

**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, 11 MAY 2004,
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, 13 April 2004

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Environmental Management Committee held on Tuesday, 13 April 2004, including the Public Excluded minutes, as circulated, be taken as read and now be confirmed.



PART I - REGULATORY / ENFORCEMENT

4 ADOPTION OF DRAFT GAMBLING VENUE POLICY

PURPOSE OF THE REPORT

The purpose of this report is to provide information on submissions received on the Council's draft Gambling Venue Policy and to recommend the Policy for adoption by the Environmental Management Committee with amendments. Submissions on the draft Policy closed on 13 April, and issues arising from late submissions will be raised by officers at the Committee meeting. The report also provides additional information on surveys around gambling issues which have been undertaken by other groups.

BACKGROUND

The Gambling Act 2003 (the Act) came into force on 18 September 2003. The Act requires the Council to adopt a policy on Class 4 gambling venues (premises with electronic gambling machines) for the City, and to have regard to the social impact of gambling in developing this policy.

The Act also amended the Racing Act 2003 to require that the Council adopt a board venue policy for the city. A board venue is a stand alone venue owned or leased by the New Zealand Racing Board (TAB) where race and sports betting is carried out. The board venue policy must specify whether new Board venues may be established in the city, and if so, where they may be located.

In developing a Class 4 gambling venue policy, the Council must have regard to the social impact of gambling within their area. In addition to this, local authorities may consider:

- The characteristics of the district and parts of the district.
- The location of kindergartens, early childhood centres, schools, places of worship, and other community facilities.
- The number of gaming machines that should be permitted to operate at any venue or class of venues.
- The cumulative effects of additional opportunities for gambling in the district.
- How close any venue should be permitted to be to any other venue.
- What the primary activity of any venue should be.

When developing a (TAB) Board Venue Policy the Council must have regard to the social impact of gambling and may consider any relevant matters, including:

- The characteristics of the district and parts of the district.
- The location of kindergartens, early childhood centres, schools, places of worship, and other community facilities.
- The cumulative effects of additional opportunities for gambling in the district.

The Council's draft Gambling Venue Policy covers both Class 4 Gambling Venues and TAB venues. The policy must be reviewed at least once every three years, which means that the next policy review will be in 2007.

THE DEVELOPMENT OF WAITAKERE CITY COUNCIL'S DRAFT GAMBLING VENUE POLICY

A workshop with key stakeholders (industry, social services and community groups) was undertaken in November 2003 to discuss the social impact of gambling in Waitakere City and to inform the development of the draft Policy.

Officers from the councils of the region formed a regional group to ensure a consistent regional approach to developing policies. A joint Social Impact Assessment on the effects of gambling was commissioned by this group to ensure that this research was carried out in a cost efficient manner.

The draft Gambling Venue Policy was developed based on the information provided by the Social Impact Assessment and feedback from stakeholders. The draft Policy was endorsed for public consultation by the Environmental Management Committee on 10 February 2004.

The draft Policy would introduce a citywide cap on current machine and venue numbers. Venues would be allowed to operate up to 9 machines, but increases in current machine or venue numbers could only occur if existing gambling venues closed. Existing venues with more than nine machines would be allowed to continue to operate with their current number of machines but would not gain Council consent to increase machine numbers. Venues would also be required to hold a liquor license (with the exception of TABs) as this should ensure better compliance with the terms of the Act, particularly restrictions on underage gambling. The draft Policy also includes a voluntary Code of Conduct which promotes responsible venue operation and disclosure of gambling fund distribution.

A111-A126 A copy of the draft Gambling Venue Policy with proposed, as attached at pages A111 to A126 for consideration by the Environmental Management Committee.

STRATEGIC CONTEXT

In developing the draft Policy, officers had regard to Council's strategic objectives and other related projects. The draft Policy's harm prevention approach is consistent with Council's strategic objectives in the areas of Sustainable Development, First Call for Children and Strong Communities.

ISSUES

SUMMARY OF SUBMISSIONS

24 Submissions were received from the following individuals and organisations:

- Jason Loye, Waitakere City Police
- Harkness Henry and Co, acting on behalf of the Perry Foundation
- Mark Dickinson, Oasis Centre
- Peter Page, Te Atatu Memorial RSA
- Roger Parton, Clubs New Zealand
- Dr Maria Bellringer & Professor Max Abbott, Gambling Research Centre
- Grant Withers, Age Concern
- Paul East, Charity Gaming Association
- Noel Dempsey, New Zealand Racing Board
- Mrs M Blayney, resident of New Lynn
- Reverend Apisaloma, Ekalesia Faapotopotoga Kerisiano Samoa Massey Trust Board
- Sharon Hollis, Scottwood Group

- Vivian Cheung, The Asian Network
- David Haigh & Jules Garland, Problem Gambling Foundation
- Waitakere Association of Gambling Action
- Marianne Mawhinney, resident of Waitakere City
- Jeffrey Morris, Water Safety Education Foundation
- Jeffrey Morris, Gaming Trust Services
- Nicole Devereux, New Zealand Police
- Debbie Hager, West Auckland Women's Centre
- Sara Tucker, Hospitality Association of New Zealand
- Pepe Sapolu-Reweti, Edu-Col
- Campbell Roberts, The Salvation Army
- Murray Spearman, West Auckland Trust Services

Five submissions were received in support of the Council's draft Gambling Venue Policy, eight submissions supported the policy in part, and 3 submissions opposed the draft Policy. Eight submissions did not clearly indicate whether they supported the policy or not.

A1-A110 A copy of the submissions received on the draft Policy, as attached at pages A1 to A90 for consideration by the Committee and a summary of submissions with officer comments, as attached at pages A91 to A110. Some issues that were commented on by a number of submitters are discussed below.

LOCATION ISSUES

The draft Policy proposes that the location of gambling venues would be controlled through the District Plan, and the proliferation of venues through the use of a cap on existing venue numbers. Under the Gambling Act, Council has the ability to impose rules in its Gambling Venue Policy controlling where gambling venues can locate, including whether they can locate near schools and other community facilities or existing gambling outlets. Location rules of this type have not been included in the draft Policy, and submissions have been received both advocating and opposing the use of location rules in the Policy.

The use of location rules was considered when developing the draft Gambling Venue Policy. The use of a cap on existing venue numbers would mean that new venues would only rarely have the opportunity to establish in the future. Existing venues tend to concentrate in the town centre areas of Henderson, Glen Eden and New Lynn. An assessment of some existing venues showed that most were located within 200 metres of another gambling outlet or a school. Advice from planning staff is that location controls could restrict the number of suitable sites available for new gambling venues to establish and actually encourage new venues to concentrate in particular areas. This may then lead to perceptions that particular town centres have been "ghettoised" by gambling venues.

The use of location controls in the draft Policy is not recommended for the reasons outlined above.

NUMBER OF GAMBLING MACHINES ALLOWED AT VENUES

A number of submissions were received from industry groups requesting that gambling venues be allowed to operate the legal maximum number of machines at their venues. Some submissions requested that the policy consider applications for increases in machine numbers on their individual merit.

Allowing all venues to operate the maximum number of machines permitted under the Gambling Act could result in a significant increase in machine numbers within Waitakere. There are currently 505 machines operating within Waitakere, and a policy which allowed gambling venues to increase the number of machines operated to the legal maximum could mean that up to 658 machines were allowed to operate, a 30% increase in existing machine numbers.

Council received feedback from social services and community groups during the Public workshop supporting either a reduction of current machine numbers or a policy which maintained the current number of machines. Evidence from the social impact assessment indicated that, although Waitakere has a comparatively low number of machines, the number of people seeking assistance for problem gambling was actually higher than the average for the Auckland region. The social impact assessment also indicated that there are some gaps in our understanding of the impact of gambling on the community which would benefit from additional research. Given that we do not fully understand the effects of gambling, a policy which allows for a significant increase in the number of gambling machines (thus increasing opportunities for gambling within Waitakere) is not recommended.

Some submissions requested that applications for machine increases be assessed on the merit of each application. This approach is likely to be impractical and may conflict with the objectives of the Council's Gambling Venue Policy.

An assessment of applications on a case-by-case basis would require the development of assessment criteria. Criteria which looked at whether venues operated responsibly or whether profits were allocated amongst the local community could not be used, as these are outside the scope of Council's mandate under the Gambling Act. When developing the policy Council may only consider the social impact of gambling, location issues, the main activity at venues and the number of machines and venues in the District. Assessing applications on a case by case basis may not be effective in controlling the growth of gambling, and may undermine the objectives of the Council's Policy if applications for machine increases are routinely granted. Additional staff resources would also be consumed in developing criteria and assessing applications against these points. For these reasons assessing applications for machine increases on a case by case basis is not recommended.

CITYWIDE CAP ON EXISTING MACHINE NUMBERS

A91-A110

Submissions were received both opposing and supporting the use of a cap on existing gambling machine numbers. Various reasons were cited by submitters who opposed the cap on machine numbers and these are attached at pages A91 to A110. Other submissions were received in support of the cap.

It should be noted that the use of a cap on venues and machine numbers by itself is not expected to be effective in preventing problem gambling. Other actions, such as the responsible operation of gambling venues, and restrictions on prize pools and advertising are required to address this problem. Under the Gambling Act, the Council's role is restricted to developing a Policy which regulates the number of machines at venues and the number and location of gambling venues in their area. The social impact assessment commissioned by the Council on the effects of gambling found that international evidence had correlated increases in the availability of gambling machines with increased prevalence of problem gambling. Feedback from community and social services groups indicated that they thought that problem gambling had a significant adverse effect on the community and that gambling machine numbers should either be reduced or kept at their current levels.

The retention of a Citywide cap on existing gambling machine numbers is recommended. The merits of allowing an increase in gambling machine numbers should be assessed as part of the policy review in 2007, when additional information on the effects of gambling is expected to be available.

OTHER INFORMATION RELEVANT TO THE DRAFT POLICY

A127-A136

Council has received a copy of a survey undertaken by the Waitakere Association for Gambling Action on public attitudes towards gambling within Waitakere. The survey questioned 88 people within Waitakere, as attached at pages A127 to A136. Some key findings of the survey were as follows:

- Most people (62%) thought there were a lot of places to gamble within Waitakere City, only a few people (9%) thought there were not a lot of places to gamble.
- 56% of people were concerned with the rise in the number of gambling venues in the City.
- 49% of people think that venues licensed after 2001 should be allowed to operate nine machines, and 47% of people thought that these venues should operate less than nine machines.
- 63% of people wanted Waitakere to become pokie free, while 37% of people didn't want the City to become pokie free.
- Many respondents thought that pokie venues should not be allowed in particular venues (such as restaurants and petrol stations) or near schools, shopping malls, Kohanga Reo or churches.

A further survey has also recently been undertaken by the Salvation Army. The survey was carried out at three Salvation Army centres in Manukau, Royal Oak and West Auckland to identify the prevalence of problem gambling amongst people visiting these centres for assistance.

548 people accessing services between November 2003 and January 2004 participated in the survey. 27% of participants reported that they had been, or currently were, affected by another person's gambling. Some respondents reported that they had been worried about another person's gambling, or that another person's gambling was affecting their health or the safety of their families.

477 people using Salvation Army services were also screened for problem gambling, and 76 individuals (or 16% of participants) were identified as being problem gamblers. 68% of individuals who were identified as problem gamblers reported they had children in their household.

AMENDMENTS TO DRAFT GAMBLING VENUE POLICY

Under the Gambling Act, it is the responsibility of the Department of Internal Affairs to provide the Council with information on the number of gambling venues and machines within Waitakere. Council officers have identified that a number of venues listed as operating in Auckland City are actually located in Waitakere City, and have notified the Department of Internal Affairs of this fact. There are currently 38 Class 4 gambling venues and 501 electronic gambling machines within Waitakere City. It is recommended that the sections in the draft Policy referring to the number of Class 4 gambling venues and gambling machines be updated to reflect the current number of venues and machines within Waitakere.

The Council has received a number of updated gambling venue and machine figures from the Department of Internal Affairs. Because there is a possibility that some venues in the City may not have been captured in this data, it is recommended that the Policy include a clause which would allow for the Council to give consent for venues and machine numbers to exceed the Citywide cap, but only if Council is satisfied that a venue was licensed prior to 22 September 2003, and has not been included in Departmental records through error.

A submission from the Gambling Research Centre requested that the policy state that the primary activity of a Class 4 gambling venue should not be gambling. This is a requirement that Class 4 venues are required to meet under the Gambling Act, so it is recommended that this be explicitly included as a condition of Council consent. It is also recommended that the requirement that gambling outlets hold a liquor license should be clarified to specify that this must be an on license or club license.

The Council has had access to legal advice stating the matters that may be considered when setting consent fees under the Gambling Act. When determining fees the Council may take into account the costs associated with processing the application, and the costs associated with monitoring compliance with this consent. The Council cannot recover costs associated with the review of the Gambling Venue Policy required every three years under the Act. It is recommended that this section be reworded to reflect this advice.

RESOURCES

The implementation of the Council's Gambling Venue Policy in its current form will require minimal resources, due to the introduction of a cap on existing machine and venue numbers. \$15,000 has been allocated in the 2004/2005 draft Annual Plan for assessing and monitoring social policies, which could be used to fund additional research on the impact of gambling.

CONCLUSION

The draft Gambling Venue Policy has been developed with regard to the social impact of gambling on the community, the wishes of key stakeholders and Council's strategic objectives. It is recommended that Council endorse the use of a citywide cap as an effective means of preventing further growth in gaming machine numbers and the other requirements set out in the policy with the amendments recommended in this report.

RECOMMENDATIONS

1. That the Adoption of Draft Gambling Venue Policy report be received.
2. That the Environmental Management Committee adopt the draft Gambling Venue Policy and that the Policy reflect that:
 - when determining fees associated with consent issued under the Policy the cost of processing the application and of monitoring compliance with the terms of this consent be considered, and
 - that Class 4 gambling venues must hold a current on license or club license, and
 - that the primary activity of a Class 4 gambling venue should not be gambling, and
 - there are currently 38 Class 4 gambling venues and 501 electronic gambling machines within Waitakere City, and
 - in cases where an existing gambling venue was licensed but this has not been captured in records held by the Department of Internal Affairs Council may give consent for venue or machines numbers to increase beyond the existing cap on venue and machine numbers.

Report prepared by: Annika Lane, Senior Analyst: Governance and Infrastructure and Allanah Jarman, Social Policy Researcher.



5 **LEGAL UPDATE (AS AT 27 APRIL 2004)**

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

Kitewaho Bush Reserve, Peter Mawhinney and Others v Waitakere City Council

Following the Council's success in the High Court (where it won its appeal, and successfully defended the cross-appeal - see later agenda item below, for more information), the Council has reignited its costs application against Mr Mawhinney et al in the Environment Court. Council is seeking approximately \$140,000. A hearing date is expected for July/August 2004.

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 appears that the appeals aside from Waitakere City Council's appeal will soon be settled. Transit has 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 & 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 & 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. The meeting to resolve this was held on 25 November 2003. Negotiation discussions at this meeting resulted in seeking an extension from the Court as to a report back date. The Court has given the parties until 1 March 2004 to carry out further landscaping proposals. The matter has not been resolved and parties are reporting to the Court by 30 April 2004. It is anticipated that an additional resource consent application will be required to implement visual mitigation measures.

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 2004. Some discussions with Mr Mawhinney have taken place as to whether it is possible to narrow the scope of the appeal.

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 is being prepared on this basis. The matter was part heard in the Environment Court on Friday 17 October 2003. The hearing recommenced in the week of 16 February and was completed during that week. The Court has reserved its decision.

Estate Homes Limited 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 Road. 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 Limited. Estate Homes Limited has issued High Court proceedings relating to a contested reserves contribution assessment in respect of the first stage of its Sturges Road subdivision. Council and Estate are in the process of negotiating resolution of this through arbitration. There is a further report date in late May 2004.

Estate Homes Limited 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. This matter has now been appealed by the Council to the High Court. Initial conference took place on 5 February 2004, with some timetabling orders made. Council successfully obtained an order for the Environment Court. A hearing date is anticipated for June 2004.

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 along with mediation, resulting in an agreement in principle being reached, with the details still to be finalised. Consent documentation for the Environment Court now being finalised and circulated to the parties. The appellant has not responded to documentation. At the Judicial Conference on 26 April 2004, Mr Barker (the Appellant/Applicant's Counsel) failed to appear. The Court has now directed that this matters is to settle by 24 May 2004 with the Appellant/Application to advise the Court of progress. In the event that the Appellant/Applicant has not completed and responded to the required documentation and the matter not settled, the matter is to proceed to hearing. An evidence exchange timetable has been set down in the event that the matter does not settle (which will only be because of the Appellant/Applicants failure to assist in finalisation of the documentation), with the Appellant/Applicant providing their evidence first.

Corner Stone Limited v Waitakere City Council (February 2003)

Corner Stone Limited has appealed the Council's decision to refuse an application for land use consent to develop six office units at 120 South Titirangi Road, Titirangi. As of 29 April 2003 there were 21 parties who had filed Section 271A or Section 274 notices. Cornerstone has provided its initial evidence and Council has filed evidence in reply. A hearing was scheduled for the week of 17 November 2003. However due to the Court's concern as to the validity of a 1971 Planning Consent the matter has been adjourned until the validity of this consent can be resolved. The parties reported back to the Court on 2 December 2003 and requested that more time be granted to consider the complexity of issues revised by the 1971 consent. This preliminary matter was heard during the week of 2 February 2004, with the Court releasing its decision on 16 February. The Court determined that Cornerstone could rely on its original application and did not need to apply for a variation to proceed. The substantive hearing has been scheduled to be heard in the week of 17 May 2004.

Waitakere Ranges Protection Society v Waitakere City Council R & 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. It is likely the site specific Thompson appeal will be resolved by agreement. The Juderon Family Trust is a Section 271A party to that appeal. Mr and Mrs Vaughan are Section 274 parties to that appeal.

Meetings have taken place between all parties but an impasse has been reached between the parties and so the matter was referred to Court facilitated mediation. Mediation took place on 17 March 2004 and achieved results. It is expected that based on the conclusion reached at mediation an agreed resolution of this matter will soon be in the next two weeks.

Kitewaho Bush Reserve Co Limited v Waitakere City Council

Part of Kitewaho Bush Reserve Company Limited's general reference on the Operative District Plan in respect of the status of Structure Planning. Now that the High Court appeal has been resolved this matter will need to be progressed to hearing. Some discussions have been had with Mr Mawhinney as to whether the appeal might be withdrawn.

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 were involved in ongoing discussions in an attempt to reach agreement as between themselves. This involved the New Lynn Community Board, who is responsible for the administration of the park. After an agreement in principle was reached there were further negotiations on the details of settlement. These negotiations took some time and were assisted by Councillor Battersby. Ultimately, with this assistance, an agreed position was reached and a consent order sought from the Court. This was granted by the Court on 26 March 2004 and provides for the installation of floodlights for Field Numbers 1 and 2 of Crum Park.

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 34-36 Grassmere Road. Waitakere City Council and Auckland Regional Council have filed their respective replies to the appeals with the Environment Court, and 13 parties have filed Section 271A or Section 274 notices. This matter will be set down for hearing sometime after 8 May 2004. Exchange of evidence has been timetabled to occur in February-April 2004.

Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming the consent conditions regarding financial contributions payable in respect of a proposed subdivision. Discussions between the parties continue.

Te Atatu Residents' & Ratepayers Association Inc v Waitakere City Council (January 2004)

A reference against the Council's decision approving Plan Change 2, which re-identifies the Harbourview land on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area. The Council has filed its notice of reply. The parties now await a mediation date from the Court.

I & Z Farac v Waitakere City Council

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Rd, Massey. It seeks to rezone all (or part) of the property as Living 2 Environment. Discussions will take place on the relief being sought.

Save Hobsonville Against the Mismanagement of its Environment Society Inc v Waitakere City Council (February 2004)

An appeal against the Council's decision granting consent to Vodafone to construct a telecommunications facility including a tower at 11 Scott Road, Hobsonville. An Environment Court-assisted mediation occurred on 18 March 2004, during which the appellant and applicant agreed to investigate the feasibility of reducing the height of the tower. The parties reported back to the Court on 8 April seeking further time to continue settlement discussions, with further mediation tentatively scheduled for late May 2004.

HIGH COURT

Waitakere City Council v Kitewaho Bush Reserve Company Limited, Peter Mawhinney & Ors (Appeal filed 22 January 2002)

As previously reported to the Committee His Honour Justice Randerson released a decision in relation to this matter on 3 March 2004 which upheld Council's decision in relation to the appeal (in respect of Section 91 Resource Management Act) and confirmed the dismissal of Kitewaho's substantial cross-appeal. On 31 March 2004 Kitewaho filed a Notice of Application for Leave to Appeal to the Court of Appeal along with draft Points on Appeal. If leave is refused by the High Court then Mr Mawhinney is able to apply to the Court of Appeal for special leave to appeal to that Court. Only after leave has been granted can the appeal proceed. Council is opposing the application for leave and a hearing has been set down for 14 May 2004.

Council has filed a costs application with the High Court seeking a substantial costs award of up to \$145,000. A decision is expected on costs in May/June 2004, although it maybe delayed if leave is granted to Mr Mawhinney to proceed to the Court of Appeal.

**Kitewaho Bush Reserve Company Limited & Ors v Waitakere City Council
(February 2002) (Civil Proceedings)**

This is a claim for damages by Kitewaho et al and is related to the matters addressed in the other High Court proceedings. It has been stayed awaiting determination of the other appeal.

In light of the application for leave for appeal the damages claim has been further adjourned (by consent of the liquidators of the appellant companies) to await the final determination of the RMA appeal and specifically until after the application for leave to appeal to the Court of Appeal has been dealt with. It has been adjourned to 19 May 2004. Council has applied to have the proceedings struck out as an abuse of process.

PROSECUTIONS - DISTRICT COURT

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

A number of charges were brought against 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. The trial took place during the week of 3 November 2003.

Mr Gordon was found guilty by the jury in respect of 15 of the 23 charges he faced. The charges he was acquitted on related to the presence of motor vehicles on one of his two properties. He was found guilty in respect of the presence of motor vehicles on the other and in respect of the presence of additional household units on both properties.

After an adjournment of sentencing to allow Mr Gordon the opportunity to remove the offending items from his property, sentencing took place on 22 March 2004.

Mr Gordon was sentenced to 320 hours community work and ordered to pay \$5,000 towards the cost of prosecution. The Court also made new enforcement orders prohibiting the presence of additional household units and car wrecks on the property.

At sentencing the Court indicated that while it was treating the continued non-compliance as an aggravating feature it would resist imposing a manifestly harsher sentence on the basis of this, because it considered this potentially new offending, not covered by the convictions it was addressing. Notwithstanding this the Court indicated that Mr Gordon had come extremely close to being imprisoned for the offending and he was given a final warning, denoting that any further offending of this kind will result in a custodial sentence.

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

Charges were laid against Mr and Mrs Covich alleging that the Covich's operated a clean fill in contravention of an abatement notice requiring them to cease this activity. Mr & Mrs Covich pleaded not guilty and elected trial by jury. A depositions hearing took place on 11 November 2003, with counsel for the Covichs conceding that there was a case to answer. This matter has been set down for a trial during the week beginning 20 September 2004.

MT Yeo, KB Yeong, MTY Properties Limited - Various Properties (May 2003)

Charges were laid against Messrs Yeo and Yeong, and Mr Yeo's company MTY Properties regarding alleged unauthorised building work, failure to comply with notices to rectify, and unsafe buildings, in respect of seven properties owned by the defendants. The matters have been adjourned to a status hearing to occur on 28 May 2004, to allow time for further discussions.

Warren Heywood - 26 Mudgeways Road, Sunnyvale (June 2003)

Mr Heywood has entered a guilty plea to a charge to failure to comply with an abatement notice. A restorative justice conference is due to occur early May, with sentencing scheduled for 24 May.

Roy Fowler - 7 Woontons Lane, Titirangi (August 2003)

Charges were laid against Mr Fowler for alleged offences under the Building Act (unauthorised building work) and Resource Management Act (breach of various district plan rules, including doing building work on the road reserve and in a stability sensitive area). Not guilty pleas have been entered. A pre-trial conference occurred on 22 April 2004 at which time the not guilty pleas were confirmed and the matter was allocated a defended hearing date of 7 July 2004.

Gary O'Malley - 18 Kopiko Road, Titirangi (August 2003)

Charges were laid against Mr O'Malley in respect of alleged unauthorised building work (new swimming pool, retaining wall and concrete block wall in a stability sensitive area). Not guilty pleas have been entered. A status hearing was scheduled for 23 April 2004 however the defendant failed to appear and the matter has been allocated a formal proof date of 28 May 2004.

Pei-Chung Wu - 76 Hobsonville Road, Hobsonville (September 2003)

Charges were laid against Ms Wu in respect of three building situated on a property co-owned by Ms Wu (the other owners having left NZ), for alleged unauthorised building works and unsanitary buildings. The matter has been adjourned and will be called by the Court on 28 May 2004, as this is when Ms Wu is due to return to NZ.

GPL Limited & JD Hardie - 591 Te Atatu Road, Te Atatu (October 2003)

Charges were laid against the company and its director, JD Hardie, for failing to provide a current building warrant of fitness to the Council and obstructing/hindering Council officers in carrying out their duties under the Building Act. To date the defendants have entered not guilty pleas to all charges. A status hearing is scheduled for 30 April 2004.

Clinton Davis - 12 McEntee Road, Waitakere (January 2004)

Charges were laid against Mr Davis for the alleged unauthorised conversion of a garage to a habitable unit. This matter will have its first call on 30 April 2004.

Rbit Investments Limited (January 2004) - 12 Marewa St (January 2004)

Charges were laid against the company and its three directors for alleged unauthorised building work to convert the basement of a house to a habitable unit. This matter will have its first call on 30 April 2004.

John O'Malley - 623 Swanson Road (January 2004)

Charges were laid against Mr O'Malley for alleged unauthorised building work (conversion of a shed to a residential unit). This matter was adjourned due to unavailability of the defendant's counsel and will be called on 28 May 2004.

Dovey Place Developments Limited, Neslo Construction Limited & Foundation Engineering Limited (February 2004)

Charges were laid against the owner of a number of properties at Dovey Place (Dovey Place Developments Limited) and the contractors responsible for the foundation and building works for undertaking the construction of five houses without building consent. These matters will have their first call on 2 July 2004.

HIGH COURT

Application for Declaratory Orders regarding Swimming Pool Fencing (December 2003)

The Council has filed proceedings in the High Court seeking declaratory orders regarding the application of the provisions of the Fencing of Swimming Pools Act 1987 ("FSP Act") and, in particular seeking a ruling on the interpretation of "immediate pool area". There are four other parties, namely Auckland City Council, Rodney District Council, and two defendants against whom the Council has already initiated minor prosecutions for alleged failure to comply with the FSP Act. A judicial conference is scheduled for 29 April. The matter has been allocated a two-day hearing beginning 2 August 2004.

RECOMMENDATION

That the Legal Update (as at 27 April 2004) be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



6 REVIEW OF THE POLICY ON DOGS AND DOG CONTROL BYLAW

PURPOSE OF THE REPORT

The purpose of this report is for consideration of the draft policy and bylaw on the control of dogs by the Environmental Management Committee, and for approval to notify the documents for public submission.

BACKGROUND

A137-A171

Since the Environmental Management Committee considered a first draft of the documents at its meeting on 9 March 2004 (349/2004) a number of workshops with Councillors and Community Board Members have been held and comments incorporated into the drafts. The policy and bylaw as attached at pages A137 to A171 have now been refined and will be prepared for public notification following final amendments by this Committee.

STRATEGIC CONTEXT

The Policy on Dogs, implemented through the relevant By-law, provides the ability to minimise any danger, distress and nuisance from dogs affecting the community generally, and will provide for the well being, exercise and recreational needs of dogs and their owners. This contributes towards making Waitakere a safe city, one of Council's five top priorities.

Waitakere City Council is signatory to the Animal Charter and shares concern for animal welfare as well as that of its citizens.

ISSUES

Given that the existing policy and bylaw, adopted in 1997 following extensive consultation, enjoys a general level of acceptance with relatively few compliance issues, a minimum of changes have been made.

Changes required by the Amendment Act 2003 to the Dog Control Act 1996, include a new schedule of fines, new definitions for Menacing and for Dangerous Dogs and clarification of where dogs are to be prohibited, restrained by leash or permitted to be exercised off-leash in the City.

The reviewed policy notes public areas in Waitakere City under management by bodies other than Waitakere City Council where dogs are prohibited. However, Waitakere City Council's bylaws do not apply to these areas, such as Whatipu Scientific Reserve and Lake Wainamu. Agreement has yet to be reached as to how these areas will be patrolled.

On land administered by Waitakere City Council, control of dogs remains the same as under the existing bylaw with all reserves being off-leash areas, and part of Piha Beach (north) and part of Bethell's Beach remaining off-leash during daylight, otherwise dogs must be leashed. Prohibited areas include Piha South during the daylight saving period, wildlife areas, playgrounds, sports fields and picnic areas. Otherwise dogs must be leashed in public places and private ways.

Joint public notification of the region's reviewed policies and bylaws on the control of dogs is now programmed for 14 June to 16 July 2004.

RESOURCES

Submissions on the policy and bylaw will need to be heard during August and possibly September 2004.

CONCLUSION

The draft documents, subject to amendment by this Committee, are ready to be publicly notified jointly with other local authorities in the region.

RECOMMENDATIONS

1. That the Review of the Policy on Dogs and Dog Control Bylaw report be received.
2. The draft Policy on Dogs and Control Bylaw as attached at pages Axx to Axx be adopted for public notification.

Report prepared by: Tom Didovich, Manger Animal Welfare Services and Carol Bergquist, Senior Analyst Environmental Policy.



PART II - DISTRICT PLAN / STRUCTURE PLANS

7 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

The Acting District Plan Co-ordinator will provide a verbal update to the Environmental Management Committee on progress in dealing with the appeals on the Proposed District Plan.

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

RECOMMENDATION

That the District Plan Appeals Update Table report be received.

Report prepared by: Owena Schuster, Committee Secretary.



8 HEARING REPORT FOR PROPOSED PLAN CHANGE 7 - NOTIFICATION REQUIREMENTS

PURPOSE OF THE REPORT

This report addresses the issues that relate to Proposed Plan Change 7. The Proposed Plan Change relates to the notification rules within the District Plan, and seeks to make them consistent with the Resource Management Act 1991 (the Act), as amended in 2003.

This report sets out the statutory process requirements and the policy and non-statutory framework relevant to plan changes. Furthermore, the report addresses Section 32 issues and provides an analysis of the two submissions that were received.

BACKGROUND

The Resource Management Amendment Act 2003 ("the Amendment") came into force on 1 August 2003 and affects (amongst other things) the Council's functions in relation to the notification of resource consent applications.

The Amendment introduces a new concept that is generally called "limited notification". Limited notification seeks to further assist the community to be involved in resource consent decision making, when the resource consent application is being processed as a discretionary or non-complying activity.

Section 94 of the Resource Management Act now states that, if public notification is not required under Section 93 (ie. because the effects are minor or it is a controlled activity), notice of the application must still be served on all persons who may be adversely affected by the activity, unless all those who may be adversely affected have given their written approval. What this means is that if one or more affected person(s) does not give their written approval, all adversely affected persons must be notified (but not the public at large). Those persons will have the opportunity to make a submission and attend a hearing. This applies even if some persons (but not all) have given their written approval.

The Council must ensure that its notification procedures and the District Plan will be consistent with these changes made to public notification. The current District Plan text is no longer consistent with the Amended Act, and as a result it has the potential to lead to resource consent applications needing to be processed on a limited notification basis which was never anticipated by the District Plan.

The Environmental Management Committee therefore resolved at its August 2003 meeting:

“That pursuant to Clause 16A of the First Schedule to the Resource Management Act 1991, the Council resolve to publicly notify proposed Plan Change 7 to the Operative Waitakere City District Plan as attached at pages A4 to A13 to the Agenda report.”

1711/2003

STATUTORY REQUIREMENTS

The Resource Management Act provides a legislative framework for the sustainable management of natural and physical resources in New Zealand. The purpose of the Act is to promote the sustainable management of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being, and for their health and safety. Part II (Sections 5-8) sets out the purpose and principles of the Act.

Section 5(2) defines the purpose of the Act, sustainable management as:

“Managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

Section 6 of the Act relates to “Matters of National Importance”. Matters of national importance include:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.*
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) the protection of historic heritage from inappropriate subdivision, use, and development.*

Section 7 relates to “Other Matters”. Particular regard must be given to:

- (a) *Kaitiakitanga.*
- (aa) *The ethic of stewardship.*
- (b) *The efficient use and development of natural and physical resources.*
- (c) *The maintenance and enhancement of amenity values.*
- (d) *Intrinsic values of ecosystems.*
- (e) *Repealed.*
- (f) *Maintenance and enhancement of the quality of the environment.*
- (g) *Any finite characteristics of natural and physical resources.*
- (h) *The protection of the habitat of trout and salmon.*

Section 8 requires that managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.

Council’s functions are outlined in Section 31 of the Act. The Council’s functions include the control of actual and potential effects off the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Section 31 of the Act outlines Council’s functions as follows:

- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
- (b) *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of;*
 - (i) *the avoidance or mitigation of natural hazards; and*
 - (ii) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
 - (iii) *the maintenance of indigenous biological diversity;*
- (c) *repealed;*
- (d) *the control of the emission of noise and the mitigation of the effects of noise;*
- (e) *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes;*
- (f) *any other functions specified in this Act.*

The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Section 74(1) of the Act is the statutory basis upon which Council undertakes changes to its district plan. Section 74(1) states that:

“A territorial authority shall prepare and change its district plan in accordance with its functions under Section 31, the provisions of Part II, its duty under Section 32, and any regulations.”

SECTION 32 ANALYSIS

The Section 32 analysis done prior to notification of the Proposed Plan Change identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act.

Before adopting an objective, policy or rule or other method in the District Plan, an assessment under Section 32 of the Act must be carried out. Section 32 (subsections 3-6) state:

- “(3) An evaluation must examine -
- (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (4) For the purposes of this examination, an evaluation must take into account -
- (a) the benefits and costs of policies, rules, or other methods and
 - (b) 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.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.”

A report addressing the requirements of Section 32 was prepared and was made available to the public at the time of the notification. The section 32 report concluded that the 2003 amendments to the Resource Management Act 1991 necessitated the Proposed Plan Change and that the change was the most appropriate, efficient and effective action to take. When evaluated, the benefits of the Proposed Plan Change outweighed the costs, and the approach was subsequently confirmed by a declaration by the Environment Court (see the Consultation section below).

DISTRICT PLAN PROVISIONS

Notification is addressed in a general fashion in the “Introduction to the Rules” Section of the District Plan, and more specifically as Rule 1 in each Human Environment or Natural Area. The “Introduction to the Rules” Section indicates that Controlled and Limited Discretionary applications need not be notified, and written approvals will not be required from any adversely affected parties. This approach is taken because it is considered that the effects that are created by Controlled or Limited Discretionary activities are generally very minor, and this approach is consistent with the current legislation. The District Plan also sets out guidelines about which Discretionary and Non-complying activities will be notified.

More specifically, Rule 1 in each of the Human Environments and Natural Areas states:

“In relation to controlled activities and limited discretionary activities under the following rules ... applications for consent need not be notified and the written consents of affected parties will not be required”.

This text was drafted having regard to the wording contained in the previous section 94 of the Act, that has now been replaced by the Amendment.

Section 93(1) of the Amendment creates a presumption that Council shall publicly notify unless:

- The application is for a controlled activity; or
- The adverse effects on the environment will be minor.

Section 94(1) of the Amendment then creates a presumption that limited notification of directly affected persons shall take place where the adverse effects are minor but there are persons who 'may be adversely affected by the activity', unless all affected persons have given their written approval. Thus limited notification is required for all activities from controlled to non complying that have more than minor environmental effects, unless all affected persons provide their approval.

However Section 94D then creates three exceptions to the presumption in Section 93(1). These are:

1. Council can notify a controlled activity application if the plan expressly requires it to be notified;
2. Public notification is not required if a rule in a district plan "expressly provides that such an application does not need to be notified"; and
3. Limited notification is not required if a rule "expressly provides that notice of such applications does not need to be served".

It is the third of these presumptions that is important to this plan change. Ss94D(2) & (3) plainly distinguish between a rule that exempts public notification and a rule that exempts notice being served on affected persons (ie. limited notification). This deliberate separation confers a clear Parliamentary intention that the District Plan rule that states that applications 'need not be notified' does not meet the requirements of the Amendment.

The current wording of the District Plan is adequate to prevent public notification under the second presumption of section 94D (identified above), however it is not when applied to the third. The statement that "**written consents will not be required**" in Council's District Plan does not correlate with the s94D(3) requirement that notice of a consent application "**does not need to be served ...**".

Once the Amendment came into force on 1 August 2003, the District Plan text is not sufficient to ensure that controlled and limited discretionary activities do not have the potential to require limited notification.

PROPOSED PLAN CHANGE 7

The key elements of Proposed Plan Change 7 are as follows:

Introduction To The Rules Section

1. Where notification of Controlled and Limited Discretionary Activities is referred to in the "Types of Resource Consent" sub-section, amend the text as follows:

"... need not be publicly notified, and written consents will not be required, **nor will the service of notice to adversely affected persons under the limited notification provisions of the Act be required ...**"
2. In the "Notified/Non-Notified Resource Consent Application Procedure" sub-section, there are two flow diagrams (entitled Diagram 1 and Diagram 2) that trace the path of resource consent applications that are processed on a non-notified and a notified basis. These two diagrams are rendered out of date by the Amendment, and it is considered appropriate to delete these from the District Plan. If they remain, they may serve to mislead plan users about the process they must follow.

Revised and updated flow diagrams will be prepared for the notified, limited notified and non-notified procedures. This will be made available as District Plan brochures, and also on the Council's Internet site. Given that the case law and procedures for these resource consent processes are continually evolving, the use of the District Plan Brochures rather than the District Plan as the media to communicate the process is cheaper and more efficient than the inevitable plan changes to update the flow charts.

There is also a typographical error in the "Notified/Non-Notified Resource Consent Application Procedure" sub-section, where the fifth (5th) bullet point refers to "section 35 of the Act". This should be "... Section 357 of the Act". The Plan Change will seek to correct this minor error.

City Wide Definitions Rule

Amend the definition of "Limited Discretionary Activity", by adding a new sub-paragraph (e) as follows:

"(e) which, for the avoidance of doubt, is the same as an activity referred to as a "restricted discretionary activity" in the Act."

Amendments to the:

City Wide Heritage Rule;
All Natural Areas Rules;
All Human Environments Rules;
Scheduled Sites Rules;
Special Areas Rules; and
Subdivision Rule 1.

The specific Rule 1 relating to Notification / Non-notification in each of these Rules of the District Plan is amended to include the following (additions in bold):

"... applications for resource consent need not be notified and the written consents of affected ~~persons~~ parties will not be required, **nor in terms of limited notification under the Act, will notice to adversely affected persons need to be served ...**"

A172-A181

This amended text is indicative, a full list of all amended Rules with the specific wording identified, as attached at pages A172 to A181.

CONSULTATION

The Council has sought legal advice on this matter, and that advice concluded that a Plan Change was necessary to clarify in the District Plan the circumstances in which a resource consent is processed on a limited notification basis.

Since the Proposed Plan Change was publicly notified, the Environment Court has issued a declaration (W070/2003) under section 311 of the Act in relation to notification statements in district plans. The decision of the Court reaches the same conclusion as the legal advice received by the Council, and directs that where previous notification statements in district plans do not accord with the provisions of the amended Act, a plan change is required to address this lack.

ANALYSIS OF SUBMISSIONS

Proposed Plan Change 7 was publicly notified on 18 August 2003 and the Council received two submissions, from the New Zealand Heavy Haulage Association (Incorporated) and the New Zealand Historic Places Trust. A summary of submissions was publicly notified on 18 October 2003 and no further submissions were received either in support or opposition to the two original submissions. Issues raised in submissions are discussed below.

Submission from the New Zealand Heavy Haulage Association (Submission 7/1)

A172-A181

This submission supported the Proposed Plan Change. In particular it supported the provisions that seek to ensure that controlled and limited discretionary activities need not be notified, and that the District Plan text be changed (as was proposed) to state that notice of the controlled and limited discretionary activities need not be served on affected parties. A full copy of the submission is attached at pages A172 to A181.

The support for the Proposed Plan Change is noted, and it is recommended that the submission by the Heavy Haulage Association be accepted by the Council.

The Heavy Haulage Association has indicated that it has no objection to the relief sought by the New Zealand Historic Places Trust. The Association has also indicated that it does not wish to be heard on this matter.

Submission from the New Zealand Historic Places Trust (Submission 7/2)

This submission sought a specific amendment to Heritage Rule 1.1, and a general amendment to the notification text to ensure that the District Plan is consistent with the terminology of the Act.

In terms of the specific amendment, the Historic Places Trust sought that Heritage Rule 1.1 be amended by adding two additional sentences at the end of the Rule, as per the following underlined text.

Notification/Non-Notification

In relation to *Controlled Activities* and *Limited Discretionary Activities* under the following Rules 2 to 5, applications for consent need not be notified and the written consents of affected **persons** ~~parties~~ will not be required, ***nor in terms of limited notification under the Act, will notice to adversely affected persons need to be served*** ~~except that t~~

The written consent of the New Zealand Historic Places Trust will be required in the case of a proposal affecting any heritage item listed under Category 1 and/or registered under the Historic Places Act and any *waahi tapu* or *archaeological site* (irrespective of whether it is registered or not. **If this written approval is not obtained, the Council will require such applications to be notified. The limited notification procedures of the Act may be used where appropriate.**

To make it clear that the additional sentences only apply to Category 1 items in the Heritage Appendix, the paragraph has been made into two paragraphs, to distinguish between controlled and limited discretionary activities, and the written consent of the Historic Places Trust. This significantly strengthens the Historic Places Trust role in terms of Category 1 Heritage items.

A172-A181 In terms of the general amendment, the Historic Places Trust sought that all references to “written consent” or “written consents” in the Proposed Plan Change be amended to “written approval” or written approvals”. This amendment makes the District Plan consistent with the Act, and ensures that there will be no confusion between a resource consent processed by the Council and the written approval of an affected party. A full copy of the submission, as attached at pages A172 to A181.

The Historic Places Trust has indicated that it does not wish to be heard on this matter.

The amendments sought by the submission are noted, and it is recommended that the submission by the Historic Places Trust be accepted by the Council.

CONCLUSION

The Resource Management Amendment Act 2003 came into force on 1 August 2003, and affects the Council’s functions in relation to notification (amongst other things). The Amendment has left the Council in the position of needing to undertake a Plan Change. Plan Change 7 seeks to ensure that the effectiveness and certainty of the District Plan is not compromised by containing text related to the notification of resource consent applications, where that has been superseded by the new legislation.

The concept of limited notification has considerable merit, and most Councils have welcomed this. However, the District Plan is based upon a presumption that Controlled and Limited Discretionary resource consent applications will not be publicly notified. The introduction of limited notification skews this premise, and has the potential to add time and cost to resource consent applications where previously those consents would have been processed on a non-notified basis. The proposed plan change signals the Council’s intention to make the District Plan consistent with the Resource Management Act 1991 (as amended by the 2003 Amendment Act), and provide certainty to all plan users about when limited notification will be applied in the resource consent process. The plan change also makes consequential changes to the District Plan and addresses other typographical errors.

RECOMMENDATIONS

1. That the Hearing Report for Proposed Plan Change 7 - Notification Requirements be received.

A172-A181 2. That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, the Environmental Management Committee approves Plan Change 7: Notification Requirements, as attached at pages A172 to A181, including the amendments sought in submission 7/2 by the New Zealand Historic Places Trust.

3. That pursuant to Clause 10(i) of the First Schedule of the Resource Management Act 1991, the relief sought by the two submitters:

- Submission (7/1) by the New Zealand Heavy Haulage Association
- Submission (7/2) by the New Zealand Historic Places Trust)

are accepted in full, for the reasons outlined in this report.

Report prepared by: Eryn Shields, Planner: Policy Implementation.



9 **ISSUES SURROUNDING THE NOTABLE PUBLIC VIEW SHAFT PROVISIONS OF THE DISTRICT PLAN**

PURPOSE OF THE REPORT

This report is prepared as a discussion document and to inform the Environmental Management Committee of the issues relating to the Notable Public View Shaft Provisions of the District Plan (the Plan).

BACKGROUND

A182-A185

The Plan currently recognises 61 notable public views throughout Waitakere City. These views are generally related to the special landscape elements and features that define the character of Waitakere, particularly in relation to many of the outstanding landscapes of the City. These public views assist with providing the community with an appreciation of the overall landscape quality and character of the City. These public views have therefore been included within the Plan and are identified in Map 3.6(e) and Appendix K of the Policy section of the Plan. Copies of Map 3.6(e) and Appendix K are attached at pages A182 to A185. These views are located throughout the City, although there is a predominance of views relating to the coastal and Waitakere ranges landscapes.

As part of its statutory responsibilities, the Council is required to monitor the effectiveness of its District Plan objectives, policies and rules. Given that the map of these public views was prepared in 1995, it is considered that a review of the effectiveness of the provisions and the impact of development on these views is necessary. The proposed review will also provide information for the Waitakere Ranges Protection Project as part of the review of the District Plan and the Ranges.

STRATEGIC CONTEXT

The Long Term Council Community Plan has nine strategic platforms. The "Green Network" Platform seeks to achieve the following:

"2020 vision: Stream and Forests will be full of life. The Waitakere Ranges will be permanently protected and a Green Network will link the Ranges and the sea, connecting the everyday lives of the people of Waitakere with the Natural world.

Summary: This platform is about ensuring that the special qualities of the Ranges and West Coast are protected. It seeks to restore the Green Network - from the ranges to and along the coast. The vision seeks to protect and enhance the city's important landforms, landscapes, range of native plants, wildlife and ecosystems in Waitakere City."

Ensuring that the District Plan, as a strategic document, is accurate and reflects the aspirations of the Long Term Council Community Plan is important if Waitakere City seeks to achieve its strategic goals. Many of these public views include significant views of the outstanding landscapes of the District. It is important to undertake regular monitoring of the objectives, policies and rules of the Plan to ensure that they reflect the Council's strategic direction. The proposed review of the public views will allow the Council to monitor the relevant objectives, policies and rules of the Plan.

ISSUES

Existing Provisions of the Waitakere City District Plan Relating to Notable Public Views

The references to the view shaft controls are mainly contained within the Policy section of the Plan. When the Plan was first notified the Council lodged its own submissions, which sought to include reference to the view protection controls in the assessment criteria of the District Plan. These submissions were accepted by the Council and the Plan does include a requirement to consider the effects of new building and/or development on views where the building or development is located on land which is identified as a sensitive ridge or headland / cliff / scarp in the Natural Area Maps.

In terms of the Objectives and Policies of the District Plan, Objective 9 is concerned with the protection of the City's outstanding landscapes, which are highly valued by the community. Objective 9 seeks to protect the quality and significance of the City's outstanding landscapes.

Policy 9.3 states:

*"Structures (including fences) and driveways should be designed and placed in such a way that they do no detract from the visual significance of those landscape elements that are essential to the City's outstanding landscapes, and do not detract from landscape elements that are essential to the city's character. Particular regard should be had for the placement of structures so that they do not intrude above any sensitive ridgeline **when viewed from a public place**, or intrude visually on any other Natural Landscape Element. Consideration shall be given to the most practicable option with respect to the placement and provision of infrastructure."*

This policy seeks to ensure that the natural character of these landscape elements is protected. Many of these landscape elements are viewed from the public viewpoints that are included on Map 3.6(e). These elements help to define the character of the particular views and, accordingly, it is important that the qualities of these landscape elements are protected.

Policy 9.13 allows for the trimming and pruning of vegetation in order to maintain Public Views:

"Activities involving the trimming and pruning of vegetation may be carried out that maintains, uninterrupted, the identified public views of the city noted on Map 3.6(e) and in Appendix K of the Policy Section. Any such trimming or clearing shall be carried out in a way that minimises damage to vegetation."

Objective 11 of the Plan is concerned with protecting those aspects of the environment that are particularly valued by the Community and recognises the varying character of each part of the City. The protection of these view shafts seeks to achieve a quality of settlement and associated activities that is sympathetic to, and protects and enhances, those features that contribute the amenity values of an area. This includes the natural and physical features that give the various landscapes of the city their character.

Policy 11.25 seeks to ensure that structures in the Harbour View Special Area are located so as to protect notable public views.

As noted above, the existing provisions of the Plan relating to the protection of public views seek to control building location and design on sites containing natural landscape elements. The rules of the Plan require that any building or development within the Human Environments which is located on land identified as a sensitive ridge or headland/cliff/scarp on the Natural Areas Maps requires resource consent. Such proposals require assessment under a number of the criteria of the Plan, including the following:

“The extent to which the height of the building or development will interrupt identified Public Views, as listed in Appendix K of the Policy Section of the Plan.”

In terms of vegetation alteration, the Plan recognises that there may be circumstances where the trimming or removal of vegetation is warranted in order to maintain these public views. This is a matter that can be considered in the event that a resource consent is sought to trim or remove such vegetation.

Discretionary or non-complying activities would also need to consider the actual or potential adverse effects of development on these notable public views.

Issue/s Identification

Council’s resource consent processing staff have expressed concerns that the exact location of the view shafts has not been sufficiently detailed on Map 3.6(e) to accurately define the extent of each particular view shaft. The scale of Map 3.6(e) makes it difficult to determine the location of views shafts and the elements or view that the Plan is seeking to protect. Further, the Plan currently only has rules relating to the protection of view shafts where development is located within a sensitive ridgeline or scarp. There may be circumstances where these view shafts are affected by development but the Plan does not include any controls.

It is considered that a review of the view shafts, including a photographic survey and an assessment of the effectiveness of the existing Plan provisions is necessary. Once these investigations have been completed, this will provide the information to determine whether a Plan Change is necessary.

As noted above, Waitakere City is very fortunate to have some of the most dramatic, varied and significant landscapes within the Auckland Region. Many of these views around the district contribute to the community’s and visitors’ appreciation of the City, and to the amenity of the City’s landscapes. Under Section 7(c) of the Resource Management Act 1991, the Council is required to have particular regard to *“the maintenance and enhancement of amenity values”*. These views were identified in an early report prepared for the Waitakere City Council (“Landscape Assessment of Waitakere City” - Boffa Miskell Limited in Conjunction with Dennis Scott and Associates, 1995), and by Waitakere City Council staff.

It is considered that a review of the provisions is necessary in order to monitor their effectiveness.

Potential Plan Change

The plan change may simply involve more accurately defining the location and significant elements of the public views that are being protected. However, it may also result in the provision of additional rules or criteria to control the effects of building or development on these views. This will also need to be balanced with the need to recognise the requirement for people to develop existing sites, provided that this accords with the overall objectives, policies and rules of the Plan. At this stage, it is not anticipated that there will need to be significant changes to the existing policy.

The review will require expert input from a landscape architect to undertake a comprehensive review of the view shafts, together with an assessment against the existing objectives and policies. The proposed landscape study will provide an assessment of the existing views and a review of how the Plan has achieved the strategic objectives relating to the recognition of such views.

As part of the citywide review, there may be additional view shafts that are now considered significant enough to warrant inclusion within the Plan. Alternatively, there may be views that are no longer considered worthy of inclusion.

It is considered that the Resource Management Act 1991 provides the most appropriate mechanism to address this resource management issue. The potential for adverse effects on public views is more than likely to occur on land within private ownership. Sufficient enforceable controls are considered necessary to ensure that these notable public views are recognised.

Approaches taken by other Local Authorities to the Issue

Waitakere City Council was the first Auckland Council to adopt an innovative effects based approach to dealing with resource management issues. This approach reflects the unique character of many of the landscapes of the district, which are recognised as being outstanding. Auckland City Council includes rules for the protection of its volcanic cone heritage through the use of height contour overlays and there are also ridgeline controls for the Gulf Islands. North Shore City includes a number of public view shafts that are recognised. Rodney District Council has a landscape protection zone adjoining the north-western boundary with Waitakere City Council.

Waitakere Ranges Protection Project

The Waitakere Ranges Protection Project has been initiated in response to concerns expressed by local people, local MP's, lobby groups, the Parliamentary Commissioner for the environment and the West Coast Plan, that the Waitakere Ranges continue to be under pressure and further action is needed to ensure more secure protection for future generations. The goal of the Waitakere Ranges Protection Project is:

“Through a partnership of iwi, Waitakere City Council, Auckland Regional Council Rodney District Council & Local Members of Parliament, and in close consultation with stakeholders, to find and implement ways of achieving better long-term protection for the natural and landscape values of the Waitakere Ranges and West Coast.”

Concern about the erosion of landscape values has been identified as a key concern in the phase one consultation of the project. The proposed review of the view shafts is a citywide review, although many of the public views shafts are contained within the Ranges. It is considered that the review will be consistent with the Waitakere Ranges project.

The Resource Management Act 1991

The purpose of the Resource Management Act as outlined in Part II of the Act is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a District Plan as outlined in section 72 of the Resource Management Act is to assist Council to carry out its functions. Councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. The Council is required to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

The issue of the recognition of notable public views enables the Council to fulfil its obligations under Part II of the Act by enabling sustainable use of the City's natural and physical resources, while avoiding or mitigating the adverse effects of development on notable public views. It is considered necessary to review the District Plan rules in order to monitor their effectiveness in achieving the strategic direction of the District Plan. It is noted that the retention of these views contributes to the amenity of the District. Sections 6(a) and (b) seek to protect the natural character of the coastal environment and outstanding natural features. Many of the views include these elements. Section 7(c) of the Resource Management Act requires that particular regard be given to *"the maintenance and enhancement of amenity values."* In addition, Section 7(f) seeks *"the maintenance and enhancement of the quality of the environment."*

Auckland Regional Council

Section 75 of the Resource Management Act requires that a District Plan must not be inconsistent with a regional policy statement or plan. The Auckland Regional Policy Statement is now operative and provides the umbrella policies from which the rules, objectives and policies of the District Plan must be in accordance. The proposed review is not considered to be inconsistent with the Auckland Regional Policy Statement. Policy 6.4.19 of the Auckland Regional Policy Statement recognises the varied and special landscapes of the Auckland Region, particularly sensitive areas, including the coastal environment and the Ranges. This position would need to be reviewed in the event that the proposed review resulted in changes to the District Plan. It is considered that there are no implications for the regional growth strategy with this issue.

The Auckland Regional Council has recently undertaken a review of outstanding landscapes of the Auckland Region. This review has resulted in some changes to the outstanding landscapes. The Council is currently preparing a review of the Auckland Regional Council work.

RESOURCES

Ongoing issues with the implementation of the District Plan's public view shaft provisions have led the staff to conclude that this issue should be afforded some priority within the District Plan monitoring programme. Sufficient staff resources and budget exist to undertake the necessary work.

CONCLUSION

Overall, it is concluded that further investigation towards a possible plan change be undertaken to review the public view protection provisions of the District Plan. This will include a requirement to undertake a landscape and visual assessment of the existing view shafts.

RECOMMENDATIONS

1. That the Issues Surrounding the Notable Public View Shaft Provisions of the District Plan report be received.
2. That further landscape and planning investigations are undertaken in relation to the effectiveness of the current view protection controls with the view towards preparing a possible plan change, if necessary.
3. That the results of the review, together with any necessary proposed plan change, be reported back to the Committee.

Report prepared by: Michael Campbell, Planner: Policy Implementation.



10 PROPOSED PLAN CHANGE TO RE-IDENTIFY THE HUMAN ENVIRONMENT IDENTIFICATION OF NINE SITES

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 nine sites incorrectly identified as Open Space Environment. The report seeks approval for the Proposed Plan Change to be publicly notified.

A186-A206 A copy of the 'Background Report and Section 32 Analysis' for the Proposed Plan Change, including changes to the Planning Maps, as attached at pages A186 to A206.

BACKGROUND

The Proposed Plan Change seeks to rezone the Human Environment identification for nine properties. Each of the properties is currently identified as Open Space in the District Plan but all are privately owned. The proposed Human Environment identifications for the sites reflect surrounding land identifications in all instances and essentially correct discrepancies in the District Plan that require rectification. This Proposed Plan Change has arisen as the subject land was mistakenly identified as Open Space Environment at the time the District Plan was first notified in 1995.

A202-A206 The following table identifies the properties, the relevant District Plan map, and the existing and proposed Human Environment identification. A Proposed Plan Change map for each property, as attached at pages A202 to A206.

Property	District Plan Map	Reprinted District Plan Map	Existing Human Environment	Proposed Human Environment
8 Aio Wira Road Bethells	1 (Bethells)	D2	Open Space	Waitakere Ranges Environment
34 Don Buck Road Massey	19 (Massey)	D7 and D8	Open Space	Living Environment
326 Royal Road Massey	29 (Royal Heights)	C9	Open Space	Living Environment
7 Standage Lane Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment
9 Standage Lane Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment
11 Standage Lane, Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment
13 Standage Lane Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment
15 Standage Lane Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment
17 Standage Lane Kelston	15 (Kelston)	F10	Open Space	Living 1 Environment

STRATEGIC CONTEXT

The Long Term Council Community Plan has nine platforms 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.

The existing Human Environment identifications for the subject sites are at odds with the range of activities and effects that the community would expect of land that has already been developed for residential and short-term accommodation purposes. The subject sites are all currently owned, managed and maintained by private landowners and there is a community expectation that it should continue to function in this capacity. The Proposed Plan Change would re-identify the nine sites and enable them to be managed sustainably and consistently in relation to their current land use status.

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

Part 5 of the District Plan describes the Open Space Environment 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 rules for the Open Space Environment have been designed to reflect the City's recreation strategies and Reserve Management Plans that have been prepared under the Reserves Act 1977. When there is no Reserve Management Plan for a reserve or public open space, all buildings are deemed to be a non-complying activity under the rules of the Open Space Environment in the District Plan. It is considered that the Proposed Plan Change is consistent with the policies of the District Plan as the Open Space Environment identification is inappropriate given the fact that the land is privately owned and is not public reserve or even proposed reserve. In addition the sites have already been developed for residential or short-term accommodation purposes.

The proposed plan change does not seek to amend any objectives, policies or rules of the District Plan. However, re-identifying the sites will align the current land use in all cases with the District Plan's policies and objectives relating to Living, Living 1 and the Waitakere Ranges Environments where relevant.

Auckland Regional Policy Statement

It is considered that the Proposed Plan Change is entirely consistent with the objectives of the Regional Policy Statement.

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.

A186-A206

An evaluation under each of the above subsections has been undertaken, as attached at pages A186 to A206. The evaluation fulfils Council's requirements with regard to Section 32 of the Resource Management Act.

The Section 32 analysis identified that the Proposed Plan Change would enable the Council to manage its land resources efficiently whilst meeting the purpose of the Act by allowing sustainable management of natural and physical resources. The Section 32 analysis also concludes that re-identification of the subject sites would ensure that more appropriate rules would apply to the sites and clarify an anomaly in the District Plan. In summary the re-identification of the land would provide a clear direction to the community on the continued use of the land for either residential or short-term accommodation purposes. If the existing identification and rules relating to the Open Space 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)).

CONSULTATION

Landowners and residents of the subject sites have been contacted via a letter of explanation dated early March 2004. The letter informed the landowners and residents of Council's intention to rezone the properties and sought comments regarding the Proposed Plan Change. The Plan Change process and timing was also summarised.

No written responses were received in relation to Council's letter of March 2004. However, four telephone calls were received. Queries related to further explanation of the process and reason for the Plan Change, and about what the description of the Human Environment identifications 'Open Space' and 'Living' actually meant.

Further opportunities for residents and any other interested party will be available to those persons through the public notification process of this Plan Change.

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 nine properties as outlined above. The Proposed Plan Change seeks to re-identify the nine sites from Open Space Environment to Living, Living 1 and Waitakere Ranges Environment. No changes are proposed to any District Plan objective, policy or rule.

The current identification of the land does not meet the District Plan policies for the Open Space Environment as they have for some time been established and maintained as residential or for short-term accommodation purposes. In this particular instance, the re-identification of the subject sites would enable them to continue to be used and maintained in accordance with their existing land use status.

The Proposed Plan Change is considered necessary to achieve the purpose of the Act and is the most appropriate in terms of effectiveness and efficiency of Council exercising its function. In addition, the Proposed Plan Change is consistent with the existing district plan policies and objectives and it is considered that there will be no adverse environmental effects generated as a result of the Proposed Plan Change.

RECOMMENDATIONS

1. That the Proposed Plan Change to Re-Identify the Human Environment Identification of Nine Sites report 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 to the Waitakere City District Plan to re-identify the nine sites from Open Space Environment to Living, Living 1 or Waitakere Ranges (where appropriate) Environment in the District Plan as attached at pages A186 to A206.

A186-A206

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



PART III - ENVIRONMENTAL MANAGEMENT

11 THE AUCKLAND WATER MANAGEMENT PLAN

PURPOSE OF THE REPORT

The purpose of this report is to seek endorsement from the Environmental Management Committee of the regional water conservation plan entitled 'The Auckland Water Management Plan'.

BACKGROUND

Watercare Services Limited, the Auckland Regional Council and the six local network operators for water supply in the Auckland region have worked together to develop the Auckland Water Management Plan. The plan is currently being endorsed by each of the parties involved.

The strategic goal of the plan is to promote the sustainable, efficient and wise use of reticulated water resources in the Auckland region. The plan was prompted by a growing awareness of environmental, social and cultural issues that surround the sustainable use of water.

In terms of demand management, Council has already successfully reduced water usage by implementing a number of measures, such as the following:

- Implementation of the water loss control programme;
- Standardisation of pressure in the water supply network;
- Providing free "gizmos" during the 1994 Auckland water shortage;
- Providing education programmes to schools;
- Undertaking water audits of schools, homes and industrial/commercial premises;
- Funding demonstration projects; and
- Undertaking rebate campaigns for dual flush toilets in partnership with local suppliers.

Through these initiatives domestic water usage has reduced from 243 litres/person/day in 1989/1990 to 192 litres/person/day in 2002/2003.

However, there is a need to implement new measures to achieve the Council's strategic direction and ensure that total water due to growth use does not increase to the point where additional supplies (such as the next stage of the Waikato water source) are required from Watercare Services Limited. This planning process also provides an opportunity to take a more holistic and integrated approach to water management by considering related issues such as possible wastewater and stormwater minimisation and reuse.

STRATEGIC CONTEXT

As part of the Council's nine strategic platforms, it is aimed to establish Waitakere as a centre of innovative water management. One of the success measures for this strategy is that by 2020 domestic water use per person is reduced to 160 litres or less per person per day.

OBJECTIVES OF THE WATER MANAGEMENT PLAN

The Auckland Water Management Plan seeks to establish a comprehensive and unified approach to managing the existing and future water needs of the Auckland region in a sustainable, wise and efficient manner.

It sets demand savings targets for the region to be implemented by the local network operators. It also suggests a set of water management initiatives designed to achieve these targets – although each water authority will be responsible for developing their own action plans to achieve the agreed objectives.

Social objectives are recognised, including the need to protect sectors of society that may be adversely affected by demand management initiatives. There is also a clear commitment to involve local iwi in the development of action plans and to encourage initiatives that improve and respect the mauri of aquatic and marine ecosystems.

Protection and enhancement of the natural environment, and reduction of wastewater and stormwater flows within sustainable parameters, is another objective of the plan. This is linked to the Auckland Regional Policy Statement, Regional Growth Strategy and the Three Waters Management concept.

The plan recognises each authority's prerogative to develop and implement the best solution in its own area. However, the plan requires all authorities to report annually their performances against their agreed targets, measured against a formal set of demand management guidelines.

A207-A225 A copy of the plan, which is entitled 'From the Sky to the Sea' as attached at pages A207 to A225.

Currently the plan comprises a framework enabling the authorities to work together; a technical report which provides their frame of reference (not included in the attachment); the objectives listed below and as outlined in the plan, and a commitment from members to develop their own detailed action plans in accordance with the agreed Auckland Water Management Plan.

The framework provides for a Water Advisory Group to be set up, comprising members of the participating organisations. This group will aim to ensure that savings targets, are met and the overall objectives of the plan are achieved.

These objectives endorse a holistic approach to water management, based around the 'Three Waters Management' concept and support for initiatives aimed at the sustainable, wise and efficient management of potable water, wastewater and stormwater.

The five main objectives of the plan are outlined below with bullet points to highlight the key areas:

1. Managing Water Demand
 - Water savings targets
 - Actions and performance measurement
 - Financial management
 - Social responsibility
 - Cultural responsibility
 - Asset management
 - Planning and research
 - Timeframe
 - Review

2. Protecting The Natural And Physical Environment
 - The natural and physical environment
 - Wastewater and stormwater
3. Working With National, Regional And Local Government
 - International agreements
 - New Zealand legislation
 - Auckland Regional Policy Statement, Regional Growth Strategy, Regional Plans
 - Three waters management
4. Working With The Community
 - Decision making
 - Education
5. Working With The Industry
 - The role of industry
 - Water-efficient technologies and water-efficient industry
 - Water efficiency label

TIMEFRAME

The timeframe for the next steps are as follows:

- March 2004 - Watercare and local network operators establish the Water Advisory Group, charter and terms of reference.
- June 2004 - Develop demand modelling approach.
- December 2004 - Complete development of Water Management Action Plans.
- January 2005 - Commence implementation.
- December 2005 - 12 month review.

RESOURCES

Funding is provided for demand management in the Long Term Council Community Plan. The programmes arising from this initiative can be implemented utilising existing staff resources.

CONCLUSION

Watercare Services Limited, the Auckland Regional Council and the six local network operators for water supply in the Auckland region have worked together to develop the Auckland Water Master Plan. The plan is consistent with Council's strategic objectives to reduce water use (Three Waters platform), to promote sustainable use of resources, to encourage zero waste, and to develop the Green Network. On that basis it considered that the Auckland Water Management Plan should be supported by Council.

RECOMMENDATIONS

1. That The Auckland Water Management Plan report be received.
2. That the Environmental Management Committee endorses the Auckland Water Management Plan.

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



12 **WAITAKERE RANGES PROTECTION PROJECT - PROJECT UPDATE INCLUDING THE PROPOSED PACKAGE**

PURPOSE OF THE REPORT

This report is to provide the Environmental Management Committee with an update on the Waitakere Ranges Protection Project including the updated proposed package for the long term protection of the Waitakere Ranges. The report also requests that the Committee break into workshop for further discussion.

BACKGROUND

The goal of the Waitakere Ranges Protection Project is:

'Through a partnership of iwi, Waitakere City Council, Auckland Regional Council & local Members of Parliament, and in close consultation with stakeholders, to find and implement ways of achieving better long-term protection for the natural and landscape values of the Waitakere Ranges and West Coast.'

Components of the Project

The Waitakere Ranges Protection project was initiated in response to concerns expressed by local people (local MPs, lobby groups, the Parliamentary Commissioner for the Environment and through the West Coast Plan), that the Waitakere Ranges continue to be under pressure and further action is needed to ensure more secure protection for future generations. From the information gathered in Phase One of the community consultation on this project it is clear that most people believe that the Ranges are not currently protected enough now and for the future, and that something 'extra' is needed.

There are five key components to the Waitakere Ranges Protection project, which together are designed to provide for stakeholder involvement and integrated decision making. They include partners working through the Political Liaison Group, research and information gathering, community consultation, policy development and implementation. Councillors Hulse, Yates and Presland are Waitakere City Council's representatives on the Waitakere Ranges Political Liaison Group.

Project to Date

The project began with an investigation to identify the values associated with the Ranges and find which of these values may not be adequately protected and why. This investigation is described in a December 2003 report by Waitakere City Council and the Auckland Regional Council entitled 'Protection of the Waitakere Ranges Area: Background Paper'. The results are summarised in a discussion paper that was used to stimulate feedback from the community on their views about whether the Ranges are well enough protected now and in the future, and if not, why not and what can be done.

Feedback was collected at 15 community workshops held between September - November 2003, from comment forms, from displays held by Community Boards in shopping malls and libraries and from a regional phone survey. The consultation feedback was reported in a February 2004 document entitled 'The Waitakere Ranges Project: Phase 1 Community Consultation: Summary and Workshop Notes'. All of these reports are now available on the Waitakere City Council web site.

Phase two of the consultation is underway. The purpose of this phase is to take the proposed package to the community for feedback. This phase is made up of two strands:

- Two open community forums -
 - Sunday 18 April, Bible College of New Zealand
 - Tuesday 27 April, Te Piringitahi o Maungarongo Marae
- Randomly selected focus groups.

The draft proposed package was presented at the Committee's 9 March meeting. It was resolved at that meeting that:

"That the Environmental Management Committee approves in principle, the indicative package for better protection of the Waitakere Ranges as presented in this report for presentation at Phase Two of the community consultation.

That the Environmental Management Committee nominates Crs Hulse, Presland and Yates from the Political Liaison Group to sign off the detail of the final indicative package to be taken out for consultation in Phase Two of the community consultation."

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A consultant's report was prepared on the boundary issue. The area as related to Waitakere City was presented verbally to the Environmental Management Committee's 13 April meeting. The Committee resolved that:

That the Environmental Management Committee proposes the boundary of the Waitakere Ranges Protection Project subject to information provided at the community consultation workshops at the April 2004 meetings.

615/2004

The possible boundary in the Rodney District was considered by the Rodney District Council's Strategy and Policy Committee on 6 May 2004. A verbal update will be provided regarding the outcome of this meeting.

STRATEGIC CONTEXT

The Waitakere Ranges Protection project is a key project within the Green Network platform of the Long Term Council Community Plan 2003. 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 the protection of the Ranges, whilst recognising that there are many different values relating to the Ranges, and that much is already being done to achieve protection. However, the tools for protection are many and varied, and community views diverse, so that a robust process is crucial.

ISSUES

Proposed Package

Below is an update of the proposed package that has been taken out to the community for consultation in phase two. This proposed package was undated after 9 March Committee meeting and was distributed to Councillors and Community Board members through the community briefing pack sent in early April.

What is the potential response	What are the benefits?	What other facts should be considered?
POLICY CHANGES OR DEVELOPMENT		
<p>Amend Auckland Regional Policy Statement and the Waitakere District Plan</p> <p>The Auckland Regional Policy Statement could be amended to provide guidance and methods on how to achieve current objectives and policies that are relevant to the Ranges.</p> <p>Subsequent amendments to the district plan might also be required to ensure that the Waitakere City District Plan remains consistent with the Auckland Regional Policy Statement and the outcomes of the project.</p>	<ul style="list-style-type: none"> • Better guidance on policies/methods. • Further level of certainty for implementation of subdivision and development provisions of the District Plan (particularly once an application reaches the Environment Court). • Better regional strategic focus for the Ranges as a special area. • Limited safeguards against change in political philosophy. 	<ul style="list-style-type: none"> • Some costs and time required. • May impact on district plan objectives, policies and rules.
<p>Amend Regional Growth Strategy Agreement</p> <p>The Regional Growth Strategy sets the level of future growth for different areas through sector agreements.</p> <p>The current agreement to accommodate future population growth in the Ranges are could be reduced.</p>	<ul style="list-style-type: none"> • Better management of accumulated adverse effects of subdivision and/or development. 	<ul style="list-style-type: none"> • Reliant on other local authorities to agree. • Strategy agreement review due in 2006.
<p>Incorporate and prioritise additional strategic work and projects into Councils' Long Term Council Community Plans</p> <p>Through the Long Term Council Community Plans (documents all Council's now have), the councils could set processes, prioritise and implement:</p> <p>Policy and project gaps identified during this project</p> <p>West Coast Plan actions identified for the Councils</p> <p>Additional non-regulatory methods identified during this project.</p>	<ul style="list-style-type: none"> • Improved outcomes for natural, cultural heritage and landscape values, and for the community • Improved participation and coordination. • Improved monitoring • Strategic focus/recognition for the Ranges • Involvement of iwi • Better co-ordination • Widespread support for non-regulatory (voluntary) methods 	<ul style="list-style-type: none"> • Would require reprioritising of councils' budgets or additional resourcing. • Implementing the West Coast Plan would require multi organisation commitment and substantial resourcing.

LEGISLATIVE CHANGE		
<p>Legislation</p> <p>Legislative options include an overlay to the Resource Management Act or changes to the Auckland provisions of the Local Government Act.</p> <p><i>Possible purpose of legislation</i></p> <p>Legislative purpose could be to clearly define the Waitakere Ranges, their values and unique pressures and put in place a framework to ensure greater protection of those values than is afforded by current legislation. The legislation could be designed to increase the certainty around implementation of the District Plan and ensure no erosion of protection.</p> <p>Possible Elements in the Legislation</p> <p>Some ideas that could address these concerns include the following elements:</p> <ul style="list-style-type: none"> • Acknowledge that the Waitakere Ranges is an area of significance and has nationally and internationally outstanding landscape and natural values requiring additional protection. • Discuss the location of the Waitakere Ranges Area and allow for additions to this area in the future. • Emphasise and address the need to manage cumulative impacts on landscape caused by subdivision and development. 	<ul style="list-style-type: none"> • One of the responses to most likely provide for permanence and certainty • High level of strategic focus and recognition for the Ranges • Future plan and policy development would have to give effect to the legislation • Provide greater guidance to Waitakere City Council, Auckland Regional Council and Environment Court on the special qualities of the Ranges. • Increased leverage for funding. • Provide better guidance on policies/methods • Further level of certainty for implementation of subdivision and development provisions of the District Plan (particularly once an application reaches the Environment Court) • Limited safeguards against change in political philosophy. • Better management of accumulated adverse effects of subdivision and/or development. 	<ul style="list-style-type: none"> • Further legal advice required on specific wording of the legislation. • May require amendments to District Plan and Auckland Regional Policy Statement. • Depending on the form adopted it may impact on District Plan objectives, policies and rules, for example: • Implementation of the District Plan by Council and the Environment Court would need to consider new legislation. This may change the approach to resource consents. For example, when resource consent applications for discretionary or non-complying activities are processed they: <ul style="list-style-type: none"> • might be more likely to be notified • might attract more consent conditions (eg. more replanting) • might be more likely to be declined if they were viewed as marginal calls. • There is a cost for the passage of legislation. • No certainty legislation will be enacted by Parliament, though this proposal has strong support from local MPs.

<ul style="list-style-type: none"> • Outline the need to provide a long term approach to managing the Waitakere Ranges, ensuring that the bottom lines set in the current District and Regional Plans and Policy Statements are not eroded but can be strengthened (this is sometimes known as “permanence and certainty). • Provide additional definitions for “protection” and the values to be protected which are stronger than is currently found in case law under the RMA and other relevant legislation. • Provide for regulatory agencies to give effect to these objectives through all actions as well as their plans and policies. 		
NON-REGULATORY OR VOLUNTARY METHODS		
<p>Establish a Charitable Trust</p> <p>A trust could be established with the purpose of attracting funding.</p> <p>The funds would either be distributed by the trust to other organisations for projects that would help better protect the Ranges, or the trust could be set up to undertake projects itself.</p> <p>Funds could be used to assist operational programmes such as weed or pest control on private or public land, education or awareness raising initiatives, monitoring etc.</p>	<ul style="list-style-type: none"> • Potential to attract new funds. • Can enhance community stewardship and further community networks. • Tax advantages (tax-deductible donations, non-taxable profits etc). • Independent of ‘government’ (although could include council or other government representatives) therefore able to attract more funding. 	<ul style="list-style-type: none"> • Level of success dependent on creativity/skills of trustees and any potential staff. • May impact on existing trusts operating in the area – what are their views? • Depending on the structure, the trust could operate on a purely voluntary basis, or could require seeding and ongoing operational funding & support. • The Trust currently does not have the unanimous support of the Project’s Political Liaison Group.

<p>Core team of Officers</p> <p>Set up teams within councils to provide advice on and/or process resource consents for activities in the Waitakere Ranges.</p> <p>Team would include staff from resource consents, enforcement, building consents, policy and resource management. This would formalise processes and strengthen consistency within and across administrative boundaries. Team may or may not work exclusively on Ranges.</p>	<ul style="list-style-type: none"> • Increased protection through improved consent processing, better co-ordination of information and processes. • Improved strategic focus on the Ranges • Improved and co-ordinated monitoring 	<ul style="list-style-type: none"> • Staff time and support required to set up and maintain a team dedicated to the Ranges.
<p>Seek World Biosphere Reserve Status</p> <p>These reserves are part of the UNESCO Man And Biosphere programme, an international concept where one or more protected areas and surrounding lands are managed to combine both conservation and sustainable use of natural resources.</p> <p>People are an integral part of such reserves. They can and should be regional centres for monitoring, research, education and training on natural and managed ecosystems.</p>	<ul style="list-style-type: none"> • International recognition of Ranges. • Should provide better monitoring, co-operation, stakeholder and iwi participation. • Increased leverage for funding. 	<ul style="list-style-type: none"> • UNESCO and DOC support would be required. To date they have chosen not to establish a biosphere reserve programme in New Zealand. • Requirements for ongoing commitment and resourcing are unknown. • Could potentially increase visitor numbers.
<p>Develop a Waitakere Ranges Implementation Plan</p> <p>A plan to guide the implementation of the responses agreed to as a result of this project.</p>	<ul style="list-style-type: none"> • A more strategic focus and greater coordination in decision making and pooling of resources. • Should enable a better monitoring programme to be developed. 	<ul style="list-style-type: none"> • Implementation of some responses may take up to ten years.

The proposed package is the basis for discussion with the community during phase two. Feedback from the community on the package will be considered alongside additional policy work to further refine the proposed package. A report on the final package will then be taken to the Waitakere City Council and Auckland Regional Council's committee meetings and then taken out to the community for final comment (phase three).

Consultation

At the time of writing this report the first community forum had been completed. The scope of the third phase of consultation will be dependent on the feedback from the phase two consultation. An update on this will be provided at the Committee's 11 May meeting. An update on the project timeline will also be presented.

RESOURCES

The Waitakere Ranges Protection project is resourced through the Annual Plan, together with additional funding voted to the project by the Council meetings of December 2003 and March 2004.

CONCLUSION

This report sets out the updated proposed package for the long term protection of the Waitakere Ranges. Verbal updates will be given on the boundary with Rodney District Council, scoping of phase three and the project timeline. It is recommended that the Committee break into workshop to discuss these issues and the proposed package.

RECOMMENDATIONS

1. That the Waitakere Ranges Protection Project - Project Update Including The Proposed Package report be received.
2. That the Committee adjourn to allow for a one hour workshop to discuss the proposed package.

Report prepared by: Kim Morresey, Partnerships and Advocacy Leader - Environment.

