out unauthorised building works. The defendants appeared on 2 August 2010 and pleaded guilty to the charges. A sentencing hearing is set down for 18 October 2010.

**(Changed)**

**Jin Ling Chen / Zhilan Trading Company Limited 'D H Supermarket' – 2/3 Edsel Street, Henderson (March 2010)**

33. Council's Environmental Health Officer inspected 'D H Supermarket' on 27 January 2010 in response to concerns raised by members of the public in relation to hygiene issues at the supermarket. The inspection revealed that the butchery section of the supermarket was in a very poor state of cleanliness that compromised the safety of products sold to the public. The floor and walls of the cool room were coated with meat/blood debris and emitted a foul odour. The customer service area was also very dirty with display cabinets smeared with blood and rotting meat present. The remainder of the supermarket did not have any significant hygiene issues.
34. The manager agreed to voluntarily close the butchery section to enable cleaning to occur. On 28 January 2010 the butchery was re-inspected by the Officer who considered that it had been cleaned to a reasonable standard. The supermarket was issued a 'D grading'. It was previously given a 'D grading' in June 2008. A charge was laid against the owner/occupier on 10 March 2010 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. After discussions with the defendant's solicitor, the Council has laid an identical charge against Zhilan Trading Company Limited which owns the supermarket business. The charge has been laid to enable the substitution of the company for Ms Chen as a defendant to these proceedings. The Company, through its solicitor entered a guilty plea to the charge. on 2 August 2010 and the remaining charge was withdrawn. The matter is set down for a sentencing hearing on 21 October 2010.

**(Changed)**

**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)**

35. 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 12,000 metres squared (m<sup>2</sup>). 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.
36. On 28 August 2009, Council's Building Enforcement Officer inspected the extension and met the project manger, 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 1200m<sup>2</sup>. 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 (Building Act).

37. 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.
38. 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 block work on the unauthorised part of the workshop. He instructed one of the workers to stop work but he refused on the grounds that he was under instructions from Clearwater Construction Limited.
39. As a result of a meeting later that day, Clearwater Construction Limited agreed to stop working on the unauthorised part of the building and to 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.
40. 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. On 2 August 2010 the Council withdrew s. 40 charges against Gordan Brkic, DHC Consulting Limited and the s. 365 charge against Martin Fahey. The defendants pleaded not guilty to the remaining charges. The matter is set down for a status hearing on 6 October 2010.

**(Unchanged)**

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

41. 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 30m<sup>2</sup> household unit at the site. In addition, an existing 45m<sup>2</sup> "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.
42. 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 has been set down for a defended hearing on 13 August 2010.

**(Unchanged)**

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

43. 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 Dangerous Building Notice was issued to the owner in person on 1 September 2008, and the safety issues were explained to him by the Council officer.
44. 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 Dangerous Building Notice was issued to the defendant by post the following day. A fourth Dangerous Building 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 Dangerous Building Notice.
45. 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 matter has been set down for a defended hearing on 13 August 2010.

**(Unchanged)**

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

46. 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.
47. 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.
48. 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 the 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.
49. 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.

50. 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. Mr Comer was committed on 16 April 2010 and the matter is remanded until 6 July 2010. An indictment was filed on 28 May 2010.

**(Changed)**

### **Leaky Building Claims**

#### **Current Claims**

51. Claim statistics are as follows:
- (a) There are now 21 unresolved leaky building claims being handled by Council's lawyers. The 21 claims represent 362 units, with 9 multi unit claims representing 350 units. Of these 11 claims are uninsured, 2 of which are multi units representing 51 units:
- High and District Court: 14 (including 6 multi unit claims)
  - Weathertight Homes Tribunal (WHT) 7 (including 3 multi units claims)
- (b) The total number of Waitakere Ranges Protection Society Incorporated (WHRS) claims recorded on the Department of Building and Housing (DBH) website relating to properties in Waitakere as at the 31 May 2010 was 188. The total number of properties affected was 364. 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. However, the WHRS figures do not capture court claims.

#### **Claims Settled**

##### **July 2010**

52. The 15 Lockington Avenue claim closed for the Council in July 2010. This was a private certifier claim and the Council's application to be dismissed from the claim was not opposed. The final costs on the claim are not yet in.

##### **June 2010**

53. No claims settled.

##### **May 2010**

54. The claim in respect of 40 Danica Esplanade, Te Atatu Peninsula was settled at mediation on 17 May 2010. The Council's and Waitakere Properties Ltd combined RiskPool excess of \$100,000 was consumed in settling the claim.

##### **April 2010**

55. The claim in respect of 192B Cliff View Drive, Green Bay was settled at mediation on 27 April 2010. The Council's RiskPool excess of \$50,000 was consumed in settling the claim.

##### **March 2010**

56. The contribution to settlement of 15 Vinograd Drive (an 8 unit claim) has been agreed, but the settlement agreement remains to be signed. The Council's RiskPool excess of \$15,000 was consumed in settling the claim.

### February 2010

57. 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

58. No claims were settled during January 2010.

### Claims Received

### July 2010

59. 15 Reflection Drive, West Harbour, 1/43A Savoy Road, and 9 Foothills Lane, both Glen Eden, 48 Waimanu Bay Drive, Te Atatu Peninsula and 131 – 139 (odd numbers and all private certifiers) Metcalfe Road, Ranui, have been received since the last report.

### June 2010

60. No claims received.

### May 2010

61. Applications for Assessor reports were accepted by the WHRS in relation to 18 Chettle Court, New Lynn, and 29 Roy Maloney Drive, Henderson on the 7 May 2010 and in respect of 7 Kona Crescent, Henderson on the 11 May 2010.

### April 2010

62. Applications for Assessor reports were accepted by the WHRS in relation to 11 Exotic Court, Massey on the 15 April 2010 and 23 Stephen Avenue, Henderson on the 19 April 2010.

### March 2010

63. An application for an Assessors report was accepted by the WHRS in relation to 11 Wootons Lane, Titirangi on the 18 March 2010.

### February 2010

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

### January 2010

65. No claims were received during January 2010.

**Report prepared by:** David Collins, Contract Solicitor.



6 **DOG CONTROL ACT 1996, SECTION 10A, ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2010**

**GLOSSARY**

Dog Control Act 1996 (the Act)

**EXECUTIVE SUMMARY**

A5-A18

The purpose of this report is to seek approval from the Planning and Regulatory Committee to forward the Dog Control Act 1996, Section 10A, Annual Report for the year ended 30 June 2010 (as attached at pages A5 to A18) to the Department of Internal Affairs, and for public notice of the availability of the report to be published in accordance with section 10A(3) of the Dog Control Act 1996 (the Act).

**RECOMMENDATIONS**

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

1. **Receive** the Dog Control Act 1996, Section 10A, Annual Report for the Year Ended 30 June 2010 report.
2. **Agree** that the Dog Control Act 1996, section 10A, Annual Report for the Year Ended 30 June 2010, be approved and sent to the Department of Internal Affairs within one month following the Planning and Regulatory Committee's meeting on 10 August 2010.
3. **Agree** that a public notice advising that the Dog Control Act 1996, section 10A - Annual Report for the Year Ended 30 June 2010 has been approved and is available for inspection at Animal Welfare, Libraries and the public counter at Waitakere Central in accordance with section 10A(3) of the Dog Control Act 1996

**BACKGROUND**

1. The Act was amended in 2003 to require territorial authorities to report to the Department of Internal Affairs on the administration of its dog control policy and practices.
2. This report provides information on the administration of dog control and its associated activities for the year ended 30 June 2010.

**DECISION MAKING**

**Issues**

3. The annual report on the administration of Waitakere's dog control policy and dog control practices meets the requirements of section 10A of the Act.
4. As at the 30 June 2010 there were 13,239 registered dogs in Waitakere on the national dog database, an increase of 184 dogs over 12 months.
5. The registration of all dogs is central to good dog control. It is the owners of unregistered dogs who are more likely to trigger a requirement for the services of dog control whether it be a dog not under proper control, a dog attacking livestock, or a dog attacking a person.

**STRATEGIC CONTEXT**

6. Dog control policy and practices are directly aligned with the Council's strategic priority of Safe City and Council's strategic objectives of strong communities supporting the health and wellbeing of Waitakere's residents.

## CONSULTATION

7. There is no requirement in the Act to consult the community prior to this report being approved. However the Act requires that a copy of this report be made available to the community within one month of the Planning and Regulatory Committee approving its content.

## RESOURCES

8. No resources are required to fulfil the obligations of making this report to the Department of Internal Affairs.

## IMPLEMENTATION ISSUES

9. Upon approval of the Dog Control Act 1996, section 10A - Annual Report for the Year Ended 30 June 2010 report a copy will be forwarded to the Department of Internal Affairs. A public notice advising approval of the report will be actioned and copies of the report made available for inspection at Animal Welfare, Libraries and the public counter.

## AUCKLAND COUNCIL TRANSITION ISSUES

10. 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:** Neil Wells, Manager: Animal Welfare.



## PART C - DISTRICT PLAN / STRUCTURE PLANS

### 7 PAKANUI STRUCTURE PLAN- PRIVATE PLAN CHANGE APPLICATION

#### GLOSSARY

Auckland Regional Council	(ARC)
Integrated Catchment Management Plan	(ICMP)
Local Government (Auckland) Amendment Act	(LG(A)AA)
Pakinui Structure Plan	(PSP)
Resource Management Act 1991	(the Act)
The Waitakere Ranges Heritage Area Act 2008	(WRHAA)
Boffa Miskell Consultants Limited	(Boffa Miskell)
Metropolitan Urban Limit	(MUL)

#### EXECUTIVE SUMMARY

On 3 May 2010 a private plan change application was received by the Council from the Bromley Park Hatcheries (on behalf of the Pakinui Development Group). The private plan change application seeks to introduce the Pakinui Structure Plan into the District Plan. The application was prepared by Boffa Miskell Consultants Limited (Boffa Miskell).

The Pakinui Structure Plan (PSP) had been previously considered by the Planning and Regulatory Committee and its predecessor, although a private plan change application had never been formally lodged.

The private plan change application seeks to provide for further subdivision potential within the 180 hectare Pakinui catchment, which is located on the northern periphery of Waitakere. Amreins, McEntee and Sunnyvale Roads, Waitakere and the territorial boundary, bound the catchment. The PSP would provide for additional lots as a limited discretionary activity requiring the establishment of bush planting, protection of bush areas, and further riparian margin protection and planting. Building sites are identified and areas of geotechnical instability are avoided. The PSP seeks to establish the potential for 65 additional lots. Any further subdivision over and above that provided for by the PSP would become a prohibited activity.

At this stage, the applicant is seeking the approval of the Council to adopt and process the private plan change. Council officers retain some reservations over the proposal and recommend that the Council accept the plan change for processing. This is a valid option under the Resource Management Act 1991 (the Act) and is considered to avoid risks and costs which may impact on the Council should it choose to adopt the plan change. The Council may choose to reject the plan change and the Act specifies instances where this is possible. It is considered in this instance that rejection is not an appropriate option.

The actual merits and environmental impacts of the proposal have not yet been considered and this will occur through the statutory process set down in the Act.

### **RECOMMENDATIONS**

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

1. **Receive** the Pakinui Structure Plan – Private Plan Change Application report.
2. **Receive** the private plan change request from the Bromley Park Hatcheries (on behalf of the Pakinui Development Group) for the notification of the Pakinui Structure Plan.
3. **Agree** to accept the private plan change for notification subject to the receipt of further information relating to the number of additional habitable buildings currently established.

### **BACKGROUND**

1. The PSP area comprises 180 hectares of a 700 hectare catchment that encompasses land in Waitakere and the Rodney District. The structure plan area is bound by Amreins Road in the west, McEntee Road in the south, Sunnyvale Road in the east, and the southern boundary of the Rodney District in the north. The PSP area is identified as Foothills Environment in the District Plan.
2. The PSP area contains a range of natural features and has been modified by human activity. Current land use practices include intensive poultry farming, horticulture, pasture and lifestyle living. There are some extensive areas of established and regenerating native vegetation. The land is undulating to the north and rises to the south. A sensitive natural ridge is identified over McEntee and Sunnyvale Roads as they bound the site along the southern edge. The sensitive natural ridge affects some individual sites within the PSP area as they adjoin these roads.
3. The PSP has been developed over the last 10 years and has been advanced most recently by Boffa Miskell on behalf of the landowners, following an extended period of delay. The PSP has been before the Planning and Regulatory Committee in May and September in 2005, and prior to this the Environmental Management Committee in April 2003.

4. The Waitakere District Plan anticipates that parties other than the Council may initiate the structure planning process. The Environmental Management Committee considered the PSP at its April 2003 meeting. The Committee resolved as follows:

*“That consideration of the Pakanui Structure Plan be deferred pending the outcome of the Structure Planning review.”*

778/2003

5. The PSP was brought back before the Environmental Management Committee when the landowners' consultant, then Cato Bolam Consultants, made a brief presentation to the May 2005 meeting, requesting that the Council take steps to progress the Structure Plan. In response to that presentation, the Planning and Regulatory Committee passed the following resolution:

*“That a comprehensive report be brought back to the July meeting of the Planning and Regulatory Committee, updating the Committee on all aspects of the Pakanui Structure Plan, related issues, any changes as required, and recommending a course of action.”*

807/2005

6. A report was prepared and presented to the Planning and Regulatory Committee on 13 September 2005 in response to the above resolution. The report outlined issues associated with the PSP which related to: stormwater management; changes to regional and local policy directions; prospective resolution of the Swanson Structure Plan appeals (anticipated to occur in early 2006); potential modifications necessary to the PSP; the outcome of the Structure Planning Review; and the possible impacts of the Waitakere Ranges Heritage Area Act 2008 (WRHAA). In response to this report the Planning and Regulatory Committee passed the following resolution:

*“That Council officers seek to address and resolve the identified issues and report back to the Planning and Regulatory Committee on progress that has been made in April 2006, or sooner if possible, to allow the Committee to consider whether it is appropriate at that time to proceed with public notification of the Pakanui Structure Plan by way of a District Plan Change.”*

1774/2005

A19-A39

7. Given the nature of these issues, Council officers have been unable to progress the PSP as directed by the Planning and Regulatory Committee until now. Many of these issues have now been addressed and are outlined in the application received and attached at pages A19 to A39. A further volume of detailed technical reports is also available to the Planning and Regulatory Committee on request.

8. The issues identified previously have been resolved as follows:

(a) Stormwater Issues

An Integrated Catchment Management Plan (ICMP) for the Kumeu and Kaipara catchment has been submitted to the Auckland Regional Council (ARC). The ICMP contemplates the development of Pakinui.

(b) The Swanson Structure Plan

The Environment Court appeals are completed and the outcome of the structure plan has resulted in a significant reduction in the yield of lots anticipated in that catchment, with prohibited activity status to seek development beyond the allocated number of lots provided for by the decision.

(c) The Regional Policy Statement

Change 6 to the Regional Policy Statement has largely been resolved with one outstanding appeal remaining at the time of writing.

(d) Managing City Growth (Plan Change 16 to the Waitakere District Plan)

As part of the suite of plan changes promulgated by the Local Government (Auckland) Amendment Act 2003 (LG(A)AA) Plan Change 16 sought to incorporate the relevant parts of the Council's Growth Management Strategy into the District Plan. There are numerous appeals outstanding against Plan Change 16. Of note is proposed Policy 0.11 which was appealed by the Waitakere Ranges Protection Society and has recently been resolved with a Consent Order being signed by the Court on 23 March 2010.

(e) The Structure Plan Review

A121-A128

The Structure Plan Review was considered by the Environmental Management Committee in December 2003 and in particular the recommendations 1 through to 17 were adopted and amended in some instances. The PSP is not inconsistent with any of the amended recommendations. A copy of the minutes is attached at pages A121 to A128.

(f) The Waitakere Ranges Heritage Area Act 2008

The boundaries of the WRHAA does not include the PSP area.

(g) Modifications to the PSP

As identified in paragraph 6 above, a number of modifications were identified by Council officers in 2005 that needed to be addressed. These have been considered and the PSP has been updated to incorporate these changes. This includes the reduction in the number of proposed lots following the "Luckens" subdivision (4 – 10 Sunnyvale Road); increasing the planting width to 15 metres for streams identified with 7 metre riparian margins and 10 metre planting width for streams identified as non-riparian.

9. Boffa Miskell has formally lodged the private plan change on 3 May 2010 at the direction of the landowners. They request that the Council consider the private plan change for processing in accordance with Clause 25(2)(b) of the First Schedule of the Act.

10. The PSP in its current form seeks to provide for an additional 65 lots, protecting major watercourses within the site with a 15 metre riparian margin (currently protected by a seven metre riparian margin) and lesser watercourses with a seven metre riparian margin (currently identified as non-riparian). In addition, bush protection areas (45.2ha) and riparian/restoration planting (15.1ha) are proposed.

11. It is proposed that subdivision in accordance with the PSP would be considered as a limited discretionary activity and proposals which exceed the density of development provided for in the PSP would be a prohibited activity.

A129-A135

12. Council officers requested further information from the applicant on 3 June 2010 and this request is attached at pages A129 to A131. A response was received on 8 July 2010 and is attached at pages A132 to A135.

13. The request from the Council officers sought the following information and the applicant's response is summarised below each heading:

(i) Environmental effects on the existing Pakinui Structure Plan area stormwater hydrology and riparian margins.

Officers identified concerns in respect of the number of stream crossings potentially required, the ongoing use of the stormwater pond and more certainty in respect of achieving hydrological neutrality. The applicant has identified that the pond will be deleted with mitigation occurring on sites, further stormwater modelling will be provided and they will consider alternative accesses to avoid stream crossings through the plan change process.

(ii) The existing built environment in the Pakinui Structure Plan area

Officers identified an issue that arose through the Swanson Structure Plan process and the impact that minor household units and other habitable buildings can have on the rural landscape and rural capacity. Given that the number of structures are currently unknown it is considered appropriate to obtain this information prior to notification. The applicant has agreed to provide this information prior to notification.

(iii) Consultation with the ARC

A136-A142

Officers considered it appropriate that the applicant should consult with the ARC in respect of the proposal given potential policy and stormwater issues that may arise. The applicant's representatives met with ARC staff on 6 July 2010. Council officers were also in attendance and a letter setting out the ARC's position with respect to the PSP is attached at pages A136 to A142. It should be noted that the ARC staff had reservations in respect of the proposed private plan change.

## DECISION MAKING

### Issues

14. The applicant has submitted the private plan change to the Council for its consideration pursuant to Clause 25, Part 1 of the First Schedule contained in the Act. The options available to the Council are set out in the Act and the options are limited. They are as follows:

**(25) Local authority to consider request**

...  
(2) *The local authority may either—*

(a) *Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—*

(i) *The request must be notified in accordance with clause 5 of this Schedule<sup>1</sup> within 4 months of the local authority adopting the request; and*

(ii) *The provisions of Part 1<sup>2</sup> of this Schedule must apply; and*

(iii) *The request has legal effect once publicly notified; or*

(b) *Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26<sup>3</sup>.*

<sup>1</sup> Clause 5 of the First Schedule relates to provision of a Public notice and service of documents to public bodies

<sup>2</sup> Outlines the statutory requirements for local authorities in relation to the preparation of District Plans

- (3) *The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6<sup>4</sup> shall apply accordingly.*
- (4) *The local authority may reject the request in whole or in part, but only on the grounds that—*
- (a) *The request or part of the request is frivolous or vexatious; or*
  - (b) *The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or*
  - (c) *The request or part of the request is not in accordance with sound resource management practice; or*
  - (d) *The request or part of the request would make the policy statement or plan inconsistent with Part 5<sup>5</sup>; or*
  - (e) *In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.*
15. Therefore the options available to the Council are to either adopt, accept or reject the plan change. These are discussed and explained further in paragraphs 19 – 37 and Diagram 1 below.
16. The Resource Management (Simplifying and Streamlining) Amendment Act 2009 introduced a new provision restricting when rules have legal effect. Previously, a public plan change rule had immediate effect from the date of notification. A private plan change continues to have legal effect only once it is made operative.

**(86B) When rules in proposed plans and changes have legal effect**

- (1) *A rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1, except if—*
- (a) *subsection (3) applies; or*
  - (b) *the Environment Court, in accordance with section 86D, orders the rule to have legal effect from a different date (being the date specified in the court order); or*
  - (c) *the local authority concerned resolves that the rule has legal effect only once the proposed plan becomes operative in accordance with clause 20 of Schedule 1.*
- (3) *A rule in a proposed plan has immediate legal effect if the rule—*
- (a) *protects or relates to water, air, or soil (for soil conservation); or*
  - (b) *protects areas of significant indigenous vegetation; or*
  - (c) *protects areas of significant habitats of indigenous fauna; or*
  - (d) *protects historic heritage; or*

<sup>3</sup> Clause 26 relates to the time period in which the private plan change must be notified

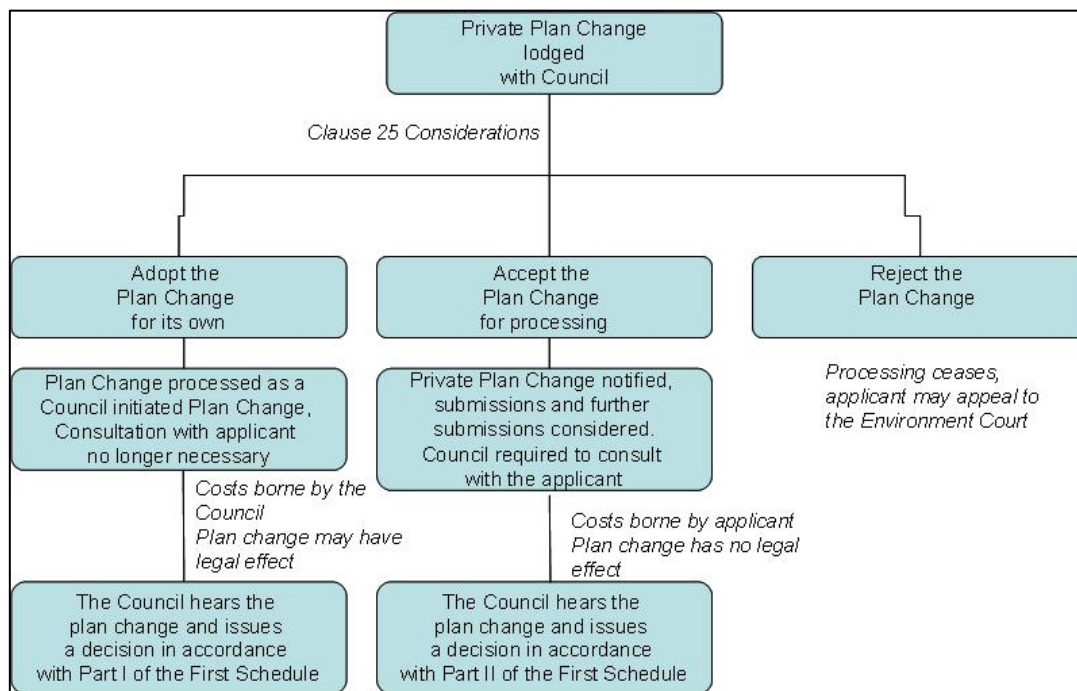
<sup>4</sup> Outlines the statutory requirements for processing resource consents

<sup>5</sup> Relates to Standards, Policy Standards and Plans established under the Act.

(e) provides for or relates to an aquaculture management area.

17. This section of the Act only requires consideration if the Committee resolves to accept the request, in whole or in part, and proceed to notify the request under Clause 25(2)(b).

**Diagram 1: Private Plan Change process**



### Statutory Context

18. As detailed above in paragraph 14 and Diagram 1, Clause 25 sets out the tests that are to be considered by the Council in respect of a private plan change. These are discussed further below:

#### 25(2)(a) Adopt the request

19. The Council may choose to adopt the request as if it were its own Council initiated plan change. The Council may notify and amend the plan change without consulting with the applicant. The Council would be responsible for the costs.
20. In light of the substance of the plan change, the rules would not have any legal effect.

#### 25(2)(b) Accept the request

21. The Council may choose to accept the request. The Council will manage the notification, summarise submissions and further submissions and prepare a recommendation in respect of the plan change. The Council is required to consult with the applicant throughout this process. The Council is able to submit on the plan change. The costs are borne by the applicant and the plan change has no legal effect until a decision is made by the Council.

#### 25(3) Deal with the request as a Resource Consent Application

22. In some instances a private plan change could be processed as a resource consent. Given the nature of this proposal it is not considered appropriate in this instance.

25(4) Reject the request

23. It is considered in this instance that there are no grounds to reject the application and the reasons are outlined as follows:

(i) **The request or part of the request is frivolous or vexatious**

The applicant has been in consultation with the Council over the lifetime of the proposal to date. The application is supported by technical analyses prepared by qualified specialists. The structure plan process is provided for by the District Plan.

(ii) **The substance of the request has been considered within the last 2 years**

No decision has been made in respect of the structure planning approach with respect to this specific geographic area.

(iii) **The request is not in accordance with sound resource management practice**

As stated above the application is supported by technical analyses prepared by qualified specialists. The structure planning process is provided for by the District Plan and is considered a sound resource management approach.

(iv) **The request would make the District Plan inconsistent with Part V of the Act**

Part V of the Act relates to the Standards, Policy Statements and Plans prepared under the Act, including the Regional Policy Statement and the District Plan. The PSP should be consistent with the cascade of planning documents. It is noted that the PSP does not seek to establish intensive or urban development beyond the Metropolitan Urban Limit (MUL).

(v) **In the case of a proposed change to a plan, where the plan has been operative for less than 2 years**

This is not applicable as the District Plan has been operative for more than two years.

24. In respect of paragraph 23(iv) the following policy analysis is considered relevant. The decision version of Policy 0.11 has been appealed and subsequently resolved. The consent order version signed by the Court on 23 March 2010, includes the following words:

*“Further intensive settlement in order to accommodate population growth should be avoided in the Waitakere Ranges including the foothills and should not occur within any other rural areas (apart from those growth area identified in policy 0.9) prior to 2021.”*

A143-A147

25. A full copy of the consent order is attached at pages A143 to A147.

26. Policy 0.9 which is appealed and remains unresolved is as follows:

*“Peripheral urban growth should be restricted to the following areas as depicted in Policy Map Z:*

- *Babich, Hobsonville Airbase, Hobsonville Centre Village, and Westgate/Massey North until 2011; and*
- *Penihana, and Hobsonville Corridor between 2011 and 2021.”*

27. Policy 0.9 and Policy Map Z does not identify Pakinui however the PSP does not seek to establish “urban” development.

28. The decision version of Regional Policy Statement Policy 2.6.17(3) as amended by Change 6 states as follows:

*“Countryside Living will only be provided where it is demonstrated that there is insufficient capacity available within the North/West and South sectors to cater for anticipated growth.”*

29. The Northern and Western Sector Agreement identifies Pakinui in Section 2.3 Rural Capacities as follows:

*“Key rural development areas are zoned Countryside Living and Foothills Environments in the Proposed District Plan. Policies for these rural areas aim at protecting and enhancing rural character and environmental values, especially water quality, significant landscape, native vegetation and natural habits. The minimum area for subdivision within these zones is 4ha.*

*Rural development is managed through the Structure Plan process. A more intensive pattern of rural development is provided for if it is in accordance with an approved rural structure plan.*

*The structure plan process identifies an appropriate pattern and scale of development, taking into account stormwater management requirements, geotechnical constraints, roading capacity, landscape value, cultural value and other relevant factors.*

*A programme of rural structure plan preparation is being implemented. Prior to the completion of these structure plans, estimates of rural development capacity is based on adoption of average development scenarios of between 1.5ha and 2ha in the major rural catchments of:*

- *Brighams/Waiarohia*
- *Opanuku*
- *Oratia*
- *Pakinui*
- *Paremuka*
- *Swanson*
- *Totara*

*Rural development will be monitored and reviewed as structure plan preparation progresses and as development occurs. Rural structure plans completed or under preparation by Waitakere City Council include Oratia, Waiarohia and Swanson.”*

30. Therefore whilst the PSP is not specifically identified in the District Plan or Regional Policy Statement, Pakinui is identified in the Sector Agreement which informs these planning documents. The method and nature of the PSP is consistent with that identified in the Sector Agreement.

A40-A120

31. The application outlines how the private plan change gives effect to these policies contained within the District Plan and Regional Policy Statement. The salient points of this assessment are outlined attached on pages A40 to A120.

## Assessment of Options

### Option 1 – adopt the request as a council plan change

32. The applicant has suggested that the Council adopt the plan change request as its own.
33. It is not recommended that the Council adopt the plan change for the following reasons:
- The primary beneficiary of the plan change is the applicant and, as such, it is appropriate that the applicant bear the costs of processing the plan change.
  - As a private plan change, it does not have effect until operative. Given that there are surrounding property owners and occupiers and interested parties who may be affected by the proposed plan change, it is preferable that they have the opportunity to comment before any weight is afforded to the plan change.
  - If the plan change were adopted, the Council would explicitly support the plan change by promoting it as a Council initiated plan change. The Council staff have reservations regarding aspects of the plan change.
  - The applicant may expect the Council to bear some or all of the costs and risks if it adopts the plan change.

### Option 2 - accept the request and proceed to notification

34. In the event Option 1 is not followed and the PSP is not adopted, this is by default the only option available because as noted below, Options 3 and 4 are not appropriate. For the reasons outlined below, the PSP cannot be processed as resource consent application, and there is sufficient information to accept this plan change request and proceed to notify it subject to receiving additional information on habitable units. Accepting the plan change does not prejudice the Council's decision making role or indicate support for the PSP.

### Option 3 – deal with the request as a resource consent application

35. Given the nature of the proposal in that it enables subdivision across 18 properties, the extended timeframe for implementation of development, and the information requirements of a resource consent application, this is not considered a suitable option.

### Option 4 – reject the request

36. There are no grounds to reject the plan change under sub clause (b) as this matter has not been the subject of a plan change within the last two years. There are no grounds to reject the plan change under sub clause (e) as the District Plan has been operative for more than two years. It should be noted that the issue of growth and rural capacity have been considered through Plan Change 16 to the District Plan which in particular inserted Objective 0, Managing City Growth and Policy 0.11 which seeks to manage peripheral urban growth. This did not however consider the PSP explicitly and the private plan change does not seek to establish additional urban development.
37. Clauses (a), (c) and (d), are intended to prevent a plan change request that is clearly contrary to the Act from being notified and thereby wasting time for the Council, affected or interested persons and the applicant. The plan change request is supported by an analysis from persons recognised in their field of expertise. While the content and intent of the PSP is open for dispute as part of the submissions process, the opinions held, which support the plan change, cannot be considered 'frivolous or vexatious' or 'not in accordance with sound resource management practice'. Nor would it 'make the District Plan inconsistent with Part V of the Act (standards, policy statements and plans)'. Matters related to (d) are discussed above in paragraphs 24 – 30.

38. It is also noted that based on the matters identified in clause 25(4)(a) to (e), it would not be appropriate to reject the plan change on the basis that the Council will cease to exist after 1 November 2010, as this option is not available to the Council. Regardless the private plan change will be determined by the new Auckland Council.

### **Consideration of Community Views**

39. The consultative process as set down out by the Act will ensure that the views of interested parties can be considered.

### **Preferred Option**

40. At this stage the preferred option for the PSP is that Council accept the private plan change for processing.

### **STRATEGIC CONTEXT**

41. The key community outcomes that need to be considered in relation to this proposal are Urban and Rural Villages, Sustainable Integrated Transport, and Green Network. To this end the proposed plan change should support a network of centres, is integrated with transport planning, and seeks to actively manage rural growth whilst protecting the green network.

### **CONSULTATION**

42. The applicant has outlined the consultation that it has undertaken in respect of the PSP. It is noted that this consultation occurred in 1999/2000 with various parties. It is acknowledged that an update may have been appropriate however the wider consultative process specified in the Act will ensure that the appropriate parties are given an opportunity to present their views to the Council.

### **RESOURCES**

43. In the event the Committee resolves to accept the request as a private plan change and proceeds to notification, the Council will recover all actual and reasonable processing costs from the applicant up until the time any appeal is lodged. This includes staff and consultant time and administrative costs relating to the notification and hearing process.
44. If the plan change is adopted as a council initiated plan change, the applicant may have expectations that all costs will be met by the Council. Currently there is no specific budget for this work.
45. If the matter proceeds to the Environment Court, the Council will need to bear its own costs associated with the appeal.

### **IMPLEMENTATION ISSUES**

46. There are no implementation issues associated with this report.

### **AUCKLAND COUNCIL TRANSITION ISSUES**

47. 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: Nick Pollard, Planner - Policy Implementation.



**PART D - PUBLIC EXCLUDED MATTER**

**8 OBJECTION TO DISQUALIFICATION AS A DOG OWNER BY NATALIE LYNNE REEVES, FORMERLY OF 1/5 GLENGARRY ROAD, GLEN EDEN**

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 Objection to Disqualification as a Dog Owner by Natalie Lynne Reeves, formerly of 1/5 Glengarry Road, Glen Eden.

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.
Objection to Disqualification as a Dog Owner by Natalie Lynne Reeves, formerly of 1/5 Glengarry Road, Glen Eden	The withholding of information is necessary in order to: <ul style="list-style-type: none"><li>• Protect the privacy of natural persons, including that of deceased natural persons.</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)(a) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *To protect the privacy of natural persons, including that of deceased natural persons.*

