



Waitakere City Council  
Te Taiao o Waitakere

## NOTICE OF MEETING

# TOWN CENTRES SUBCOMMITTEE

I hereby give notice that a Meeting of the Town Centres Subcommittee will be held on:-

**DATE:** Monday, 17 March 2008 **TIME:** 1.30 pm

**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.

11 March 2008

Emma Joyce  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8950

### MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairman)
	RP	Dallow, QPM, JP Deputy (Chairman)
	BA	Brady, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper, JP
	AK	Corban, OBE, JP
	MM	Jolley
	PG	Mitchell
	EAG	Grimmer, MNZM (Henderson Community Board)
	GPJ	Marshall (New Lynn Community Board)
	Cr P Walbran	Auckland Regional Council
	D Cosgrove	AMP Capital Investments Limited
	To be advised	Westfield Limited
	R Lindsay	ONTRACK
	To be advised	New Lynn Business Association
	E Johnstone	Henderson Business Network
Observer	P Clark	Auckland Regional Transport Authority

Mayor RA Harvey, QSO, JP (ex officio)

Deputy Mayor (ex officio)

(Quorum 5 members)

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(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 TOWN CENTRES SUBCOMMITTEE TO BE  
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,  
HENDERSON, WAITAKERE, ON MONDAY, 17 MARCH 2008  
COMMENCING AT 1.30 PM**

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**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFLICTS OF INTEREST**

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



#### 4 **APPEALS IN RELATION TO DISTRICT PLAN CHANGES 13-18**

##### **GLOSSARY**

Local Government (Auckland) Amendment Act 2004	(LGAAA)
Resource Management Act 1991	(RMA)
Auckland Regional Policy Statement	(ARPS)

##### **PURPOSE OF THE REPORT**

The purpose of this report is to update the Town Centres Subcommittee on appeals lodged in response to Council's decisions on Plan Changes 13-18, summarise the implications of the appeals, and outline the likely process and timeframe for resolving them.

##### **BACKGROUND**

Proposed Plan Changes 13-18 were publicly notified on 31 March 2005 as a mandatory requirement of the Local Government (Auckland) Amendment Act 2004 (LGAAA).

The LGAAA mandates that all councils in the Auckland region integrate their land transport and land use provisions and ensure these give effect to the growth concept contained within the Auckland Regional Growth Strategy.

The Auckland councils jointly constituted a hearings panel to hear submissions on the plan changes and to make recommendations to each council. After receiving the panel's recommendations, the Council adopted Plan Changes 13-18 with some amendments in July 2007. The Council's decisions were sent to all submitters at that time.

The Resource Management Act 1991 (RMA) provides for any party who lodged a submission on a plan change to appeal to the Environment Court if they are dissatisfied with the Council's decision.

##### **STRATEGIC CONTEXT**

Plan Changes 13-18 are of key strategic importance to the Council. Amongst other things, the Plan Changes seek to reinforce the strategic approach to growth management that the Council has adopted, integrate transportation and land use, redress the local employment deficit that prevails in Waitakere, and introduce improved methods for managing amenity issues arising from intensification.

##### **ISSUES**

###### **Appeals and Section 274 Parties**

*A1-A9* In total, the Environment Court has received 28 appeals against the Council's decisions on Plan Changes 13-18. A table indicating the appellants and the basis of their appeals is attached at pages A1 to A9.

*A1-A9* Section 274 of the RMA provides for persons to register an interest in appeal proceedings that are before the Environment Court. Where a person advises the Court of their interest in a particular appeal, they are then entitled to participate in any hearing that is convened to resolve the appeal. A number of parties have lodged section 274 notices in relation to the Plan Change 13-18 appeals, although they largely comprise the existing appellants. The identities of the section 274 parties, and the appeals that they are involved in, are also noted within the table attached at pages A1 to A9.

### **Likely Process for Resolution of Appeals**

In addition to the Plan Change 13-18 appeals, the Environment Court will also need to address appeals lodged in relation to Plan Changes 6 and 7 of the Auckland Regional Policy Statement (ARPS), and appeals against other plan changes promulgated by Auckland Councils under the LGAAA.

The Environment Court is proposing to deal with all these appeals as a package, given the interconnected nature of the issues that have been addressed through the various LGAAA plan changes.

From the Council's perspective, it is clearly desirable for the appeals to be disposed of in the shortest possible time and with a minimum of cost. However, there may be some obstacles to achieving this objective, given that the appeals are subject to a judicial process that is largely beyond the control of the Council.

There are some actions that the Council can take that may assist in the efficiency of the process.

Firstly, the Council can actively engage in discussions with the appellants and section 274 parties, either informally or through Environment Court mediation, in an attempt to resolve appeals without the need for a hearing. Staff have analysed the appeals to determine which of them may have potential for resolution between the parties, and have now commenced informal discussions in most instances with the major appellants. Staff will continue to pursue such opportunities where there is some realistic prospect of a negotiated settlement.

Secondly, the Council may benefit from the sequencing of hearings that the Environment Court adopts. It is considered that there are potential efficiencies to be gained from the Court hearing appeals relating to ARPS Changes 6 and 7 early in the process, and then issuing an interim decision on those appeals.

There is some logic in hearing and determining appeals in relation to the overarching regional objectives and policies first, in order to ensure regional consistency, and because the RMA requires that district plans must give effect to any regional policy statement. If the hearings were sequenced in this way, it would provide an early opportunity for the Court to issue an interim decision effectively confirming the Metropolitan Urban Limit shift. This would provide greater certainty for investors, the business community and others that the land in question will be urbanised.

Furthermore, an interim decision on 'big picture' issues may result in the withdrawal of district plan appeals that were unheard at that stage, if the relief that they are seeking was inconsistent with the interim decision.

For these reasons, Council's solicitors are intending to request that the Court hears the appeals relating to the ARPS or matters of regional significance first, and then issues an interim decision once those hearings have been completed. Preliminary discussions with the Environment Court have suggested that this approach may be acceptable to the Court.

### **Environment Court Hearing Timeframe**

The Environment Court has indicated that it will convene a judicial conference in May 2008 to hear from each party in relation to the manner in which they propose to pursue their appeals and the expert witnesses they intend to call to present evidence.

Once the Environment Court has heard from the various parties, it will either set appeals down for hearing or invite the parties to participate in mediation. If some of the appeals are to proceed to a hearing, a sequential evidence exchange timeframe would be established. The evidence exchange timing would mean that hearings would be unlikely to commence before the latter part of 2008 at the earliest. It is anticipated that an interim decision might be released early in 2009.

Subsequent hearings, dealing with the more detailed matters such as those covered in Plan Changes 13-18, would follow in 2009. Given the number of appeals, and the complexity of the issues they raise, it is considered that resolution of all the appeals through the statutory process is likely to take at least until the end of 2009.

### **Implications of the Appeals**

The appeals have the potential to significantly delay the commencement of development that would be facilitated by Plan Changes 13-18.

A review of the appeals indicates that there are few, if any, provisions of Plan Changes 13-18 that are not subject to challenge. On this basis, it appears that there are no significant aspects of the Plan Changes that are effectively operative.

The consequence of this widespread and direct challenge is that the Council is obliged to afford greater weight to the operative District Plan than to the provisions of Plan Changes 13-18 when assessing applications for resource consent. This situation will prevail until the appeals have been resolved.

Effectively the appeals are an obstacle to the timely commencement of development, particularly in those areas in the north of the City that are proposed to be urbanised. As noted previously in this report, it is possible that many of the appeals may still remain unresolved in two years time.

The length of this potential delay reinforces the benefits of proactive negotiation with appeal parties, with a view to achieving resolutions of appeals outside of the formal Environment Court process where possible.

### **Council's Section 274 Notices**

The Council has advised the Environment Court that it has an interest in a number of appeals lodged in relation to ARPS Changes 6 and 7, and in relation to plan changes promulgated under the LGAAA by the other Auckland territorial local authorities.

The Council's section 274 notices are intended to ensure that the Council has some input into resolution of various appeals, to ensure that its interests are not compromised in some way.

### **RESOURCES**

Resolution of the appeals will require allocation of staff time, together with funding for legal costs and costs for the engagement of expert witnesses.

Staff time is already allocated toward this project. Some provision for legal and expert witness costs exists within budgets, sufficient to cover costs in the current financial year, although it is likely that some further funding will need to be provided in Council budgets for upcoming years. This issue will be addressed through the 2008/2009 Annual Plan process.

## CONCLUSION

A number of appeals have been lodged with the Environment Court in relation to Council's decisions on Plan Changes 13-18.

Council staff are attempting to facilitate the resolution of the appeals in the most efficient and cost effective manner possible. However, it is likely that the appeals may delay many of the development opportunities that are facilitated by the Plan Changes, for a period of two years or more.

## RECOMMENDATION

That the Appeals In Relation To District Plan Changes 13-18 report be received.

Report prepared by: Philip Brown, Group Manager: Planning & Community Services.

