



# WAITAKERE CITY COUNCIL



AGENDA FOR AN ORDINARY MEETING OF THE ENVIRONMENTAL MANAGEMENT COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY, 7 OCTOBER 2003, COMMENCING AT 9.30 AM.

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**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) and (7A) of the Local Government Official Information Act 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 item is a minor matter; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Committee resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

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



**3 CONFIRMATION OF MINUTES**

Ordinary - Tuesday, 9 September 2003

**RECOMMENDATION**

That the minutes of the Ordinary Meeting of the Environmental Management Committee held on Tuesday, 9 September 2003, as circulated, be taken as read and now be confirmed.



## **PART I - REGULATORY / ENFORCEMENT**

### **4 LEGAL UPDATE (AS AT 25 SEPTEMBER 2003)**

#### **INTRODUCTION**

The following is a list of legal actions in respect of matters within the scope of the Committee, 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 and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. The dates referred to in the headings are the dates on which appeals, informations or proceedings were first filed in Court.

#### **ENVIRONMENT COURT**

##### **Birdwood Structure Plan Kitewaho Bush Reserve Company Ltd & Ors v Waitakere City Council**

This was an application by the Council to strike out Kitewaho, Mr Mawhinney and associated entities' reference on Variation 87 (Birdwood Structure Plan). The reference had sought that the Birdwood structure plan be extended to allow extensive subdivision rights throughout the entire non-urban parts of Waitakere City, including land holdings owned by Kitewaho et al in the Bethells/Waitakere area. The Court upheld Council's application and has struck out the entire reference by Kitewaho et al on the basis that it is an abuse of process. An application for costs against Kitewaho has been filed with the Court. In the meantime the companies have been placed in liquidation and the liquidators have indicated a willingness to negotiate a settlement of the costs claims and abandonment of all of the references by those companies. (This will have implications for the other proceedings initiated by Mr Mawhinney that are noted in this report.)

##### **Waitakere City Council v Auckland Regional Council (SH16/18) (14 March 2002)**

Appeal filed by Waitakere City Council against decision of Auckland Regional Council on earthworks, stormwater and related resource consents sought by Transit for SH16/18.

Several other parties have also filed appeals (namely Transit, John Boyle, Ockleston Family Trust). It now appears that the appeals aside from Waitakere City Council's appeal will soon be settled. Transit has now settled its appeal with Auckland Regional Council, by entering into a consent memorandum that confirms that the total amount to be spent by Transit on mitigatory measures for the entire SH16/18 project is \$768,000. Waitakere City Council is continuing with ongoing settlement negotiations with Transit. Waitakere City Council has recently agreed to resolve that part of its appeal that relates to the Greenhithe side of the motorway project. The basis upon which settlement has been reached is that Transit has agreed to consult with both Waitakere City Council and the North Shore City Council prior to the allocation of the mitigation package of \$768,000. This will ensure that Waitakere City Council has some input into the allocation of the funds. The remainder of Waitakere City Council's appeal remains live.

##### **Selak v Waitakere City Council (7 March 2002) Collett & Nye v Waitakere City Council (8 March 2002)**

Appeals filed by the applicant Messrs Selak and their neighbours, Messrs Collett and Nye. Both appeals relate to the operation of the Selaks' Go-kart track on their property at Kennedy's Road, Whenuapai. The Selaks have appealed a condition disallowing use of the track on Sundays and public holidays. The Colletts and Nyes have appealed Council's decision to allow the Go-Kart activity. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impacts of the Go-Kart track, which is to be considered by all parties and may result in settlement of these appeals.

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

This was an appeal by Abacus, Kitewaho and related entities (associated with Mr Mawhinney) against subdivision consent conditions imposed for a subdivision at Bethells/Waitakere. The appeal was to be heard in February 2003 but has been adjourned pending the outcome of the High Court appeal referred to below in this report. It is expected to proceed to a hearing in the last quarter of 2003.

**Peat v Waitakere City Council (10 April 2002)**

An appeal by Mr and Mrs Peat against Council decision to decline subdivision consent application seeking a non-complying 3 lot subdivision in 26 Awhiorangi Road. The subdivision would, if granted, 'jump the gun' by proceeding prior to resolution of both the Swanson Structure Plan references and the current global review by Council of structure planning, and Council's evidence in being prepared on this basis. Presently scheduled for a hearing in the week of 13 October 2003.

**Estate Homes Ltd v Waitakere City Council (31 August 2001) (Sturges Road)**

Estate Homes has appealed the financial reserves contribution assessed as payable for the second stage of its subdivision at 13-15 Sturges Rd. A cash bond of the amount of the contribution in dispute has been paid and on that basis Council has consented to an Order allowing the subdivision to proceed. The matter has been adjourned at the request of Estate Homes Ltd, with a further report date of 31 October 2003. Estate Homes Ltd has issued High Court proceedings relating to a contested reserves contribution assessment in respect of the first stage of its Sturges Rd subdivision.

**Estate Homes Ltd v Waitakere City Council (28 March 2002) (Ranui Station Road)**

An appeal against consent conditions imposed for a proposed subdivision at Ranui Station Road. The matter was argued in the Environment Court on 25-27 August 2003. The appeal in respect of the reserve fund contribution was abandoned leaving Council's contribution to the road as the only matter in dispute. The Court's decision was issued on 17 September, upholding the aspect of the appeal regarding road widening. All other contribution issues had been resolved by agreement.

**Spencer v Waitakere City Council - Lone Kauri Road, Karekare (29 August 2000)**

Appeal by Mr Spencer against Council's decision declining consent for subdivision of a property located at Lone Kauri Road, Karekare. Both the Waitakere Ranges Protection Society and several residents' groups are parties to the appeal. An on-site meeting between all parties took place and a proposal has been put forward, with negotiations continuing. Mediation took place on 29 March 2003, resulting in an agreement in principle being reached, with the details still to be finalised.

**Richmond Eden Ltd v Waitakere City Council (4 February 2003)**

**Waitakere Ranges Protection Society Incorporated v Waitakere City Council and Richmond Eden Ltd (3 February 2003)**

**Pradhir and Others v Waitakere City Council (February 2003)**

The above appeals relate to a decision granting resource consent to Richmond Eden Ltd for a 12-lot subdivision of a site at 39 Landing Road, Titirangi. The Waitakere Ranges Protection Society has opposed the decision; Pradhir and Others have opposed a condition that relates to parks and walkways; and Richmond Eden Ltd (the applicant) has appealed a number of the conditions. Mediation took place on 3 September 2003 and proposals were put forward for Council to consider further. A further mediation is scheduled for 7 October.

### **Poll v Waitakere City Council (January 2003)**

Vicki Poll has appealed Council's Commissioners' (Harry Bhana/Alan Watson) decision refusing an application for a land use consent to operate a café/restaurant and a wedding reception/private function centre from existing building and gardens at 164 Brigham Creek Road, Whenuapai, known as "Surreal Café". This decision was contrary to the reporting officer's recommendation. A number of surrounding residents have registered an interest in the appeal with the Environment Court as s271A parties.

Although Council and the appellant were willing to enter into mediation, the surrounding residents (s271A parties) did not wish to enter mediation and therefore the matter went to hearing. The Environment Court hearing took place over three days during the week of 18 August. Awaiting a decision.

### **Cornerstone Ltd v Waitakere City Council (February 2003)**

Cornerstone Ltd has appealed the Council's decision to refuse an application for land use consent to develop 6 office units at 120 South Titirangi Road, Titirangi. As of 29 April 2003 there were 21 parties who had filed s271A or s274 notices. Cornerstone has provided its initial evidence and Council has filed evidence in reply. Cornerstone yet to provide rebuttal evidence. A hearing was scheduled for late September 2003, but is likely to be adjourned.

### **8 Wallace Road Ltd v Waitakere City Council (November 2002)**

The company has appealed Council's costs and charges in respect of an application that was made for resource consent to develop 31 residential units on land situated at 8 Wallace Road, Ranui. The application was refused. The parties are currently in the process of preparing evidence. A meeting to explore settlement options is proposed for the week beginning 22 September 2003. It is anticipated that the hearing will take two days.

### **Waitakere Ranges Protection Society v Waitakere City Council R and L Thompson v Waitakere City Council**

These proceedings involve two references concerning subdivision, filed in relation to Variation 87 of the Proposed District Plan. Waitakere Ranges Protection Society are a party to the Thompson reference. This reference seeks site specific relief in respect of the Thompson's property. The Waitakere Ranges Protection Society reference is more a general reference appeal. The Juderon Family Trust are a (section 271A) party to that appeal. Mr and Mrs Vaughan are (section 274) parties to the appeal. Mr and Mrs Vaughan's interest was only discovered relatively recently.

A meeting took place on 5 September 2003 between all parties at which the prospect of resolution was discussed. The parties are still involved in discussions about those options and it is hoped that this will lead to resolution of the matter.

Kitewaho Bush Reserve Company Ltd have been joined to these proceedings by a previous Environment Court decision and therefore any resolutions reached between the other appellants may be subject to resolution of the Kitewaho reference.

### **Bay Olympic Sports & Soccer Association v Waitakere City Council (March 2003) Friends of Crum Park Incorporated v Waitakere City Council (March 2003)**

These are two appeals relating to Council's decision to partially grant consent to night-light fields at Crum Park, Green Bay subject to conditions. Bay Olympic has appealed the restrictions imposed by Council, and Friends of Crum Park have contested the lack of further restrictions.

Bay Olympic and Friends of Crum Park have been involved in ongoing Council-facilitated mediation in an attempt to reach agreement. This has continued for some weeks. The parties have been unable to reach agreement through this process and Council is now ascertaining whether it would be worthwhile proceeding to Court assisted mediation or seek hearing time.

#### **Prema Trust v Waitakere City Council & Auckland Regional Council (July 2003)**

An appeal against a joint Waitakere City Council/Auckland Regional Council decision refusing consent for an alternative healing centre at 36 Grassmere Rd. Waitakere City Council and Auckland Regional Council have filed their respective replies to the appeals with the Environment Court, and 14 parties have filed s274 notices. A call over of the appeal will occur in due course.

#### **HIGH COURT**

#### **Waitakere City Council v Kitewaho Bush Reserve Company Ltd & Ors (Appeal filed 22 January 2002)**

#### **Kitewaho Bush Reserve Company Ltd & Ors v Waitakere City Council (February 2002)**

These proceedings involve applications by Kitewaho and associated companies for declarations and enforcement orders relating to 8 different subdivision applications and related applications for certificates of compliance. On 18 October 2001 Judge Treadwell released an interim decision rejecting Kitewaho et al's declaration and enforcement applications, and essentially finding in Council's favour.

In December 2001 the Court released its final decision. In that decision the Court found that the proceedings issued by Kitewaho and related companies were an abuse of process and largely misconceived. Costs were reserved. In other words, Council was successful in its defence of all aspects of these proceedings (other than certain findings by the Court in relation to s91 and s92 Resource Management Act).

At a meeting on 19 December 2001, Council resolved that an appeal should be lodged to the High Court to clarify the Court's decision in relation to matters of interpretation of the Resource Management Act. That appeal was filed on 22 January 2002 and was served on the other parties involved (ie. Kitewaho and related entities and the Auckland Regional Council). Kitewaho and related entities served its own (voluminous) appeal on Council.

Separate to the above High Court appeals, both Waitakere City Council and the Auckland Regional Council have applied to the Environment Court for substantial costs against Kitewaho and related entities. The Court has deferred any decision on the costs application pending the outcome of the above High Court appeals.

There have been a number of preliminary steps required in these proceedings to address the voluminousness and imprecision of Kitewaho's points on appeal. This has resulted in a number of re-pleadings.

This matter is to be heard in the week beginning 17 November 2003. It has been set down for a 4-day hearing. The parties are currently in the process of exchanging submissions and preparing a casebook.

### **Bible College (New Zealand) Inc & Ors v Waitakere City Council (17 July 2003)**

Bible College (New Zealand) Inc filed a notice of proceedings for an application for judicial review of Council's decision granting consent (non-notified) for development of a Pak N Save, Mitre 10, etc on the Lincoln Park site. The evidence exchange timetable has been set down (Council 23 September 2003). Discussions continue.

### **ENFORCEMENT ORDERS**

#### **Waitakere City Council v Borrett - Sunnyvale Road, Massey**

Application for Enforcement Orders in relation to an alleged illegal landfill site in Sunnyvale Road. A search warrant and an Order to inspect the property were obtained from the Court in September 2001 and Council officers have since inspected the property. As a result of that inspection, amendments to the Enforcement Orders being sought were made. Mediation was held on 1 May 2003 before an Environment Commissioner with a further on-site mediation held in late May and 29 July 2003, respectively. Settlement was ultimately not reached and a fixture is allocated in the week of 13 October 2003.

### **PROSECUTIONS**

#### **Barry Cargill - 58A Rauhuia Crescent, Huia (17 May 2001)**

Charges were laid against Mr Cargill in relation to the clearance of bush in the Coastal Natural Area. Mr Cargill pleaded guilty to these charges.

At the initial sentencing Mr Cargill proposed a substantial remediation package in lieu of a fine. This involved the gifting of 2.23ha (of his 6.191 ha property) of his land to the Auckland Regional Council for park land; the covenanting of a further 1.3ha of bush to protect and maintain this area and a replanting and maintenance plan in respect of the areas cleared.

His Honour Judge McElrea accepted this package in principle and adjourned sentencing to allow the required subdivision process to take place.

On 10 September 2003 His Honour finalised sentencing although the last few administrative steps have yet to be completed. On the basis of the remediation package His Honour sentenced Mr Cargill to come before the Court if called upon. This allows the Council to ensure the final steps are taken in the implementation of the remediation package. The Court has also provided for an enforcement order to be completed to confirm this compliance and the ongoing maintenance of the replanting. The Court also ordered Mr Cargill to pay \$9,265.00 in costs to the Council.

#### **Graham Gordon - 202 Shaw Road, Titirangi (16 November 2001)**

A number of informations were served on Mr Gordon in relation to Resource Management Act breaches for allowing car bodies to be stored on his property and allowing multiple household units to be established. Council alleges that these activities are contrary to the District Plan and to Enforcement Orders made against Mr Gordon by the Court in 1993.

Mr Gordon has entered not guilty pleas to all charges and elected trial by jury. He has been committed to trial after conceding that there is a case to answer. The Court has indicated that the matter will be heard in November 2003. It is anticipated that it will require a 3-day hearing.

**Susan and Andrew Borrett - 49 Sunnyvale Road, Red Hills (3 June 2002)**

Informations were laid for Resource Management Act offences for unauthorised vegetation clearance, earthworks and breaches of interim enforcement orders. The Borretts entered a plea of not guilty and requested trial by jury. The trial took place during the week commencing 8 September 2003. Mr Borrett was found guilty on 5 out of 6 charges and Mrs Borrett 4 out of 7 charges. Sentencing is set down for 16 October 2003.

**Lorenzen - 91 Kaurilands Road, Titirangi (November 2002)**

Informations have been laid against Mr Lorenzen in relation to the clearance of bush in the Riparian Margin and General Natural Area. The matter was set down for a first call on 29 November 2002 but adjourned to enable Mr Lorenzen to seek legal advice, with a further date of 28 March 2003. Mr Lorenzen has entered a plea of not guilty and requested trial by jury. Depositions occurred on 14 May 2003 with the defendant agreeing that there was a case to answer. A pre-trial application by the applicant to dismiss the charges was heard by the Court on 10 September 2003. The Court dismissed this and the parties are now awaiting allocation of a trial date.

**Ivan and Alona Covich - 40 Sunnyvale Road, Massey (May 2003)**

Informations have been laid against Mr and Mrs Covich. Council alleges that the Covich's are operating a landfill without a resource consent and therefore are acting in contravention of the District Plan and the Resource Management Act. The matter was called on 30 June 2003, the Covich's entered a not guilty plea and elected trial by jury. The matter had a pre-depositions callover date of 20 August 2003. A depositions date has been confirmed on 17 November 2003.

**Meng Teck Yeo, Kee Bong Yeong & MTY Properties Ltd – six properties at various locations (May 2003)**

Numerous informations were laid against the defendants for Resource Management Act and Building Act offences in relation to six properties that were rented to tenants. Each of the properties is alleged to be insanitary and in breach of the District Plan requirements relating to the number of occupants allowed in dwelling units. Disclosure has taken place. The matter was adjourned from 29 August for the purpose of further discovery and is due to be called on 26 September 2003.

**COURT OF APPEAL - APPEALS FROM PROSECUTIONS**

**Aik Law & Kim Lai - 34 Rathgar Road, Henderson (21 August 2001)**

These defendants rented an insanitary building, previously a garage, to a family of 6 for a period of 4 years and 3 months. On 25 May 2001, they were convicted in the Waitakere District Court pursuant to CRN Nos.0090028151 and 52 and sentenced to total fines of \$40,500. The defendants subsequently appealed the conviction and sentence and were granted leave by the High Court to produce a significant amount of new evidence during the course of the appeal. Council also produced evidence in response to this at the hearing, which took place in the Auckland High Court from 24 to 26 July 2002.

Following the High Court's (Harrison J) refusal to grant leave to appeal to Law and Lai, an application was made to the Court of Appeal for further leave to appeal against the order for costs. The Court of Appeal granted special leave to Law & Lai to appeal to the Court of Appeal against the convictions, sentences and the order for costs made by the High Court. The matter is schedule for a one-day hearing on 18 November 2003.

### **RECOMMENDATION**

That the information be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



## **5 INTERNET CAFES - APPLICATIONS FOR EXTENDED HOURS OF OPERATION**

### **PURPOSE OF THE REPORT**

To present applications from Internet Cafe operators, seeking determination by Council, for consent to operate outside the hours of operation restrictions contained in Waitakere City Council Bylaw No. 20 1990 - Amusement Galleries.

### **BACKGROUND**

Following a request from the Henderson Community Board meeting of Wednesday, 3 April 2003, a report was presented to the Tuesday, 8 July 2003 meeting of the Environmental Management Committee on regulations applicable to Internet Cafes.

This report concluded that personal computers provided in Internet Cafes are used for electronic games of skill and amusement such that Internet Cafes will fall within the scope and controls of Waitakere City Council Bylaw No. 20 1990.

Consequently on that basis, Field Services staff initiated a process of directing the existing Internet Cafes within the City, to meet the requirements of the Bylaw.

### **STRATEGIC CONTEXT**

There is a huge positive potential connected with public access to the Internet. These positives include things such as; providing a versatile communication medium, providing ready access to unlimited information; facilitating e-government, e-commerce and e-learning; etc. The positives associated with the Internet plays a key part in Councils vision for the future of the City.

Internet Cafes have a major role in providing easy and economical public access to the Internet.

However, these positives must be balanced against negative issues, which can be associated with some Internet Cafes, while at the same time, ensuring that public access to the Internet is facilitated.

### **ISSUES**

The major problems associated with some Internet Cafes primarily relate to issues highlighted by the Police. These issues fall under the general category of minor criminal offending, disorderly behaviour, alcohol, drug use, gangs and underage youth frequenting the premises at all hours of the day and night.

Bylaw No. 20 has no power to control or resolve the underlying socio-economic causes of these problems.

Clause 14 to Bylaw No. 20 requires that an amusement gallery may only be open between 7.30 am and 11.00 pm Monday to Saturday inclusive, and that the premises must be closed outside these hours including the whole of Christmas Day, Good Friday and every Sunday.

By restricting the hours of operation of Internet Cafes, Bylaw No. 20 indirectly controls the hours and location where these problems will manifest. If there were no Internet Cafes, these problems would more than likely still exist. The difference being that they would exist somewhere else.

Further controls stipulated in the Bylaw include a prohibition on intoxicated persons or persons under the influence of drugs from entering or remaining on the premises, and a ban on patrons under the age of 15 years remaining on the premises during normal school hours.

In the process of communicating the issues and requirements of Bylaw No. 20 to the existing Internet Cafe operators, their landlords and the Police, the primary focus revolved around the restrictions placed on the hours of operation. The restriction of hours was viewed either as a solution to the minor criminal offending and other problem issues associated with Internet Cafes, or as a threat to the viability of the business.

Bylaw No. 20 allows for application to Council for consent to remain open outside the restricted hours of the Bylaw. Any such consent may be given subject to such conditions as Council may impose and may be revoked by Council at any time.

The Environmental Management Committee is the appropriate body to receive, consider make a determination on any such applications.

The majority Internet Cafe operators within the City have made application for such a dispensation, and seek consent for a 24 hour 7 day a week operation or simply consent to operate on a Sunday.

The Police have issues with consenting to a 24-hour operation to certain premises, due to Policing concerns evident in or arising from those specific premises.

### **Code of Practice for Internet Cafe Operators**

The negative issues associated with Internet Cafes appear to correlate with a lack of good management of the premises.

There are very good examples of well run and well managed Internet Cafes within the City, in which no problems are known to arise.

Bylaw No. 20 does not dictate that good management practices must be put in place in Internet Cafes, nor does it outline what these practices are nor how they could be achieved.

In discussion with the Waitakere Echotech Working party on this issue, the best way to satisfactorily address issues associated with Internet Cafes was seen to be via a code of practice drafted in consultation with the operators, as to how a well run and responsible Internet Cafe needs to be managed and operated.

Such a code of practice would also likely address associated matters such as; access by minors to restricted web sites, restrictions on violent and offensive games accessible by minors, gambling, and the huge issues surrounding addiction.

The code of practice could be provided with a legislative backbone, through making it a condition of the amusement gallery licence issued to an Internet Cafe, that the Internet Cafe adopt and put into practice, the code.

### Operating on a Sunday

The prohibition on Sunday trading contained in Bylaw No. 20 probably reflected the trading restrictions contained in the Shop Trading Hours Act 1977, which has since been repealed.

Such a restriction no longer makes sense, as any effects that may arise from trading on a Sunday, would not be predicted to be significantly different from any effects that may arise from trading Monday to Saturday.

Consequently, it is difficult to justify a prohibition on Sunday opening.

It is recommended that a blanket dispensation be provided to all Internet Cafes allowing them to open on a Sunday on the same terms as the opening hours for Monday to Saturday (ie. 7.30 am to 11.00 pm).

### The Applications for Dispensation

All Internet Cafes within the City, received on-site visits by Field Services staff which was followed up in writing with advice to make written application to Council, if they wished to operate outside the hours stipulated in Bylaw No. 20. They were requested to clearly outline in any such application:

- (a) The opening hours they seek, and;
- (b) The reasons they require the extended hours, and;
- (c) The predicted effects the extend hours may have on the surrounding neighbourhood, and;
- (d) Any measures they intend to put in place that are designed to control the predicted effects in (c) above, and;
- (e) Any other matters relevant to their application.

A1-A46

Consequently, Council received 8 applications for dispensation. These applications are attached at pages A1 to A46 and outlined in table form below:

Trading Name	Address	Applicant	Dispensation
W.net Cafe	1/326 Great North Road Henderson	Jianyi Wei	24-hour 7-day a week operation
Web City	342 Great North Road Henderson	Young Ho Choi	Sunday trading 9.00 am to 10.00 pm
Warp 9	Shop 307A Lynmall	Mark Kelly	24-hour 7-day a week operation
Cybernet	617 Te Atatu Road Te Atatu Peninsula	Adel Alfadli	Sunday trading 8.00 am to 10.00 pm
Red Star	3134 Great North Road New Lynn	Jing Huan & Yi Lui	24-hour 7-day a week operation
X-net Cafe	26B Delta Avenue New Lynn	Bruce Wang Eastfield Trading Limited	24-hour 7-day a week operation

Trading Name	Address	Applicant	Dispensation
Tang Dynasty	1/7 Rata Street New Lynn	Xiang Li Tang James Sansom	24-hour 7-day a week operation
Zenith Internet Bar	Shop W523 Lynmall		24-hour 7-day a week operation

A47-A48

The applications were sent to the Police for comment. The subsequent report from the Police on these applications is attached at pages A47 to A48.

### APPLICATION ASSESSMENTS

#### 1. **W.net Cafe, 1/326 Great North Road, Henderson**

An inspection of the premises by Field Services, revealed there to be 20 computers on the premises, and that the main activity of these computers appeared to be the playing of computer games.

This inspection revealed issues relating to cleaning, hygiene and sanitary facilities requirements. The Police advise that they have always found these premises to be in a filthy condition. The Police also report that they regularly remove truants from these premises and regularly locate criminal elements, including youth gang members, inside and loitering around the premises.

The Police note a high level of disorder and arrests around this location. In the opinion of the Police, the staff at these premises do not provide any supervision to customers and they believe the staff are intimidated and do not enforce any rules. The Police generally would not support these premises trading outside the opening hours of the Bylaw, except for an allowance for trading on a Sunday.

The applicant Mr Jianyi Wei asserts that he requires consent for opening on Sundays to better accommodate students who study during the day Monday to Friday, and that a 24-hour operation is required to enable customers to "cyber-chat" with friends and relatives when it is a convenient time for their friends or relatives, which due to different time zones usually is after midnight New Zealand time.

Mr Wei does not provide a satisfactory commentary in his application on any issues raised by the Police, nor on the effects his business may cause to the surrounding neighbourhood or what measures he would put in place to control any effects.

#### **Recommendation**

W.net Cafe is identified as an extremely badly operated premise that provides a focus for the problems noted in the Police report. Consequently, dispensation for 24-hour operation is not recommended. However, dispensation to open on a Sunday is recommended.

#### 2. **Web City, 342 Great North Road, Henderson**

An inspection of the premises by Field Services revealed there to be 22 computers on the premises, with about half of these computers occupied in the playing of computer games.

This inspection revealed no cleaning, hygiene or other issues. This premise is licensed by Council as a food premise and is therefore subject to regular food hygiene inspection.

The Police report notes no truancy or disorder issues with these premises, although they have dealt with cannabis smoking, drinking and general disorder problems in the area surrounding the premises. The Police generally would not support these premises trading outside the opening hours of the Bylaw, except for an allowance for trading on a Sunday.

The applicant Mr Young-Ho Choi seeks dispensation for opening on Sundays from 9.00 am to 10.00 pm. He does not seek any other dispensation.

Recommendation

It is recommended that the dispensation sought in this application be approved.

**3. Warp 9, Shop 307A Lynmall Shopping Centre**

An inspection of the premises by Field Services has revealed these premises to be a well-run establishment with no issues for concern noted. The Police report raises no issues.

The applicant Mr Mark Kelly has presented a comprehensive application that satisfactorily addresses all areas of concern.

A significant difference between the Warp 9 situation and other Internet Cafes is that the immediate environment surrounding the Warp 9 premises is totally encompassed by a private shopping centre complex and its car park. A 24-hour supermarket is adjacent to the premises and the area is subject to 24-hour security provided by the shopping complex.

Recommendation

It is recommended that the dispensation sought in this application be approved.

**4. Cybernet, 617 Te Atatu Road, Te Atatu Peninsula**

These premises are yet to open for business. An inspection by Field Services has revealed that the premise complies with all physical requirements.

The Police provide no comment on this application.

The applicant Adel Al Fadli seeks dispensation to operate on a Sunday 8.00 am to 10.00 pm.

Recommendation

It is recommended that the dispensation sought in this application be approved.

**5. Red Star, 3134 Great North Road, New Lynn**

An inspection of these premises by Field Services revealed a clean and tidy well run establishment containing 16 personal computers.

The Police report does not identify any serious problems, except an issue with truants.

The applicants, Jing Huan and Yi Liu, require dispensation to run a 24-hour 7-day operation to ensure the financial viability of their business. Additionally, their customers require late night access to the Internet to allow them to chat with family in different time zones and some customers would like the ability to play games overnight.

Recommendation

It is recommended that the dispensation sought in this application be approved.

**6. X-net Cafe, 26B Delta Ave, New Lynn**

An inspection of these premises by Field Services revealed the premise to contain 34 personal computers. A lack of cleaning and hygiene to the toilets was noted as a particular concern.

The Police report highlights these premises as a badly run establishment, being frequented by youth gangs and is associated with disorder and truancy.

Concerns have been raised, by the New Lynn Village Business Association, relating to the anti-social activities that take place around these premises. They do not see any justification to consent to a dispensation for the premises to operate 24-hours 7-days a week.

The applicant, Mr Bruce Wang, advises that they require dispensation to open 24-hours a day 7-days a week to ensure the financial viability of the business, and asserts that the premises does not have any negative effect on the surrounding neighbourhood.

Recommendation

It is recommended that the application for 24-hour operation be declined and that dispensation for Sunday trading be approved.

**7. Tang Dynasty, 1-7 Rata Street, New Lynn**

An inspection of these premises by Field Services raised cleaning, hygiene and toilet accommodation issues and revealed the premise to contain 30 personal computers.

The Police report highlights these premises as a badly run establishment, being associated with truants, disorder, drugs, and alcohol.

Neighbouring tenants in the building and the landlord of the building have raised their concerns with Council over the problems caused by this operation.

The Applicants, Xiang Li Tan and James Sanson, advise that dispensation for 24-hour operation 7-days a week is essential for the survival of the business. They propose to solve any problems associated with operating 24-hours, by implementing a members only club.

Tang Dynasty is identified as an extremely badly operated premise that provides a focus for the problems noted in the Police report on these premises. The history of the premise does not provide any confidence that the club member's only solution they propose, will succeed in eliminating the problems associated with the operation.

Recommendation

Consequently, dispensation for 24-hour operation is not recommended. However, dispensation to open on a Sunday is recommended.

**8. Zenith Internet Bar, Shop W523, Lynmall**

An inspection of the premises by Field Services has revealed these premises to be a well-run establishment. An issue relating to the adequate provision of toilet accommodation is being progressed by the operator. The Police report raises no significant issues.

The premise is in a similar in many respects to Warp 9, except that its location is opposite the New Lynn Bus Depot.

Recommendation

It is recommended that the dispensation sought in this application be approved.

**RESOURCES**

No extra resources are required in relation to this issue. Cyber Cafes would fall within the scope of the current licensing and inspection programmes conducted by Field Services.

**CONCLUSION**

Properly managed Internet Cafes can provide a positive benefit to the community and play a major role in Council's strategic vision. However, badly managed Internet cafes can also provide a focus for antisocial behaviour and criminal offending.

Council's Bylaw 20, provides a degree control over Internet Cafes, by restricting the hours during which they may remain open.

Internet Cafes identified as particularly bad operators by the Police, should remain under the restricted of open hours in the Bylaw, as a means of limiting the hours during which problems associated with their operation may arise. However dispensation for Sunday opening should be permitted.

The proper management of issues associated with Internet Cafes, is best achieved through self-regulation by the operators themselves. The best means to achieve this is through the development of a code of practice for Internet Cafe operation, in consultation with all interested parties. This code of practice would then become a condition of the annual licence issued under Bylaw 20.

All Internet Cafes not identified as particularly bad operators by the Police, should be conferred with a dispensation to open 24-hours 7-days a week, subject to the development of an Internet Cafe operators code of practice, to be developed over the next nine months.

**RECOMMENDATIONS**

1. That the information be received.
2. That dispensation from compliance to Clause 14 of Waitakere City Council Bylaw No. 20 1990 Amusement Galleries, be conferred to Internet Cafes providing them consent to open on a Sunday between the hours of 7.30 am and 11.00 pm, excluding any days during which they are required to be closed by statute.
3. That a code of practice for the proper and satisfactory operation and management of Internet Cafes be developed by Council, in consultation with Internet Cafe operators, the Police and any other interested parties.

4. That the applications for dispensation from compliance to Clause 14 of Waitakere City Council Bylaw No. 20 1990 Amusement Galleries, lodged by the following applicants be approved, conferring to them consent to open 24-hours a day 7-Days a week, excluding any days during which the premises are required to be closed by statute, and subject to the condition that a code of practice for the proper and satisfactory operation and management of Internet Cafes be developed prior to the renewal of the Amusement Gallery licence:

Mark Kelly, Warp 9, Shop 307A Lynmall Shopping Centre, New Lynn  
Jiang Huan and Yi Lui, Red Star, 3134 Great North Road, New Lynn  
Zenith Internet Bar, Shop W523 Lynmall Shopping Centre, New Lynn

5. That the applications for dispensation from compliance to Clause 14 of Waitakere City Council Bylaw No.20 1990 Amusement Galleries, lodged by the following applicants be declined:

Jianyi Wei, W.net Cafe, 1/326 Great North Road, Henderson  
Bruce Wang, X-net Cafe, 26B Delta Ave, New Lynn  
Ziang Li Tang and James Sansom, Tang Dynasty, 1/7 Rata Street, New Lynn

6. That subject to recommendation 3, that it be a condition of any approval for dispensation from compliance to Clause 14 of Waitakere City Council Bylaw No. 20 1990 Amusement Galleries, by Internet Cafes, that they adopt the code of practice for the proper and satisfactory operation and management of Internet Cafes developed by Council, in consultation with Internet Cafe operators, the Police and any other interested parties.

Report prepared by: Alan Ahmu, Team Manager: Environmental Compliance.



## **6 APPLICATION FOR DISPENSATION FROM REQUIREMENT OF BYLAW RELATING TO MOBILE TRADERS**

### **PURPOSE OF THE REPORT**

To present an application from Bean 'n' Gone Limited for dispensation from Clause 417.2 to Council's Bylaw No. 4 Chapter 4:1972 - Mobile or Travelling Shops, and Hawkers and Itinerant Traders.

### **BACKGROUND**

Clause 417.2 prohibits hawkers, peddlers, stalls, mobile shops and travelling shops from trading on streets and public places stipulated in the Fourth Schedule to the Bylaw.

Hobsonville Road is noted in the Fourth Schedule to the Bylaw.

Bean 'n' Gone Limited proposes to establish a coffee cart in the car park situated at 120 Hobsonville Road.

A49-A66

Consequently Bean 'n' Gone Limited has made application to Council seeking dispensation from the requirement of clause 417.2. The application is attached at pages A49 to A66.

The proposal to establish a coffee cart at this site is also the subject of a non-notified resource consent application, being a non-complying activity in the Countryside Environment.

## **ISSUES**

The purpose of clause 417.2 is not directly stated in the Bylaw. However the prevention of potential traffic hazards associated with hawkers, stalls and mobile shops, etc., operating on main arterial roads appears to be the primary purpose (eg. preventing traffic hazards associated with cars pulling out of or into the traffic stream as a result of motorists stopping to visit the stall or mobile shop, etc).

Clause 111.1 of Chapter 1 (Introduction) to Bylaw No. 4 provides that where in the opinion of the local authority full compliance with any of the provisions of the bylaw, would needlessly or injuriously affect any person, or the course or operation of the business of, or be attended with loss or inconvenience to, any person without corresponding benefit to the community, the local authority may, on special application of that person dispense with the full compliance with the provisions of this bylaw.

The assessment of environmental effects provided with the resource consent application for this activity does not predict any adverse environmental effects (i.e. no adverse visual and lighting effects, no adverse traffic effects, no adverse noise effects, no adverse amenity effects and no adverse social and economic effects).

Both Transit New Zealand and Council's Transport Assets Section do not object to this proposal and all adjacent businesses support the proposal.

The proposed coffee cart will be required to comply with relevant provisions of the Food Hygiene Regulations 1974 and be subject to annual licensing and inspection by Council's Environmental Compliance Team.

## **RESOURCES**

No extra resources are required in relation to this issue. The coffee cart would fall within the scope of the current licensing and inspection programmes.

## **CONCLUSION**

This application is subject to a non-notified resource consent that will evaluate all resource management/environmental issues associated with the proposed coffee cart at this location, and at the same time will address issues that might be raised in relation to an exemption from the Bylaw.

Should the consent application be granted, it can be concluded that the consent application process has successfully addressed the associated Bylaw exemption issues.

Consequently, an exemption from compliance to clause 417.2 should be granted on the condition that resource consent for this activity is granted.

### **RECOMMENDATIONS**

1. That the information be received.
2. That an exemption from compliance to Clause 417.2 Bylaw No. 4 Chapter 4: 1972 - Mobile or Travelling Shops, and Hawkers and Itinerant Traders, be granted to Bean n Gone Limited, to allow the establishment of a mobile shop coffee cart at 120 Hobsonville Road, in accordance with the application dated 14 August 2003 and on the condition that this undertaking gains the necessary resource consent and complies with all other requirements of the Bylaw.
3. That the exemption be renewable annually subject to the satisfactory operation of the undertaking.

Report prepared by: Alan Ahmu, Team Manager: Environmental Compliance.



## **7 UNITEC BILLIARD - APPLICATION FOR EXTENDED HOURS OF OPERATION**

### **PURPOSE OF THE REPORT**

To present to the Environmental Management Committee an application from UNITEC Billiard for dispensation from Clause 4 to Council's Bylaw No.20 1990 - Amusement Galleries.

### **BACKGROUND**

Unitec Billiard is situated at 17 Railside Avenue, Henderson. The premise contains 18 billiard tables and 10 video arcade games. It is licensed and inspected by Council as an amusement gallery, pursuant to Bylaw No. 20.

Clause 14 to Bylaw 20 requires that an amusement gallery may only be open between 7.30am and 11.00pm Monday to Saturday inclusive, and that the premises must be closed outside these hours including the whole of Christmas Day, Good Friday and every Sunday.

A67-A71

Consequently, Unitec Billiard has made application to Council for dispensation from Clause 14 to allow them to open until 3.00am Monday to Sunday. A copy of this application is attached at pages A67 to A71.

Council is considering similar applications for extended hours from Internet cafes.

### **STRATEGIC CONTEXT**

Council's strategic vision sees our town centres providing safe choices for public entertainment and recreation.

Amusement galleries such as billiard halls can be seen as providing the public a safe alcohol free entertainment venue.

### **ISSUES**

The application by UNITEC Billiard is treated separately from Internet Cafes.

## ASSESSMENT OF APPLICATION

The applicant, Mr Dae Kwang Jeong, asserts that they require extended opening hours, as it is not possible to run a billiards business within the hours prescribed by the bylaw.

Mr Jeong notes that several billiard halls in the Auckland City Council area open till 3.00am.

There are two other "pool halls" within Waitakere City: the Lucky Break Snooker Lounge in Glen Eden and Shooters Snooker and Pool in New Lynn. Both these establishments fall outside the scope of Bylaw 20, as they both hold Liquor Licences. The Lucky Break Snooker Lounge opens 7 days a week from 11.00 am to 1.00 am the following day. Shooters Snooker and Pool opens from 10.00 am to 12 midnight Sunday to Thursday and 10.00 am to 2.00 am Friday to Saturday.

UNITEC Billiard does not hold a liquor licence.

The Henderson Police have no issues or concerns to date, with UNITEC Billiards. No complaints have been lodged with Council concerning the operation of these premises.

Field Services staff in dealing with the applicant, has found the premises to be well set up with co-operative and responsible staff.

UNITEC Billiards has been open to customers from June 2003.

The prohibition on Sunday trading contained in Bylaw 20 probably reflected the trading restrictions contained in the Shop Trading Hours Act 1977, which have since been repealed.

Such a restriction no longer makes sense, as any effects that may arise from trading on a Sunday, would not be predicted to be significantly different from any effects that may arise from trading Monday to Saturday. Consequently, it is difficult to justify a prohibition on Sunday opening.

Similarly, it is difficult to justify a restriction of hours, when identical operations within the City, albeit with liquor licences, operate outside those hours. In this sense, not having a liquor licence might be viewed as a punishment, when in another sense, not having a liquor licence in a "pool" hall might be viewed as highly positive.

Any consent giving dispensation from clause 14 to Bylaw 20 may be subject to any conditions imposed by Council and may be revoked at any time.

## CONCLUSION

Unitec Billiards has been established for just over three months without raising concerns with the Police or Council.

Liquor licensed "pool" halls within the City operate outside the restricted hours of Bylaw 20.

Consequently, there is no current reason not to allow Unitec Billiards a dispensation to open outside the hours of Bylaw 20.

### **RECOMMENDATIONS**

1. That the information be received.
2. That the application for dispensation from compliance to Clause 14 of Waitakere City Council Bylaw No.20 1990 Amusement Galleries, lodged by Unitec Billiard situated at 17 Railside Ave Henderson be approved, conferring to them consent to open from 12.00pm to 3.00am the following day, Monday to Sunday, excluding any days during which the premises are required to be closed by statute.
3. That the exemption shall be subject to the following conditions:
  - a) The exemption may be revoked at any time should the operation of the premises prove unsatisfactory.
  - b) The exemption shall be renewed annually subject to the satisfactory operation of the premises.

Report prepared by: Alan Ahmu, Team Manager Environmental Compliance.



## **8 SUBMISSION ON THE BUILDING BILL**

### **PURPOSE OF THE REPORT**

To ask for authority to be given to the Chair of the Environmental Management Committee to sign a submission on the Building Bill currently before the Government Administration Select Committee.

### **BACKGROUND**

The Building Bill provides for the repeal of the Building Act 1991 in its entirety. While recent weather tightness issues were the catalyst for the development of the Bill, it also addresses a variety of other issues including

- sustainable development;
- water and energy efficiency;
- lifecycle costs; and
- renewable energy.

The Bill was introduced into parliament on Friday, 29 August 2003, had its first reading on Friday, 5 September 2003 and is currently before the Government Administration Select Committee. The Select Committee will report back to the House in March 2004.

A copy of the Bill is available in the Councillor's lounge or from [http://www.med.govt.nz/buslt/bus\\_pol/building/review/bill/](http://www.med.govt.nz/buslt/bus_pol/building/review/bill/). The most relevant sections have been marked in the hardcopy available in the Councillor's lounge.

### **STRATEGIC CONTEXT**

Sustainable development is at the core of Council's strategic direction. Specifically Council has adopted targets to reduce water and energy consumption as part of its Long Term Council Community Plan. A requirement for water and energy efficiency as part of the Building Act would assist Council in reaching its targets.

## ISSUES

The Building Act regulates building standards throughout the country and therefore has a significant influence on the built environment in Waitakere City Council. The existing Act does not address sustainability issues in a comprehensive form and has in many ways hindered progress on the implementation of Council's strategic direction.

The proposed bill does address sustainable development, lifecycle costs, water and energy efficiency and the use of renewable energy. At this stage staff envisage that Council's submission would be supportive of this new direction.

Submissions on the bill close on 31 October 2003. This means that it will not be possible to bring a final submission back to this committee for approval.

## RESOURCES

Resources are available to write the submission. It is not considered necessary that a presentation to the Select Committee be made.

## CONCLUSION

It is strategically desirable that Council submit on the proposed Bill.

## RECOMMENDATIONS

1. That the information be received.
2. That authority be given to the Chairperon of the Environmental Management Committee to sign the final submission on the Building Bill.

Report prepared by: Katja Lietz, Project Manager Sustainability Projects.



## **PART II - DISTRICT PLAN / STRUCTURE PLANS**

### **9 PROPOSED PLAN CHANGE TO RE-IDENTIFY AMBRICO RESERVE, NEW LYNN FROM WORKING ENVIRONMENT TO OPEN SPACE ENVIRONMENT**

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

The purpose of this report is to present to the Environmental Management Committee a Proposed Plan Change relating to the re-identification of Ambrico Reserve at 5 Ambrico Place, New Lynn. The report seeks approval for the Proposed Plan Change to be publicly notified.

A72-A88

A copy of the 'Background Report and Section 32 Analysis' for the Proposed Plan Change, including the Certificate of Title and changes to the Planning Maps, are attached at pages A72 to A88.

#### **BACKGROUND**

The site comprises 2101m<sup>2</sup> and is currently identified as Working Environment and designated for reserve purposes in the District Plan. The Notice of Requirement hearing was held before a Commissioner on 31 January 2002 and the Commissioner's recommendation was confirmed at the Environmental Management Committee meeting on 18 February 2002 (resolution 203/2002). Following this, Council purchased the property at mortgagee sale and transfer to Council was registered on 4 April 2002.

#### **STRATEGIC CONTEXT**

The Long Term Community Consultation Plan has nine pathways that set out the Council's goals and actions for managing the social, economic and environmental wellbeing of the City. The urban and rural villages pathway identifies that the Council will need to review its planning processes to support integrated planning. The Proposed Plan Change will ensure that the District Plan, as a statutory and strategic document, is accurate and based on the most up to date information available to Council.

In addition, Council's Parks Strategy seeks to improve accessibility to neighbourhood and local reserves. The existing Human Environments identification is at odds with the range of activities and effects that the community would expect of land that already has reserve status (via both the existing designation and the building of play equipment and landscaping on the site). The subject land is currently owned, managed and maintained by Council as a reserve and there is a community expectation that it should continue to function in this capacity. The Proposed Plan Change would re-identify the land and enable it to be managed sustainably as reserve for future generations to enjoy. The Working Environment identification is not consistent with the reserve status of the site.

#### **STATUTORY CONSIDERATIONS**

##### **Resource Management Act 1991**

The Resource Management Act 1991 provides for changes to the District Plan. The attached report, 'Background Report and Section 32 Analysis' for the Proposed Plan Change clearly identifies the relevant sections of the Act, and other statutory documents, that must be taken into account when notifying a Proposed Plan Change. Summaries of the relevant discussions from that report follow.

##### **Waitakere City District Plan**

The District Plan defines Open Space as areas of publicly owned open space ranging from the large park areas in the Waitakere Ranges to the small local parks in the urban area. The bulk and location rules relating to the Open Space Environment seek to ensure that buildings relate to recreational activities and are generally consistent with reserve management plans that have been developed.

It is considered that the existing identification of the land as Working Environment is not appropriate for recreational or public use of the land. Given that the area of land in question abuts residential land and has already been developed as a reserve, the Open Space identification, policies and objectives are considered more appropriate for the site. The Working Environment does not make provision for passive or active recreational use of land.

The Proposed Plan Change would not involve the adoption of any new objective, policy or method. The existing framework of policies and rules within the District Plan is adequate to address any adverse effects on natural and physical resources arising from resource use within the site being identified as Open Space. The Open Space Environment provides for recreational use of land, which would generate "low impact" effects.

### **New Lynn Reserve Management Plan**

The Council is currently developing a New Lynn Reserve Management Plan, which includes Ambrico Reserve. During the first round of public consultation Council received a number of submissions from residents at Tuscany Towers relating to noise from children playing, noise from moving components of the play equipment, damage to fencing and gates, trespassing on private property, supervision of play equipment, personal safety, and protection from weather. Council is currently addressing a number of these concerns. It is considered appropriate for any similar issues to be discussed and dealt with through the development of the New Lynn Reserve Management Plan which is due to be released for further public consultation in late 2003.

### **Auckland Regional Policy Statement**

It is considered that the Proposed Plan Change is entirely consistent with the objectives of the Regional Policy Statement. The reserve currently provides a recreation facility in an established residential area and the Proposed Plan Change seeks to establish the site as Open Space to align the use of the site with that Human Environment identification in the District Plan.

### **Section 32 of the Resource Management Act**

Council's obligations under Section 32 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 reasons for evaluation.

A82-A84

An evaluation under each of the above subsections has been undertaken and are attached at pages A82 to A84. The evaluation fulfils Council's requirements with regard to Section 32 of the Resource Management Act.

In summary the re-identification of the land would provide a clear direction to the community on the continued use of the land as a reserve. If the existing identification and rules relating to the Working Environment were retained then the purpose of the Act would not be achieved and there may be a degree of uncertainty of the future of the use of the land.

Further, it is intended that the evaluation will be available for public inspection at the same time as the Proposed Plan Change is publicly notified (in accordance with Section 32(6)).

## RESOURCES

No specialist reports are required for the proposed Plan Change. Processing the plan change through the statutory process can be adequately resourced from existing budgets. No additional staff funding or resources are required.

## CONCLUSION

The purpose of this report is to present to the Environmental Management Committee a Proposed Plan Change relating to the re-identification of the property at 5 Ambrico Place, New Lynn. The Proposed Plan Change would alter the Human Environment identification of the site from Working Environment to Open Space Environment to enable the land to continue to be used as a reserve. The current identification of the land does not meet the District Plan policies for Working Environment as it has for some time been established and maintained as a recreation reserve. In this particular instance, the re-identification of the subject land would enable it to continue to be used and maintained for active and passive recreation. Given the context and scale of residential development at Ambrico Place, and that recent studies indicate there are a significant number of families with children residing in Ambrico Place, the re-identification of the reserve is entirely necessary and appropriate.

## RECOMMENDATIONS

1. That the information be received.
2. That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee resolve to publicly notify the Proposed Plan Change relating to Ambrico Reserve to the Waitakere City District Plan to re-identify the site from Working Environment to Open Space Environment in the District Plan as attached at pages A72 to A88.

Report prepared by: Amanda Blakey, Planner: Policy Implementation.



## 10 HEARING FOR PROPOSED PLAN CHANGE 5 - RE-IDENTIFICATION OF FORMER STOPPED ROADS IN PIHA FROM TRANSPORT ENVIRONMENT TO OPEN SPACE ENVIRONMENT

### PURPOSE OF THE REPORT

- A89 The purpose of this report is to seek the Environmental Management Committee's approval of Proposed Plan Change 5. This Proposed Plan Change relates to several pieces of former stopped road in Piha and seeks to change the existing Human environment classification from Transport Environment to Open Space Environment. The reserves consist of unformed legal road (sand dunes, berms and grassed areas) that had been stopped as road and gazetted as reserve in 2001. The Proposed Plan Change comprises a change to the District Plan Map as attached at page A89. The Proposed Plan Change was required to reflect the change in status of the land from road to reserve in the District Plan Maps.

A supplementary report sets out the statutory requirements under the Resource Management Act 1991 and the policy framework. Furthermore, the supplementary report addresses Section 32 requirements. No submissions were received to the Proposed Plan Change.

## BACKGROUND

The subject land consists of the areas shown as Section 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70252 and Section 1 on Survey Office Plan 70155. The sites located on North Piha Road, Marine Parade North, Marine Parade South, Beach Valley Road and on the corner of Seaview and Glenesk Roads.

The Committee resolved on Tuesday, 8 July 2003:

*“That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee resolves to publicly notify proposed Plan Change 5 to the operative Waitakere City District Plan to re-identify the following parcels of land (areas of land shown in Sections 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70241, Sections 1 & 2 on Survey Office Plan 70252 and Section 1 of Survey Office Plan 70155) from Transport Environment to Open Space Environment as attached at pages A14 to A18 in the Agenda report.”*

1423/2003

Council notified Proposed Plan Change 5 in the NZ Herald on 21 July 2003 and received one submission that was later withdrawn. As no submissions were received, further submissions were not called for.

## STRATEGIC CONTEXT

The Long Term Council Community Plan (LTCCP) has nine pathways that set out the council's goals and actions for managing the social, economic and environmental well-being of the City. The Long Term Council Community Plan states that the District Plan is a strategic document and as such it should be based on the most accurate information available.

## ISSUES

A90-A100

Changing the identification of several pieces of stopped road in Piha is consistent with the policies and objectives of the District Plan and would bring the District Plan maps into line with the reserve status. In addition, the Plan Change would also be consistent with the Auckland Regional Policy Statement that promotes public access to coastal areas and highlights the importance of Open Space for recreation. The Proposed Plan Change would clarify the position for any third party selling or purchasing the land adjacent to the reserves. The Proposed Plan Change is consistent with the policies and objectives of the District Plan in terms of enhancing recreational opportunities for the residents and visitors to Piha. The Proposed Plan Change is consistent with the Piha Reserve Management Plan and the Council's Open Space Strategy. A full discussion of statutory requirements is attached at pages A90 to A100.

## RESOURCES

No additional resources are required as staff preparation and processing time and associated advertising costs to complete the Proposed Plan Change are covered in the existing budget.

## CONCLUSION

The Proposed Plan Change would re-identify the Human Environment of existing reserves on North Piha Road, Marine Parade North, Marine Parade South, Beach Valley Road and on the corner of Seaview and Glenesk Roads from Transport Environment to Open Space Environment to ensure that the District Plan shows the correct zoning for several pieces of Open Space in the City. This change is important to ensure that the integrity of the District Plan is maintained and that the Plan reflects the current status of the land as reserve.

It is considered that any adverse effects arising from the Proposed Plan Change would be negligible because the revised identification would be compatible with restoration planting and low-scale buildings planned as part of the Piha Reserve Management Plan.

## RECOMMENDATIONS

1. That the information be received.
- A89-A100 2. That pursuant to Clause 10 of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee approves Proposed Plan Change 6 to the Waitakere City District Plan to re-identify the following parcels of land (areas of land shown in Sections 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70241, Sections 1 & 2 on Survey Office Plan 70252 and Section 1 of Survey Office Plan 70155 ) from Transport Environment to Open Space Environment is attached at pages A89 to A99.
3. That a decision notice stating approval of Plan Change 5 be publicly advertised on or about 14 October 2003.
4. That, Plan Change 5 be publicly notified on, or about 5 November 2003 to become operative.

Report prepared by: Alina Hughes, Planner: Policy Implementation.



## 11 AGENDA REPORT FOR HEARING FOR PROPOSED PLAN CHANGE 6 - RE-IDENTIFICATION OF BURBERY RESERVE FROM TRANSPORT ENVIRONMENT TO OPEN SPACE ENVIRONMENT

### PURPOSE OF THE REPORT

A101 The purpose of this report is to seek the Environmental Management Committee's approval of Proposed Plan Change 6. This Proposed Plan Change relates to a site on the corner of Pleasant Road and Atkinson Roads in Titirangi, known as Burberry Reserve, and seeks to change the existing Human Environment classification from Transport Environment to Open Space Environment. The reserve consists of an area that was formerly unformed, legal road that has been stopped as road and gazetted as reserve in 2001. The proposed Plan Change comprises a change to the District Plan Map as attached at page A101. The Proposed Plan Change was required to reflect the change in status of the land from road to reserve in the District Plan maps.

A supplementary report sets out the statutory process requirements and the policy framework. Furthermore, the supplementary report addresses Section 32 requirements. No submissions were received to the Proposed Plan Change.

## BACKGROUND

The subject land consists of the area shown as Section 1 on Survey Office Plan 69923 adjoining Lot 12 DP 48606 CT5C/1077 and has an area of 911m<sup>2</sup>. The subject site was formerly a portion of legal road that has been stopped through a formal road stopping procedure under the Local Government Act 1974. The Environmental Management Committee resolved on Tuesday, 8 July 2003:

*“That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee resolves to publicly notify Proposed Plan Change 6 to the Operative Waitakere City District Plan to re-identify the following parcels of land (areas of land shown in Sections 1 on Survey Office Plan 69923 adjoining Lot 12 DP 48606 CT5C/1077) from Transport Environment to Open Space Environment as attached at pages A11 to A12 in the Agenda report.”*

1423/2003

Council notified Proposed Plan Change 6 in the New Zealand Herald on 21 July 2003 and has received no submissions within the 20 working day period. Consequently, further submissions have not been called for.

## STRATEGIC CONTEXT

The Long Term Council Community Plan has nine pathways that set out the Council's goals and actions for managing the social, economic and environmental well-being of the City. The Long Term Council Community Plan states that the District Plan is a strategic document that regulates planning matters. The proposed Plan Change will ensure that the District Plan as a strategic document is accurate and based on the most up to date information.

## ISSUES

A102-A112 Changing the identification of Burberry Reserve is consistent with the policies and objectives of the District Plan and would bring the District Plan maps into line with the reserve status. The proposed Plan Change would clarify the position for any third party selling or purchasing land adjacent to the subject site. The proposed Plan Change is consistent with the policies and objectives of the District Plan in terms of enhancing recreational opportunities for the community in urban areas. The proposed Plan Change would add an important local resource to the City's Open Space. A full discussion of statutory requirements is attached at pages A102 to A112.

## RESOURCES

No additional resources are required as staff preparation and processing time and associated advertising costs to complete the Proposed Plan Change are covered in the existing budget.

## CONCLUSION

The proposed Plan Change would re-identify the Human Environment of an existing reserve on the corner of Atkinson and Titirangi Roads from Transport Environment to Open Space Environment to provide the correct zoning for a piece of Open Space in the City. This change is important to ensure that the integrity of the District Plan is maintained and that the Plan reflects the current status of the land.

Any adverse effects arising from the Proposed Plan Change would be insignificant because the land provides a moderate level of visual amenity in a residential environment. The use of the site will remain as a local reserve and can be managed to ensure the amenity values of the adjoining residential properties are maintained.

### **RECOMMENDATIONS**

1. That the information be received.
- A101-A112* 2. That pursuant to Clause 10 of the First Schedule to the Resource Management Act 1991, the Environmental Management Committee approves Proposed Plan Change 6 to the Waitakere City District Plan to re-identify the following parcels of land (areas of land shown in Section 1 on Survey Office Plan 69923 adjoining Lot 12 DP48606 CT5C/077) from Transport Environment to Open Space Environment as attached at pages A101 to A112.
3. That a decision notice, stating approval of Plan Change 6, be publicly advertised on or about 14 October 2003.
4. That Plan Change 6 be publicly notified on, or about 5 November 2003 to become operative.

Report prepared by: Alina Hughes, Planner: Policy Implementation.



## **12 REVIEW OF NEW LYNN TOWN CENTRE COMMUNITY ENVIRONMENT BOUNDARIES**

### **PURPOSE OF THE REPORT**

The purpose of this report is to update the Environmental Management Committee on the work that has been undertaken looking at the boundary of the New Lynn Community Environment and possible expansion of the New Lynn Town Centre. The report seeks approval of the Committee to investigate possible Plan Changes to expand the New Lynn Community/Community Periphery Environment identification.

### **BACKGROUND**

Since the 1970s, planning controls in Waitakere City have supported the existing pattern of retail concentrations in town centres. During the development of the District Plan, Council continued this centres-based Retail Strategy - with two Human Environments, the Community Environment and the Community Periphery Environment developed to provide for retail uses. Some retail uses with the exception of Scheduled Sites were provided for on a discretionary basis in the Working and Living Environments.

There were a number of appeals to the Retail Strategy and the position was modified to provide for a "centres plus" approach, whereby if no land was available for retail within the town centres and Community/Community Periphery Environments, then sites outside of town centres could be considered. An implication of the 'centres plus' strategy is that council must actively ensure that there is sufficient land within town centres to meet retail demands, otherwise there is likely to be grounds for out-of-centre retail development.

Since that time, available Community Environment and Community Periphery Environment land in town centres has shrunk considerably, with a resulting pressure for retail development on major arterial routes such as Great North Road, Lincoln Road and Hobsonville Road. This report brings together issues around the pressure for expansion of the New Lynn Town Centre, and further reports will be brought to the Committee regarding issues in the Henderson/Lincoln and Westgate areas.

## STRATEGIC CONTEXT

Retailing is a significant component of the mix that makes up a successful town centre, along with commercial offices, community facilities and residential living. Council has long adopted an approach of directing retail activities into town centres as part of its Urban Strategy in order to:

- ensure town centres are effective “destinations” providing for the widest possible range of community needs;
- minimise effects on air, land and water by reducing vehicle trip length and numbers;
- support the economic basis of town centres ;
- supporting passenger transport.

### New Lynn

The City's major strategic objectives for the New Lynn Centre are the development of:

- a sub-regional destination;
- a thriving town centre providing increased local employment;
- a centre linked to public transport networks that is easy to access and travel around;
- an area of the City that has quality amenity and green space;
- urban growth managed in an environmentally sustainable fashion;
- integrated community and social services; and
- a centre that complements the development of other City centres.

## ISSUES

### Trends in Retailing

Over time, trends in retailing have seen a change from traditional “strip shopping” retail centres to retailing being provided for in Malls, and increasingly “bulk” and “mini-bulk” retail stores and bulk retail centres.

The overall demand for retailing has however still increased with population growth. Where bulk retail centres and malls are provided in a way that does not integrate well with the traditional town centres, this can be a factor in the decline in traditional strip retailing. Low quality of building stock and slowness of some landowners to respond to market demands are also significant contributor to the success of mainstreet areas.

Of equal concern at the strategic level is the impact that poorly thought through “closed mall” and bulk retail centres can have on patterns of car use and transport modes. For example the development of stand-alone bulk retail centres in locations accessible only by car contribute to degrading the quality of air and water, as well as increasing traffic problems in already busy areas.

Where traditional mainstreet shopping, malls and bulk retail link together in such a way that pedestrian movement between shopping types is safe and pleasant, the overall retail mix contributes to provide a vibrant town centre.

### Retail Demand in Waitakere City

Since the development of the District Plan, there has been significant growth in retailing within Waitakere City. In particular in the three major centres - New Lynn, Henderson and Westgate there has been significant retail growth - much in the form of bulk and mini-bulk retail and mall expansion. This growth has also been affected by the increasing uptake of land in town centres for medium and high density accommodation. In the case of Henderson, much of the land identified as Community Periphery (the Human Environment which provides for bulk retail) has instead been developed for high density housing. This has had a flow on effect with pressure to develop Lincoln Road Working Environment for retail. The Lincoln Centre and Lincoln Special Area development are recent examples. Further to this, a draft application for a Non Complying resource consent by the Bible College of New Zealand has been lodged with Council to develop 11,000 m2 of bulk retail in the Bible College Special Area.

In New Lynn, these areas previously occupied by car yards have been converted into a range of retail formats, including bulk retail. The Westgate centre has developed completely since the formation of the District Plan, with all areas zoned Community Environment uptaken by retail uses.

The result of this retail expansion and land use changes, is that there is little capacity within the three major centres for further retail development, however there is significant and increasing demand for more retail activities. In New Lynn this has manifested itself by proposals coming forward from landowners in Working Environment zoned land, seeking an expansion of the Community Environment or Community Periphery Environment zoning to allow further retail development.

Rather than seeing applications for retail development in Working Environment land being put forward on a case-by-case basis, and the inevitable Environment Court proceedings, a review of the demand and provision for retail in New Lynn, within the context of the wider Waitakere City has been undertaken. This study, undertaken by Marketplace Ltd, a retail consulting group has identified a number of key issues regarding retailing in Waitakere City and New Lynn.

- the City has become more self-sufficient in terms of retail spending, as a consequence of retail investment in its central and northern areas. Overall retail "capture" or the amount of money spent on retail by Waitakere City residents now equals the amount of money spent in retail outlets within the City - a significant improvement from the assessment undertaken in 1994, most significantly contributed to by the development of the Westgate centre;
- the southern parts of Waitakere have however, shared equally in that investment, with their proportion of retail supply falling substantially since 1994. New Lynn Centre has not shared to the same extent in expanded retail facilities, notwithstanding the upgrading of LynnMall City;
- St Lukes has also been the subject of major investment since 1994, in both the Mall and in peripheral retailing activities;
- there are a range of retail types (supermarket, apparel, general household goods and furniture) poorly provided for in the existing New Lynn centre;
- New Lynn Town Centre is as trading strongly for its size, but is under-achieving relative to Henderson, given the spending power that is closer to New Lynn;
- New Lynn is foreseeably the most accessible large centre for close on 40,000 households, well over 100,000 people and a substantial business community. Its retail expansion, to better rival the nearest competing major centres, carries not only the connotation of enabling people, but also that of more efficient shopping in terms of private transportation. It is also on the rail corridor, so more intensive business development would be consistent with public transportation strategies.

Overall the study concluded *“that the significant expansion of New Lynn Centre is feasible and – from the viewpoint of its “constituency” – a desirable and efficient prospect.”*

The report also identified however that any expansion of the retail core of New Lynn needs to be undertaken in such a way that short term impacts on the existing retail centre are minimised. In particular the report recommends that any expansion should be undertaken in such a way that the larger format (bulk retail) stores are located on the periphery of the expansion and that the expansion be undertaken not in a linear fashion along Great North Road, but instead across the Railway line towards Clark Street in order to provide a more balanced and cohesive centre. The report suggests that it may be necessary to develop a variant to the current Community Periphery zone that limits development to bulk retail formats.

In addition to the Retail Study, 2 other studies have been undertaken which provide significant information in relation to retailing in New Lynn. These studies are the Assessment of Town Centre Performance undertaken by Macroplan and a review of the urban design implications of retail expansion in New Lynn undertaken by Hill Young Cooper.

### **Assessment of Town Centre Performance**

The Macroplan work included a market research survey of existing shoppers in the New Lynn Centre. A range of issues of concern were raised, including safety issues and the high perceived risk of danger, the low amenity offered by the town centre and the poor pedestrian experience. Of particular relevance to retail issues however was the indication that the majority of people shopping in New Lynn would shop at St Lukes as their alternative. This is perhaps unsurprising given that more than half the retail catchment of New Lynn is within Auckland City, but also confirms that provision of additional retail in New Lynn is likely to have minimal impacts on other Waitakere City town centres.

### **Urban Design Impacts**

The work undertaken by Hill Young Cooper on the urban design implications of any retail expansion support the recommendations of the retail study that any expansion of the Community Environment or Community Periphery Environment should be southwards towards Clark Street.

Rather than spread new retail development in a linear fashion north-south along Great North Rd (such as an expansion along Great North Road towards Avondale), new retail development would be better located close to the current mall and mainstreet area, creating more of a triangular hub around the rail station. However the extent of new retail development in the Clark Street area needs to be controlled so that other objectives for the town centre, such as residential intensification and protection of employment activities can also be met. There also needs to be some ‘pressure’ for redevelopment and intensification of the existing town centre (such as multi-story development of Lynmall), and as a result the expansion of the commercial area should meet some but not all of the potential demand for retail activities.

The study emphasises the importance of achieving excellent pedestrian and vehicle links between the two halves of the centre if such a retail expansion is to be undertaken - something that does not currently exist. In particular, the urban design recommendations are that Memorial Drive extension must be extended across the Railway Line - with a signal controlled intersection rather than a roundabout. Until such time as Memorial Drive is extended, they recommend a significant improvement in pedestrian amenity and connectivity, and any retail expansion must be contingent on such improvements being made.

### **Effects of Any Rezoning on Traffic and Employment**

While the effects on existing retail and urban form have been considered in the work undertaken to date on New Lynn retail issues there are other effects which need to be considered before any Plan Change can be considered. In particular traffic impacts the effects any rezoning may have on the existing and future potential employment base in New Lynn must be considered.

With regard to traffic, retail uses result in quite a significant change in traffic patterns in the surrounding area. South of the existing centre, any retail expansion would impact on Clark Street, the main east-west arterial road in that part of the City. Both roundabouts on Clark Street are under significant pressure from existing traffic and impacts on these critical aspects of the roading network in New Lynn need to be considered.

Likewise any rezoning proposals must consider the effects on the existing industrial uses. Retailing, and in particular bulk retail, employs a small number of people for the land area utilised, and the effect that any rezoning may have in possibly driving business out of the City needs to be considered. In addition, the need to ensure that adequate areas of industrial land remain within the New Lynn area and the City at large to provide for future industrial and business development is a factor which must be considered before any rezoning is proposed.

### **Other possible Landuses**

In addition to the above considerations, the possible development of other uses for the land such as residential development or open space should be considered. One of the key aims of the urban strategy and Council's town centre programme is to diversify the mix of activities and landuses within the town centres in order to create more vibrant and successful centres and support passenger transport. This includes the need to significantly increase the number of people living within close proximity to the town centre and associated bus/rail interchange. Council has committed to providing for 74% of the City's growth over the next 20 years within the existing urban area, and in particular is promoting medium and high density development around its town centres. New Lynn has been very successful in the implementation of this policy, and it is important that any retail growth does not compromise the City's objectives in this area. At the same time an expansion of the quality and depth of retail at New Lynn is likely to assist with intensification objectives.

### **Effects of No Retail Expansion**

A significant consideration in this issue, is the likely effects of allowing for no retail expansion. These effects are likely to be three fold.

Firstly, applications for resource consents for bulk retail in the wider New Lynn Town Centre area (such as the southern by Margan Avenue and perhaps along Great North Road) may be lodged with the Council, and if declined will almost certainly be appealed to the Environment Court. Given the "centres plus" approach of the current District Plan retail strategy, there is a high risk that the Environment Court would find sympathy with the argument that as there is no space within the current community environment, then out of centre development that is in relative proximity to the town centre may well be appropriate. Any such finding would undermine the integrity of the Working Environment zone, not just in New Lynn, but in other parts of the City. It would also be contrary to the urban design-based concept for the centre.

Secondly, pressure on areas such as Great North Road in Kelston for bulk retail will increase, with similar recourse to the Environment Court. The effects of the Kelston Foodtown development on the Glen Eden Town Centre, the subsequent closure of the Glen Eden supermarket and the increased traffic congestion on Great North Road are a direct indication of the kinds of long term effects which can be felt when significant retail development is undertaken outside of town centres.

Thirdly, given the proximity of New Lynn to Auckland City, there is a high risk that retail and bulk retail development could be located outside of Waitakere City, but close by, with resulting significant damage to the economy of New Lynn. Recent proposals for the siting of The Warehouse and other bulk retailers at Avondale Racecourse are a case in point. If the retail demand is not able to be met in Waitakere City, as well as forcing Waitakere City residents to continue to drive long distances out of the City to shop, the Council may have no control whatsoever of the form and location of any retail development.

### **RESOURCES**

The New Lynn Planning and Co-ordination budget contains sufficient budget for further studies into the issues around retail expansion in New Lynn.

### **CONCLUSION**

Significant demand exists for the development of further retail in the New Lynn Town Centre. Studies to date indicate that expansion of the retail core may be appropriate, however further work on the possible effects of such an expansion need to be undertaken before any decision can be made whether to proceed to a Plan Change.

### **RECOMMENDATIONS**

1. That the information be received.
2. That further work continue to investigate options for expanding the Community Environment and/or Community Periphery Environment in New Lynn be undertaken. Such work should include
  - an analysis of traffic impacts;
  - investigating employment issues and the effects on the amount of industrial land available in the City;
  - other possible uses for the land and implications for Growth Strategy targets;
  - likely impacts if no retail expansion is allowed for;
  - potential adjustments to the Community Periphery Environment rules to better reflect urban design outcomes.
3. That further work City wide be undertaken to look at options for accommodating the significant retail pressure which currently exists within the City and that this be reported back to the Environmental Management Committee.

Report prepared by: Lois Easton, Group Manager: City Development Projects.



### **PART III - ENVIRONMENTAL MANAGEMENT**

#### **13 HUIA VILLAGE WATER SUPPLY**

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

The purpose of this report is to update the Environmental Management Committee on the survey of residents and ratepayers of properties supplied by the Huia Village treatment plant as to whether they want the water supplied by the new upgraded treatment plant to be fluoridated or non-fluoridated.

##### **BACKGROUND**

Huia Village residents are currently supplied with water treated by Watercare Services Limited at a local small water treatment plant. The New Zealand Drinking Water Standards 2000 introduced new standards for water treatment which must be complied with by 1 January 2005 if the treatment plant is to produce water which meets the Drinking Water Standards, and to maintain an 'A' grading with the Ministry of Health. Without an upgrade, the treatment plant would achieve only a 'D' grading

Furthermore, the water supply at Huia Village has not been fluoridated in accordance with the wishes of the community since the time that the original plant was constructed in 1971.

At the July 2003 meeting of the Environmental Management Committee, the recommendations of the Waitakere Community Board were ratified, namely, that upgrading of the Huia Village water treatment plant is the preferred option for ensuring that the Huia Village water supply achieve an 'A' grading in terms of the New Zealand Drinking Water Standards 2000, based on the community survey and the recommendations of the Huia/Cornwallis Local Water Agenda Group.

Furthermore, the Environmental Management Committee resolved:

*"That the Huia/Cornwallis Local Water Agenda Group be authorised to carry out a survey of residents and ratepayers of properties supplied by the Huia Village treatment plant as to whether they want the water supplied by the new plant to be fluoridated or non-fluoridated, and that the results of this survey be reported back to the Environmental Management Committee."*

1428/2003

The results of the survey will be reported to the 30 September meeting of the Waitakere Community Board with the following recommendations:

1. That the report on the Huia Village Water Supply be received.
2. That Watercare Services Limited be advised that the Waitakere Community Board supports the requests of the majority of residents, that fluoride not be added to the Huia Water Supply.

## STRATEGIC CONTEXT

The Council's strategic platform for the three waters is that Waitakere is a centre of innovative water management. Some of the success measures that contribute to this platform and which are relevant to this issue are as follows:

- average domestic water use per person in the city is reduced to 160 litres or less per person per day;
- an 'a' grade of water supply is maintained, including compliance with the 2000 NZ Drinking Water Standards;
- 60% or more of residents are aware of actions they might take to conserve water or protect water quality in streams.

## RESULTS OF THE SURVEY

The Huia/Cornwallis Local Water Agenda Group carried out the survey of residents and ratepayers of properties supplied by the Huia Village treatment plant. The key results are as follows:

- 132 replies were received from the 243 properties surveyed. This represents a 54% response. 97 of 132 respondents (73%) are clearly opposed to fluoridation of the water supply.

The result confirms that a clear majority of Huia Village residents are opposed to fluoridation of the water and wish the current situation to continue.

A113 The full survey results are attached at page A113.

Watercare Services Limited have been advised of the results.

## RESOURCES

Upgrading of the Huia Village Water Supply Treatment Plant will be funded by Watercare Services Limited at no cost to Council.

## CONCLUSION

Watercare Services Limited has identified the need to upgrade the Huia Village water treatment plant to comply with new requirements of the New Zealand Drinking Water Standards.

The Huia/Cornwallis Local Water Agenda Group has carried out a survey of the residents and ratepayers of properties supplied by the Huia Village treatment plant on the fluoridation issue, and the results confirm that a clear majority are opposed to fluoridation of the water and wish the current situation to continue.

## RECOMMENDATIONS

1. That the report on the Huia Village Water Supply be received.
2. That Watercare Services Limited be advised that the Environmental Management Committee supports the requests of the majority of local residents, that fluoride not be added to the Huia Water Supply.

Report prepared by: Richard Taylor, Assets and Network Manager.



14 **WAITAKERE RANGES PROTECTION – CONSULTATION UPDATE**

**PURPOSE OF THE REPORT**

The purpose of this report is to provide the Environmental Management Committee with an update on the Waitakere Ranges Protection project.

**BACKGROUND**

The Council is currently undertaking a project to determine whether long-term protection of the Ranges is adequate, and if not, what should be done. This has involved pulling together the research and information relating to the Ranges, looking at how the Ranges are currently managed, what gaps exist and how they might potentially be filled.

There are three key components to this project:

- **Research and Information Gathering**

Work has been underway since April 2003 pulling together the various pieces of research and information on the Ranges held by a number of different agencies. It has been found through this exercise that the research is often site or project specific and fragmented, so that gaining a holistic picture of the health of the Ranges has been difficult. However, signals indicated that pressures do exist with the key ones including subdivision and development, animal pests, weeds, and visitor impacts. Two reports are being produced to support the community consultation: a detailed report and a summary version.

The Environmental Management Committee resolved on Tuesday, 12 August 2003:

*“That Crs Hulse, Presland, Stone and Yates be given delegated authority to sign-off the more detailed Snapshot of the Ranges.”*

1715/2003

- **Community Consultation**

A three-phase community consultation process was signed off at the Committee's July meeting.

Phase one

*Purpose:* To share with the community information gathered, discuss issues and commence the preliminary discussion around possible responses. The messages to the community include the acknowledgement of the considerable work undertaken to produce the West Coast Plan and the good work happening, especially in relation to weeds and animal pests, without rules and legislation. The vehicle will be a series of workshops throughout the city. Community Boards will also take out displays to community events and sites.

Phase two

*Purpose:* To discuss potential responses in more detail. A series of small focus groups will be organised. The groups will become more focussed in their discussions, as preferred responses are defined. This phase will be supported by Council policy work aimed at researching and refining responses.

### Phase three

A community consultation programme will be developed to take the preferred response(s) to the community for comment.

- **Response development**

Policy work will be required to support phase two of the community consultation process, and the decision making of the Council and its partners in this project.

### **STRATEGIC CONTEXT**

The Waitakere Ranges Protection project is a key project within the Green Network platform of the draft Long Term Council Community Plan. The 'Green Network' strategic platform contains a vision that would see streams and forests full of life, the Waitakere Ranges permanently protected and a Green Network in place linking the Ranges to the sea, as well as connecting the everyday lives of the people of Waitakere with the natural world.

Council has indicated a strong commitment to working on protection of the Ranges, whilst recognising that there are many different values relating to the Ranges, much is already being done to achieve protection, the tools for protection are many and varied, and community views diverse. A robust process is crucial for achieving community understanding of, and long-term commitment to, any solutions that might arise from the process.

### **RESOURCES**

Budget for the Waitakere Ranges project is allowed for in the 2003/2004 Annual Plan.

### **ISSUES**

At the time of writing this report the summary document was still being produced. The final version will be distributed at the October 2003 committee meeting.

*A114*

The fourteen community workshops for phase 1 of the consultation begin on Monday, 29 September 2003 and continue through to mid November 2003. A schedule of meetings is attached at page A114. Four workshops will have been undertaken by the October 2003 committee meeting, and an update on these will be presented at the meeting.

### **CONCLUSION**

Given the timeframes of the community consultation to be undertaken from late September 2003, a verbal update of progress in the consultation will be presented at the Environmental Management Committee's October 2003 meeting.

### **RECOMMENDATION**

That the information be received.

Report prepared by: Kim Morresey, Partnerships and Advocacy Leader, Environmental, and Jenny Macdonald, Strategic Leader.



15 **PAINTED APPLE MOTH UPDATE REPORT FROM THE MINISTRY OF AGRICULTURE AND FORESTRY**

**PURPOSE OF THE REPORT**

The purpose of this report is to present the eighteenth of the monthly Painted Apple Moth update reports from the Ministry of Agriculture and Forestry, as requested by the Council at its meeting of 17 August 2001. The Ministry of Agriculture and Forestry report will be circulated separately with the Agenda. Additional information on the painted apple moth eradication programme is also presented here.

**BACKGROUND**

Nine targeted aerial sprays against painted apple moth were completed over the period from January to September 2002. A combination of a fixed wing aircraft and a helicopter sprayed up to 900 hectares.

Eleven expanded aerial spray rounds have been completed from 23 October 2002, 13-15 November 2002, 2-3 December 2002, 20-21 December 2002, 7 and 15 January 2003, 30-31 January 2003, 16-17 February 2003, 14-17 March 2003, 2-3 April 2003, 22-23 April 2003 and 14 May 2003. Three aircraft - a Fokker Friendship, an air tractor and a helicopter - have been used to spray up to 10,300 hectares. Aircraft have suspended spraying at 8:00-9:00 am, 12:15-1:00 pm and 3:00-4:00 pm when children are walking to and from school and eating lunch.

The winter operation, from June 2003 to September 2003, has included targeted aerial spraying of 892 hectares over five known hotspot areas; Ranui/Swanson, Riverpark, Waikumete Cemetery, Hobsonville and Meola Creek. Two targeted aerial sprays of 892 hectares were completed on 12 June 2003 and 3 July 2003 with the air tractor. Three further targeted aerial spray rounds were completed on 4 August 2003, 26 August 2003 and 30 September 2003 using a helicopter alongside the air tractor in an effort to complete the winter aerial operations as quickly as possible. Aircraft have suspended spraying at 8:00-9:00 am, 12:15-1:00 pm and 3:00-4:00 pm when children are walking to and from school and eating lunch, except over the school holiday period.

**STRATEGIC CONTEXT**

The Ministry of Agriculture and Forestry has an obligation to do all that is required in terms of its legal responsibilities under the Biosecurity Act 1993. Council has encouraged and facilitated this where possible.

Council has an obligation to protect native ecosystems, native flora and fauna habitat and the ecological processes associated with these systems both under the Resource Management Act 1991 and under the District Plan issues 5.2 and 5.5. Equally, Council has an obligation to protect and represent the residents of Waitakere City.

**ISSUES**

**Current aerial spray programme**

The final winter targeted aerial spraying operation was scheduled for 16 September 2003. Two weeks of high winds and rain delayed aerial spraying until the 30 September 2003.

**Moth trap catches**

Cooler winter temperatures slow down, but don't stop, the lifecycle of painted apple moth. There have been no wild moths caught in traps for August or September 2003, up to and including the 25 September 2003.

Weekly releases of sterile male moths at three hotspot sites have continued as part of the winter programme. In late September two of the sterile male moths released by Ministry of Agriculture and Forestry were caught in the normal moth trap grid. The significance of these captures indicates that temperatures are warming up enough for the males to start flying. If wild populations of painted apple moth still exist we could start to see them appear in the traps from now onwards.

### **Summer operation**

The Ministry of Agriculture and Forestry is expected to make an announcement about the contents of the summer operation in early October, following the completion of the winter targeted aerial spraying. The tools used in the summer operation will depend on where and how many male moths, if any, are caught over the early part of summer. Some targeted aerial spraying is anticipated but the exact size of the spray zone and number of sprays will be determined by trap catches.

### **Contents of the aerial spray Foray 48b**

Previous attempts by Council and the community to have the ingredients of the aerial spray, Foray 48b, released to the public have been denied by the Ministry of Agriculture and Forestry on the basis of commercial sensitivity of the product.

Council has requested the release of the ingredients to nominated health professionals and Council staff in order for Council to discharge its statutory duty under the Health Act. To date the Ombudsman's office has not yet made a final recommendation and Council continues to communicate with the Ombudsman's office on an ongoing basis.

### **Wellington School of Medicine Health Study**

The Ministry of Health has contracted the Wellington School of Medicine to undertake a review of health issues related to the aerial spraying of Foray 48b in Auckland. The review includes:

- an analysis of existing scientific information about the potential health effects of the spray;
- a summary of consultation with stakeholders and members of the public; and
- recommendations for further study.

Waitakere City Council, along with other territorial authorities, stakeholders and Government agencies, has been invited to nominate peer reviewers. The peer reviewers shall be selected by the Ministry of Health and made public.

### **RESOURCES**

It is not expected that Council will put any additional financial resources into the eradication operation as it is a matter of national biosecurity and is under the jurisdiction of the Ministry of Agriculture and Forestry through the Biosecurity Act 1993. Council has made provisions in the 2003/2004 Annual Plan for some revegetation of Council land where host removal work has been undertaken by the Ministry of Agriculture and Forestry.

## CONCLUSION

Fourteen rounds of targeted aerial spraying to eradicate the painted apple moth have been completed along with eleven expanded aerial sprays. A reduced winter operation ran from June to September 2003. The summer programme is to commence in October 2003 although the exact contents of this are yet to be announced by the Ministry of Agriculture and Forestry.

## RECOMMENDATION

That the information be received.

Report prepared by: Kerry Bodmin, Landscape Planning Co-ordinator.



## 16 BIODIVERSITY PROTECTION ON PRIVATE LAND – COVENANTING & THE GREEN NETWORK COMMUNITY ASSISTANCE PROGRAMME

### PURPOSE OF THE REPORT

The purpose of this report is to inform the Environmental Management Committee of the latest developments with the Green Network Conservation Covenants and to gain approval for the finalisation of the covenant document and authorisation for the Chief Executive to enter into covenant agreements.

### BACKGROUND

The Green Network Community Assistance Programme commenced in the 1998/1999 financial year. The programme was comprehensively reviewed in October 2000 and a refinement of the framework for assistance was undertaken. All participants qualify for some form of assistance, with those who have streams or significant bush remnants on their property (ie. significant Green Network assets) qualifying for a higher level of assistance. The main types of assistance offered by the programme are outlined below:

- **Advice and Information**  
Telephone and site visit advice on management of natural areas as well as provision of leaflet information on managing natural values.
- **Provision of free plants**  
This is assessed on a site-by-site basis with a maximum of 200 plants available for major revegetation projects.
- **Provision of bags for disposal of ginger as part of kerbside refuse collection**  
Applicants are eligible for up to 6 bags per annum to dispose of ginger roots and seed heads free as part of the kerbside refuse collection.
- **Provision of jumbo bins for weed disposal**  
Applicants are eligible for 1 bin per property per year for the disposal of weeds when a large scale, comprehensive weed removal project is undertaken.
- **Provision of free herbicide**  
A voucher for Escort or Roundup may be provided where applicants have a large infestation of weeds.
- **Subsidy for contractor control of weeds**  
In priority areas where weed control by the landowner is difficult due to their circumstances or the nature of the weed infestation, a 50% subsidy up to a value of \$300 is offered for contractor removal of weeds. Generally the Weedfree Waitakere Trust has been the contractor undertaking this work.

- **Subsidy for fencing**

For areas where stock is grazing bush or streamsides, applicants are eligible for a maximum subsidy of 50% up to \$1,000 towards fencing costs.

- **Covenanted assistance**

Applicants are eligible for up to \$2,000 towards the cost of covenanting their site.

- **Rates relief**

When a covenant is in place, applicants are eligible for rates relief according to the proportion of their site covenanted and its values. The average rates relief is \$720 per annum.

The above programme is a tool to address biodiversity issues on private land. It meets a strong demand from landowners and is well supported by the community, central government and the international community. The programme was initially developed in 1997. At the 1992 Earth Summit in Rio de Janeiro, one of the key agreements adopted was the United Nations Convention on Biological Diversity. In 2000 the NZ Government produced The New Zealand Biodiversity Strategy. Also in 2000 a report was produced for the NZ Government on addressing the effects of private land management on indigenous biodiversity. These developments all result from the realisation that loss of species and environmental health will continue unless private landowners and land managers are brought into the picture. All of the above initiatives support the approach of Waitakere City's Green Network Community Assistance Programme that includes a combination of technical, educational, practical and moral encouragement, with a range of measures from easy-to-implement to the more in-depth programmes such as covenanting.

## **STRATEGIC CONTEXT**

The 2020 Vision for the Green Network, as outlined in the Long Term Council Community Plan is that the Waitakere Ranges will be permanently protected. There will be a network of bush and trees (the Green Network) from the Ranges, through town centres and suburbs, to the coasts, bringing the natural world into people's everyday lives and filling the streams and forests with life.

Protection and enhancement is sought on both public and private land, community involvement is encouraged, as is the protection of landscapes, native plants, wildlife ecosystems, while providing friendly green areas throughout the City.

Council's tools for implementing the Green Network fall broadly into three categories:

- (1) Council's investment in stormwater management and parks weed control and revegetation.
- (2) Regulation of the activities of landowners, particularly development.
- (3) Partnerships and community programmes to encourage voluntary action by Landowners.

The Green Network Community Assistance Programme is a partnership programme where Council provides advice and some assistance that supports and encourages private landowners who wish to improve the natural values on their land. Also, the Green Network Community Assistance Programme is an integral part of achieving the 2020 Green Network Strategic Platform adopted by Council in November 2002.

## ISSUES

### Green Network Conservation Covenant

A covenant is an agreement to (in the case of the Green Network) protect and enhance the natural health and values of the land. Covenants are currently offered by the Queen Elizabeth II National Trust, the Department of Conservation and Waitakere City Council. Such a covenant enables landowners to provide long-term protection to areas of land, bush, wetland, coastal edge and other natural areas on their land. In many instances landowners have spent much time, money and effort caring for an area of land which when passed on can be damaged or neglected. Placing a covenant on the land enables them to, ensure the natural health and values of the land are protected into the future. The Waitakere City Council document is specifically designed to meet Green Network objectives and local community needs and has some significant benefits not offered by the other two Nationally based covenants available, namely the management plans and monitoring.

Section 77 of the Reserves Act 1977 provides that a local authority, if satisfied that land should be managed so as to preserve the natural environment, landscape amenity or wildlife or freshwater life or marine-life habitat or historic value, may enter into a covenant agreement to provide for the management of that land in a manner that will achieve the particular purpose of conservation.

While any conservation covenant under this section remains in force, sections 93-105 of this Act (Offences), as far as they are applicable and with the necessary modifications, shall apply to the land affected in all respects as if it were a reserve, subject to the terms and conditions set out in the conservation covenant.

Based on the above, a general covenant template has been developed and has undergone testing by being worked through with several prospective landowners who plan to covenant their land. Lessons learned through that process are intended to be incorporated into the covenant document to ensure a more user-friendly and accessible document.

The Green Network Conservation Covenant documentation consists of two parts:

1. The Covenant agreement is made under the Reserves Act 1977 and contains all those aspects mutually agreed to be permanently desirable and therefore intended not to be negotiable. There are several key components to the covenant agreement:
  - the owner retains the land;
  - the covenant document cannot be changed (or withdrawn from) without the agreement of all parties to the covenant. Note that the rates relief policy allows for the covenant to be withdrawn from if the rates relief funding or programme ceases;
  - there is a commitment by the landowner to proactively manage the land;
  - the covenant is entered on the title of the property so that any future prospective purchaser is aware of the encumbrance of the covenant on the land at the time of purchase.
2. The management plan contains all those aspects that may be negotiated or need to be updated over time. Both the covenant agreement and the management plan need to be case specific to accommodate the circumstances of the land in question.

The purposes of the Management Plan are stated as being: To protect and enhance the natural interactions and natural diversity of plants, wildlife and landscape of the covenant area; and, to plan for the managing of threats that may cause damage or loss to the same.

The management plan has four sections:

- a brief summary of the land in question;
- a full description of the biological, physical and historical features of the land;
- a wish list of all those aspects that should at some time be addressed through management including weeds, pests, fencing and revegetation;
- an agreement including an undertaking to address those aspects from the wish list seen as highest priority and agreed to be feasible within the next two years.

The last two sections are planned for review every 2 years so that new priorities are set and effective proactive management is ongoing. This is the biggest difference between Waitakere City Council Green Network conservation covenants and the covenants by the other agencies, which do not contain a management plan or any agreement for ongoing proactive management. This service both attracts people to covenanting, and is a significant factor in why they approach Council instead of another agency.

Council undertakes some commitments in this process. These are:

- assistance with planning and management of the Green Network Conservation Covenant through biennial updates of the Management Plan;
- access to Council officers for technical advice on the management of the land (between reviews).

These commitments are based on staff time and become null and void if the owner falls in breach of the covenant and remain so as long as the owner remains in breach.

Should the Council choose to withdraw the service of providing staff time to update management planning, there is provision for the covenant to revert to a non-management-plan covenant as is standard for the other agencies that offer covenants.

In addition, through the other provisions of the Community Assistance Programme and depending on the circumstances and needs of the land in question, Council may offer other assistance e.g. fencing subsidy, contribution of plants towards revegetation work, etc. Such assistance is relevant only to the financial year in which it is offered and any assistance for following years is dependant on continued funding of the programme through the annual plan.

Demand for Green Network Conservation Covenants is strong. New enquiries average approximately one per week. Currently there are 88 entries on the database of people who have gone beyond just an enquiry. The entries on the database include:

- 48 expressions of interest. A desire to covenant has been expressed and usually a site visit has been undertaken. It is acknowledged that entering into a covenant is a substantial undertaking and people like to gather information and mull it over, often coming back to engage six months to two years later;
- 6 on hold. People have informed Council that they still plan to consider a covenant but other issues need working through first;
- 4 declined, three by the landowner and one by Council due to lack of natural values worthy of protecting through this mechanism;

- 14 operational covenants. These were all in place through the Queen Elizabeth II National Trust prior to Council establishing the Green Network Community Assistance Programme. While currently these Covenants have no management plan Council is happy to provide encouragement and some support through the programme;
- 17 in progress where Council is in active discussion with landowners who have indicated they wish to develop a covenant for the land. Five of these are substantially advanced.

Rates relief is offered as a component of Green Network Community Assistance but has its own policy guiding its implementation. It has a bearing on the covenant programme in that a suitable covenant (not necessarily a Green Network Conservation Covenant but one that does add value to the District Plan) is a prerequisite to being eligible to apply for rates relief. Motivations for covenants are split accordingly, with approximately 50% of enquirers wishing to gain this eligibility, while the other 50% are mainly motivated by the desire to “do their bit” for the enhancement of nature in their community. This poses two divergent problems for the Covenant programme:

1. Council had earlier determined during the formation of the rates relief policy, that those people who were entering a Covenant with rates relief in mind should have the option of withdrawing from the Covenant should the rates relief be withdrawn; while
2. People entering the Covenant with protection as the primary concern were not at all interested in entering a Covenant where there was such potential for a future landowner to cancel the Covenant. They wished to have a covenant that did not depend on rates relief resourcing.

The solution has been to offer an optional clause in the covenant agreement whereby the landowner initiating the covenant can, at the time of entering into the covenant, specify option 1. or 2. as above. For Council this has the consequence that there is no long-term obligation to provide rates relief in either case. Thus rates relief resources are renewed annually through the annual plan. In addition, this means the number of properties receiving rates relief can only expand to the extent to which it is funded each year.

The Queen Elizabeth II National Trust and Council have held initial talks, the outcome of which is that some complimentary coordination of covenants and sharing of resources would appear possible. This could see some covenants, especially those where the landowner wants strong protection, being tripartite agreements where Council contributes the management plan and monitoring with Queen Elizabeth II providing the covenant. The ability for Queen Elizabeth II National Trust to do their own covenants would remain, and the ability for Council to do its own covenants would also remain, especially those where the landowner wished the covenant to be able to be cancelled should Council rates relief be withdrawn. Staff from both organisations will report to their governance bodies on any agreement proposal of this nature.

## RESOURCES

The budget for the 2002/2003 financial year was \$20,000. Budget allocated in the 2003/2004 Annual Plan is \$20,000. Of this budget, \$7,000 is committed in existing rates relief. It is thus expected that some five additional covenants with their attendant rates relief and costs for preparation of the associated management plans will be entered into with the remaining funds during the 2003/2004 financial year.

The budget for Rates Relief for the Green Network Covenant programme will be reviewed through the Annual Plan based around demand for the Covenants and assessment of the rates relief components on a case-by-case basis.

## CONCLUSION

The Green Network Community Assistance Programme is a successful programme that has contributed to a substantial rise in awareness, interest and activity on private land. This land is a significant component of the Green network and important to sustaining Waitakere's environmental health and turning around the loss of biodiversity in the City.

The covenanting component of the programme is enabled by the Reserves Act 1997 and contributes to the Green Network by allowing people to protect and effectively manage their land.

The covenant is governed by two documents for which there are tested templates, both of which are modified on a case-by-case basis according to the circumstances of the land in question when negotiating the covenant with landowners.

## RECOMMENDATIONS

1. That the information be received.
2. That a Green Network Conservation Covenant agreement be prepared as described in this report in accordance with Section 77 of the Reserves Act 1977.
3. That the Chief Executive be authorised to negotiate a joint Conservation Covenant agreement with the Queen Elizabeth II National Trust.
4. That the Chief Executive be authorised to enter into Covenant Agreements on the recommendation of the Legal Services Manager.

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