



**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE  
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON TUESDAY, 7 JUNE 2005 COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 10 May 2005.

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 10 May 2005, as circulated, be taken as read and now be confirmed.



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

### **4 LEGAL UPDATE (AS AT 27 MAY 2005)**

#### **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 references to Council's District Plan, 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, information or proceedings were first filed in Court.

#### **ENVIRONMENT COURT**

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

The only outstanding matter on this case is costs. As already reported, Council has been awarded \$75,000 plus approximately \$5,000 for disbursements. We have issued a bankruptcy notice in the High Court in respect of the sum, but Mr Mawhinney has been evading service. We are in the process of seeking further directions as to service from the Court to ensure the notice is served as soon as possible.

##### **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. The parties are likely to resolve this matter through mediation with an Environment Court Commissioner. This is set to take place on 8 June 2005.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (Resource Management Act 886/98) has been concluded.

##### **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. The parties attended a Court-assisted mediation on 7 September 2004; however, no resolution was reached. The matter is to be set down for hearing shortly; the parties are to submit an agreed evidence exchange timetable to the Court.

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

This matter relates to a reference against the Council's decision approving Plan Change 2. It changes the zoning of the land in Harbourview, which is on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to 'Open Space Environment' and 'Marae Special Area'. A Court assisted mediation occurred on 16 July 2004 and 20 October 2004. Progress has been made and, as a result, the Council has considered this in a workshop meeting during April. This is to be addressed further in a confidential item to this agenda.

### **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 are to take place on the relief being sought. Settlement discussions are taking place in an attempt to refine the issues in dispute.

### **Auckland Regional Council v Waitakere City Council (September 2004)**

An appeal by the Auckland Regional Council against a decision of the Council to grant approval to an application for subdivision by Mr P Lipsham. The application relates to a property situated at 146-148 Parker Rd, Oratia. Mr Lipsham's evidence has just been exchanged and Council's evidence is due before or on June 17. The Auckland Regional Council's appeal is based on fundamental concerns with the development vis-à-vis the Auckland Regional Policy Statement and it is therefore likely that the matter will have to proceed to a hearing to be resolved. A preliminary hearing date has been set down for the week of 11 July 2005.

### **Trichon v Waitakere City Council (October 2004)**

This is an appeal against an abatement notice issued by the Council in respect of unauthorised earthworks. The matter was referred to a Court-assisted mediation on 17 November 2004 and it has since been agreed that the Trichons' consultants would provide further information. This information will assist Council to advance the resource consent application for stabilisation of the earthworks and additional development of the site (as proposed by the Trichons). The Trichons have since provided Council with reports from a geotechnical engineer and survey plans regarding the proposed development and remedial works; further information is still required before the application can be processed.

Given the progress made to date, the Council considers that the current abatement notice is no longer required and has advised the Court that the notice can be cancelled and the appeal can be allowed by consent (we await the appellant's agreement to this course of action). The Council will report to the Court on or before 29 June 2005.

### **E A Haines v Waitakere City Council (December 2004)**

An appeal against a decision of Council's Commissioner (John Childs) to refuse consent for a golf driving range. The appeal has only recently been filed and the parties to the appeal have yet to take any substantive steps.

Some neighbouring property owners have confirmed their interest. At this juncture settlement does not appear possible; however Mrs Haines is currently reviewing whether to pursue the appeal. If she advises she wishes to continue with the matter a timetable for the exchange of evidence can be set. Council has reported to the Court with a suggested timetable for exchange of evidence.

### **Auckland Regional Council v Waitakere City Council (February 2005)**

An appeal by the Auckland Regional Council against the Council's decision granting consent to Shefco Limited to establish a food processing facility at 76-78 State Highway 16. A notice of reply has been lodged and a timetable for the exchange of evidence has been agreed. The Auckland Regional Council has confirmed that it intends to continue to oppose the consent based on its alleged inconsistency with the Auckland Regional Policy Statement, Metropolitan Urban Limits and the potential for a negative precedent effect.

While the parties have not yet been able to agree to resolve the matter the issue has been confined. The evidence timetable will see the matter ready for hearing from mid August 2005.

### **Waitakere City Council v Minister of Defence (February 2005)**

Council filed a Notice of Appeal in relation to a proposal by Defence to remove St Marks Chapel from the Hobsonville Air Base to Papakura. The Chapel is a listed heritage building and is protected under the District Plan. The Minister of Defence has rejected the Council's recommendation that Chapel remain at Hobsonville. The Ministry of Defence is of the opinion that the Chapel is to be used by Defence Force personnel and this use is best served at Papakura where the Chapel will be more appropriately preserved. The Council has yet to decide whether to appeal this decision.

### **South Kaipara Nominees Limited v Waitakere City Council (February 2005)**

An appeal by the appellant company (director: Peter Mawhinney) in respect of a decision by the Council to decline to grant a certificate of compliance regarding a proposed subdivision at Anzac Valley Road, for want of jurisdiction.

Essentially, the application sought to cancel an amalgamation condition that was imposed under subdivision consent; this could not be described as a permitted activity and accordingly did not meet the preconditions of Section 139 of the Resource Management Act 1991.

On 22 April 2005 the Council filed an application to strike out the appeal on the grounds that there is no jurisdiction to grant the relief sought or any right of appeal in respect of the Council's decision. A hearing on the strike-out application is scheduled for 9 June 2005.

### **T Whimp v Waitakere City Council (April 2005)**

An appeal against an abatement notice issued by the Council in respect of a breach of the Transport Environment Rules. The appellant has been using the carriageway, footpath and grass berm for residential purposes, throughout the City. The matter was set down for a mediation which was held on 22 April 2005. The parties had six weeks to find Mr Whimp accommodation that suits the need of the parties. The Council is working with the Salvation Army and the Henderson Community Police to assist Mr Whimp. The parties reported to the Court and have been given until 30 June 2005 to find an appropriate resolution.

### **Auckland Regional Council v Waitakere City Council (May 2005)**

#### **Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)**

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc against a decision of the Council to grant approval to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Inc lodged submissions opposing the application.

The reasons for the Auckland Regional Council's appeal include the inconsistency of the application with the Auckland Regional Policy Statement, the Waitakere City District Plan objectives and policies, inappropriate density of development, and the precedent effect of the approval for the Swanson area.

The reasons for Waitakere Ranges Protection Society Inc's appeal is based on the application being inconsistent with sustainable management principles of the Resource Management Act, the precedent effect of the approval for the Swanson area, the inappropriate weight accorded to Variation 88, and inappropriate density of development.

The Council has yet to file a notice of reply to these appeals, but will do so by 10 June 2005.

### **Waitakere City Council v Auckland Regional Council (May 2005)**

An appeal against a decision of the Auckland Regional Council to grant Watercare approval to renew their consents for the Waitakere dams. The appeal relates to the ARC declining to include a condition in the consent requiring Watercare to contribute to, or participate in, the preparation of an integrated catchment management plan for the Waitakere catchment. The Council is filing an appeal to the Environment Court to seek a suitable condition. An appeal has also been filed by the Waitakere Ranges Protection Society, against the compensation flow and monitoring conditions.

### **HIGH COURT**

#### **P W Mawhinney (substituted plaintiff) v Waitakere City Council (February 2002) (Civil Proceedings)**

This is a civil claim for approximately \$6.7 million by Mr Mawhinney (who has been substituted as plaintiff for the Kitewaho companies) against Council alleging that he has suffered losses as a result of Council improperly delaying the processing of the subdivision consents. These applications were also the subject of the Declaratory Proceedings.

We have finally received the Court's decision in relation to security for costs in this case. Associate Judge Sargisson has awarded \$60,000 as security for Council's costs, which was to be paid within 14 days of the decision. The appeal period has now expired no payment has been received from Mr Mawhinney. These proceedings are now on hold for six months. We are able to apply to have the proceedings struck out for want of prosecutions. The Judge has also made a number of useful comments in her judgment about the weakness of Mr Mawhinney's case.

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

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004. This decision was in Council's favour and reversed the decision of the Environment Court. Since the release of the decision Estate Homes has been granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued). A hearing is set down to take place in the Court of Appeal, on 1 September 2005.

### **Estate Homes Limited v Waitakere City Council (Sturges Road) (May 2004)**

As reported last month, we have now received the arbitrator's decision in this case awarding \$152,687 (incl. GST). Demand has been made for this sum and payment made. Estate Homes have queried whether there is a calculation error in the award which we have opposed (both on substantive and jurisdictional grounds) and the Arbitrator will make a final award over the next couple of weeks. There are also outstanding issues over interest and costs which the parties have exchanging further submissions on. There was a final hearing to determine these issues on 26 May 2005.

### **Foundation Engineering Piling Limited v Waitakere City Council - Dovey Place - (December 2004)**

This is an appeal against a conviction for undertaking or permitting building work without a building consent. Foundation Engineering was pursuing a technical point in relation to the time the charge was laid in relation to the work being undertaken. The District Court determined that the charge was properly laid. The matter was considered in the High Court on 24 May. It was held in Council's favour that the charges were laid in time. Further, the Court was of the opinion that there were jurisdictional issues as to High Court's ability to hear the appeal, even if it were allowed.

## **DISTRICT COURT**

### **Lance Olsen – Dovey Place, Massey (February 2004)**

Charges were laid against the building contractor who undertook work on five houses without building consent. A pre-trial issue has been raised by Mr Olsen regarding the validity of information as his company has been struck off the register – the Council seeks to have the charges amended so that Mr Olsen is personally liable for the alleged offences. This matter is to be adjourned to await the outcome of the High Court appeal by Foundation Engineering Ltd, which relates to the same building sites.

### **A & J Kumar – 23 Roberts Road, Te Atatu (March 2004)**

Charges have been laid alleging unauthorised building works and failure to comply with a notice to rectify building work. The defendants have been granted building consent for removal of the unauthorised works. The prosecution matter has been adjourned to 13 June 2005.

### **Contract Sealing Limited, Action Plumbing Gas & Drainage Limited & Others – 547 West Coast Road, Oratia (March 2004)**

Charges have been laid alleging unauthorised building works. The defendants have entered not guilty pleas. A date for a defended hearing is yet to be confirmed by the Court.

### **I R Stanic – 11 Orchid Place, Henderson (May 2004)**

Charges laid under the Resource Management Act alleging contravention of District Plan Rules, as the property is being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent, and for contravention of an abatement notice in respect of such activities. The defendant has entered not guilty pleas. Mr Stanic pleaded guilty; a restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was needed to remove the vehicles from the property and that no further vehicle repair work would be done at the property. It is likely that the Council will seek an enforcement order to ensure that this occurs. Sentencing is scheduled for 7 June 2005.

**L A Green – 9 Herrings Cove Lane, Titirangi (July 2004)**

Charges laid under RMA alleging contravention of an abatement notice which required the installation of erosion/sediment control, removal of earth deposited at the site and revegetation works. The defendant has entered a guilty plea and the matter has been adjourned for sentencing on 12 July 2005.

**S & U Kumar – 24 Te Muri Place, Glendene (August 2004)**

Charges laid under the Building Act for unauthorised building work (including extension to house and change of use of lower level of dwelling to create separate residential unit). The owners have advised that they are undertaking works to address some of Council's concerns. In these circumstances the matter has been adjourned to 13 June 2005 without plea.

**E A Haines – 80 Hobsonville Road, Hobsonville (September 2004)**

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. The matter has been adjourned to a defended hearing plea and is listed for call in the Auckland District Court on 7 and 8 June 2005.

**DP Kiely – 60 Wisely Road, Hobsonville (September 2004)**

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. Mr Kiely has entered a guilty plea to permitting the unauthorised vegetation clearance. However the arborists retained by the Council and Mr Kiely respectively, disagree as to the number of protected trees that were removed. The matter has been adjourned to 14 June for sentencing.

**Steven Lee - 2/7 Te Atatu Road (December 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work. Mr Lee is alleged to be the builder who undertook the building works. In these circumstances the matter has been adjourned to 13 June 2005 without plea to allow Mr Lee time to apply to Legal Aid and obtain advice.

**TM Sharman & Others – 5 Stephen Avenue (December 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of garage into a minor household unit). The property owner has submitted a "safe and sanitary" report in relation to the works. The matter has been adjourned to 13 June 2005.

**RA & HJ Offenbaker – 356 Forest Hill Road, Oratia (December 2004)**

Charges were laid under the Building Act for unauthorised building work and under the Resource Management Act in respect of various District Plan rule breaches, including unauthorised vegetation clearance, building on land subject to slope instability, and building on a sensitive ridge. This matter has been adjourned to 13 June 2005. The defendants are seeking retrospective resource consent.

### **John Steed – Public Places Bylaw (March 2005)**

An application for an injunction, pursuant to section 162 of the Local Government Act 2002, requiring Mr Steed to cease breaching the Council's Public Places Bylaw (Bylaw No. 4, Ch 2, cl 233.1(b)). Mr Steed has been living in his caravan on roadsides and road reserves in various locations in the City in breach of the bylaw and has refused to comply with Council officers' requests to cease doing so, has contravened an abatement notice, and is generally causing a nuisance in the locations where he resides in the caravan (e.g. by burning his household rubbish on the roadside and emptying wastewater from the caravan into the stormwater drainage system). Council officers have tried to assist him with alternative accommodation but he refuses to consider such options. A status hearing was scheduled for 30 May 2005.

### **D Thompson & Others – 10 Pohutukawa Road, Whenuapai (March 2005)**

Charges laid under the Building Act for unauthorised building work done to create two residential units within an existing warehouse building, and under the Resource Management Act for the use of those units in breach of the residential rules of the District Plan. First call is scheduled for 13 June 2005.

### **M K Kasprzak – 27 Bedford Street, Te Atatu South (March 2005)**

Charges laid under the Building Act and Resource Management Act in respect of a second minor household unit constructed without the requisite building and resource consents. First call is scheduled for 13 June 2005.

### **Sher Mohammad and Abdul Hafeez – 73 Huia Road, Titirangi (May 2005)**

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance, and unauthorised earthworks. First call is scheduled for 13 June 2005.

### **RECOMMENDATION**

That the Legal Update (as at 27 May 2005) be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



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

### **5 DISTRICT PLAN APPEALS UPDATE TABLE**

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

The Principal Advisor: District Plan will provide a verbal update to the Planning and Regulatory 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 be received.

Report prepared by: Owena Schuster, Committee Secretary.



## **PART D - ENVIRONMENTAL MANAGEMENT**

### **6 BYLAW UPDATE - FOOD PREMISES GRADING**

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

The purpose of this report is to update the Planning and Regulatory Committee on the impact of Waitakere City Council Bylaw No. 26 1994 - Food Safety, Amendment No.1 2003.

#### **BACKGROUND**

At the Council Meeting of 28 May 2003 an amendment was made to Council's Food Safety Bylaw that brought about the implementation of the grading of food premises within Waitakere City as from 1 July 2003. Consequently from that date, all food premises upon inspection are awarded a grading certificate that directly relates to the level of food safety and hygiene found on the premises at the time of inspection.

#### **STRATEGIC CONTEXT**

Council's Strategic Plan (Wellbeing Support Objective 7 - Protection from Nuisance and Hazards) has the overall aim of ensuring that citizens of the City have a safe and healthy environment. One of the Council's roles in this respect is to protect and conserve public health and safety. The grading of food premises is designed to improve the overall level of food safety and hygiene within the City, and is consistent with this objective.

#### **OUTLINE OF THE INSPECTION/GRADING PROCESS**

All food premises in Waitakere City are randomly inspected by Council's environmental health team on a programmed basis at least once during the food premise registration year (i.e. 01 July to 30 June the following year). Food premises are awarded a grading certificate based on the standard of food safety and hygiene found on the premises during its first inspection of the year.

The grading certificate that is awarded is required to be displayed in a prominent place on the premises to which it relates so as to be readily visible.

A policy initiative by the Chief Executive Officer that "food safety is not negotiable in Waitakere City" has been adopted by Council's environmental health team. This policy reinforces Council's public safety focus by encouraging people who provide food outlets and restaurants throughout the City to be responsible. As a means of giving effect to this policy the Chief Executive Officer has tasked Council's environmental health team to protect the consumer against disease and food poisoning by ensuring a high standard of cleanliness and hygiene is enforced at all times. Consequently the environmental health team has adopted the standard operating procedure of immediately closing any food premise that is graded D or E and not permitting them to re-open until all matters identified as presenting a risk to food safety are satisfactorily rectified. Additionally prosecution proceedings are initiated against premises that are closed.

Grading booklets were developed to assist this initiative so that all D and E grade certificates are able to be issued on the spot with the normal typed and laminated certificate also subsequently posted to the premises. This measure was designed to eliminate the gap between being graded and not being able to display the grade awarded because the grading certificate was yet to be received in the mail. The old certificate will be removed by the officers at this stage.

Re-inspection time-frames for D and E grade premises are programmed to ensure a higher level of surveillance by environmental health staff until the premises are considered to be operating to satisfactory standards and have received a higher grading.

### **IMPACT OF THE BYLAW**

Environmental health staff have noticed a significant improvement in the overall level of food safety and hygiene in food premises throughout the City following the introduction of food grading.

A1-A3

During the first year of grading (i.e. the 2003/2004 food premise registration year) the overall level of compliance (i.e. percentage of food premises achieving a grade of A or B) was 76%. During the 10 months of the current second year of grading this statistic has risen to 90%. A strong trend towards improvement is clearly visible in the percentage of premises achieving B and A gradings, with a corresponding decline in the percentage of food premises being rated a D or an E grade (refer Appendix attached at page A1 to A3).

The Bylaw is viewed by environmental health staff as a powerful tool that has proved to have the ability to bring about a real and significant improvement in the attitude, procedures and practices of food premise operators. The increased level of food handlers in food premises having completed an NZQA approved course in food hygiene can be directly linked to training being a significant factor when assessing a grading, as can the increased number of premises adopting formal cleaning schedules and temperature management procedures.

### **ISSUES**

#### Penalties for non-compliance

The penalty for a contravention of the Food Hygiene Regulations 1974, such as "failure to maintain the premise in a clean condition" is a maximum fine of \$200. Such a low level of penalty has not proved to be a significant deterrent and would typically prove to be less than the cost to Council of taking the prosecution.

Currently the New Zealand Food Safety Authority is reviewing the regulation of food within New Zealand which will include a review of the available penalties and sanctions. The completion of the review and the solution it may provide is not estimated to be available until 2006.

The Local Government Act 2002 allows for a fine not exceeding \$20,000 for any offence against any Bylaw made under Part 8 of that Act. Breaches of Council's Bylaws, including Bylaw No.26, will be liable for this penalty once the Bylaw is reviewed by Council and confirmed under the Local Government Act 2002. This Bylaw was reviewed and amended in 2003, and therefore was not scheduled for a further review immediately. However, the Chief Executive Officer has directed that Bylaw No.26 is to be removed from that exercise and updated in regard to fines at once. It is intended to present an amended Bylaw at the next meeting for the Committee's consideration. If approved, the amended Bylaw cannot be finally adopted until the proposed changes have been ratified by Council and the Special Consultative Procedure has taken place in accordance with the provisions of the Local Government Act 2002.

### The two month rule

The operation of the Bylaw has raised issues from some operators, particular those that have been awarded a D or E grade, relating to the Bylaw requirement that the grading certificate be displayed for a period of two months from the date of grading before a re-grading may be undertaken and a new grading certificate issued.

These operators maintain that they have satisfactorily rectified all matters that gave rise to their low grading and are therefore unfairly punished by the display of a grading certificate that may not reflect the current hygiene status of the premises.

The requirement to display the grading certificate is an important component of the Bylaw and plays an essential role in providing the incentive for operators to improve and maintain good standards of food safety and hygiene. The display of the grading certificate enables customers to make choices based on the immediate past history of food safety and hygiene found on the premises.

Studies published in the American Journal of Environmental Health have found that reputational incentives provided by a requirement to display grading certificates are effective in causing food premises to improve and maintain good hygiene, and that grading systems are associated with a significant decrease in food borne disease hospitalisations and are an effective intervention for reducing the burden of food borne disease.

The two month period during which a grading certificate must be displayed before a re-grading can be undertaken is designed to provide a motivational impetus for operators to ensure that they sustain and maintain high standards and also allows for an assessment of whether the improved standards have been sustained over this period. The two month stipulation is aligned to identical requirements in both Auckland City and Manukau City Bylaws relating to food grading.

### Display of grading certificate

A further issue relates to the display of the grading certificate on the premises. The Bylaw requires that "The grading certificate shall be displayed in a prominent place on the food premises to which it relates, so as to be readily visible to members of the public visiting the premises". However, this means that in most circumstances a customer will have to enter the shop to ascertain if it has a grading certificate and allows uncertainty as to exactly where on the premises that the certificate should be displayed.

Clarity is required in specifying the exact location for display; such as requiring that the certificate be displayed on the front window at the principal entrance of a shop, or requiring that certificates be displayed at all points of sale in premises that provide a drive through service in addition to counter sales.

The best means of addressing this issue would be to amend Bylaw No.26 so that the Bylaw would require the display of multiple copies of a grading certificate appropriate to the specific design and layout criteria for premises, to ensure that the grading certificate is readily visible to all potential customers.

## **CONCLUSION**

The introduction of Bylaw No. 26 has been a huge success in raising the level of food safety and hygiene in food premises in Waitakere City. The adoption of the firm policy that "food safety is not negotiable in Waitakere City" is seen as being vital to sustain and improve on the success generated by the Bylaw.

Further support of this policy stance in terms of instilling a significant deterrence will be provided once the review of Council's Bylaws is completed.

The mandatory display of the grading certificate for two months before re-grading may occur is a major component to the success of the Bylaw as it creates the motivation for sustained improvements, has been found to be associated with a decrease in food borne disease hospitalisations, and allows for greater assurances that the improvements have been sustained when the premises are assessed for re-grading. Amending the Bylaw to improve and clarify the requirements relating to the location where the grading certificate is required to be displayed is seen as a means of ensuring the information is readily and explicitly visible to the public so that it may be utilised in their decisions of where to shop or eat.

### **RECOMMENDATIONS**

- 1 That the Bylaw Update - Food Premises Grading report be received.
- 2 That the policy stance adopted by Council's Environmental Health team of "Food Safety is not negotiable in Waitakere City" be endorsed.
- 3 That the Chief Executive Officer's direction that staff undertaking Council's Bylaw Review Programme allocate a high priority to the review of Waitakere City Council Bylaw No. 26 1994 - Food Safety, Amendment No.1 2003 be endorsed.
- 4 That an amendment to Waitakere City Council Bylaw No. 26 1994 - Food Safety, Amendment No.1 2003, to clearly define the requirements pertaining to the display of grading certificates on food premises be endorsed.

Report prepared by Alan Ahmu, Team Manager Environmental Compliance.



## **7 UPDATE ON ST MARKS CHAPEL**

### **PURPOSE OF THE REPORT**

The purpose of this report is to provide the Planning and Regulatory Committee with an update on an Outline Plan of Works application lodged by the New Zealand Defence Force to remove St Marks Chapel at Hobsonville Airbase, a category III heritage item, and relocate it at Papakura military base.

### **BACKGROUND**

The Committee received a report on the St Mark's Chapel in March 2005.

The Council received an Outline Plan of Works application by the New Zealand Defence Force to relocate St Marks Chapel in January this year. The Minister of Defence has a designation over the military bases at Hobsonville and Whenuapai enabling works for defence purposes and associated activities.

The building is listed as a category III heritage item in the District Plan and this status was unsuccessfully challenged by New Zealand Defence Force when the District Plan was publicly notified in 1995. St Mark's Chapel is an interdenominational chapel that was constructed in 1942. It is believed to be one of seven such chapels built around the same time with similar ones at Whenuapai, Wigram, Harewood and Woodbourne Bases. St Mark's Chapel meets all of the seven criteria for listing heritage buildings in the City based on its historic, architectural, landmark and visual values, community significance, patterns of settlement and contributing towards a sense of place. St Marks Chapel has value as part of a wider cluster of buildings and as part of the infrastructure of Hobsonville Base. The Chapel has been a part of the fabric of the Hobsonville Base since it was constructed and makes an important contribution to its identity.

## STRATEGIC CONTEXT

The Hobsonville airbase forms an integral part of the City's built heritage. Hobsonville was initially developed ahead of Whenuapai Airbase in the 1930s and had the advantage of allowing for seaplanes and conventional aircraft. The future planning proposals for Hobsonville will respect the unique heritage character of the site through the use of precincts, viewshafts and associated rules. The Hobsonville military base has associations for the broader community in terms of its social, economic and cultural significance and removal of St Mark's Chapel would be contrary to the International Council on Monuments and Sites Charter principles.

International Council on Monuments and Sites is an international non-governmental organisation of heritage professionals engaged in the conservation of places of cultural heritage value and dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 following the adoption of the International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter) the previous year.

## ISSUES

Council lodged an appeal in the Environment Court on 23 February 2005. The appeal was against the New Zealand Defence Force decision to not accept Council recommendation to retain the St Mark's Chapel in its current position at Hobsonville Airbase. This appeal was lodged under urgency to preserve Council's rights and ensure that the chapel remained on its site until the appeal was resolved.

A4-A6  
A7-A8

In mid March Crown Law (for Defence) and Robert Enright of Kensington Swan (Council) agreed a process for sorting out some procedural issues. This led to Council on 18 March 2005 formally providing New Zealand Defence Force with its recommendation on the Outline Plan of Works proposal to remove the St Mark's Chapel. The Council's recommendation was to refuse the Outline Plan of works on the basis that the removal of the building from the military base was outside the scope of their designation. New Zealand Defence Force then proceeded to seek the Minister of Defence's decision under Section 176A(5) whether to accept or reject the Council's recommendation. The Minister has now made the decision (a copy is attached at pages A4 to A6) to not accept the Council's recommendation. The Chief Executive Officer has responded to this letter and a copy is attached at page A7 to A8. The Council has until 31 May 2005 to lodge an amended appeal specific to the Minister's decision. Robert Enright has been instructed to draft and lodge the amended appeal.

On 8 June 2005 Council and Crown Law have to report back to the Environment Court on the original appeal. It is recommended the Council confirms its desire to proceed with the appeal in the Environment Court.

It is understood that New Zealand Defence Force has removed the Chapel fittings and furniture. New Zealand Defence Force should be required to return all furniture and fittings to maintain the integrity of the Chapel. The Chapel fittings and furniture in our opinion form part of the Chapel and should not have been removed until the Chapel issue was resolved.

### **RESOURCES**

There is sufficient resource in terms of staff time and legal budget for this matter.

### **CONCLUSION**

The St Mark's Chapel at Hobsonville is a significant building in terms of heritage and value to our community. It is therefore considered important that Council defends its recommendation for the St Mark's Chapel to remain in its current position in Hobsonville. This position is consistent with District Plan Policy and the Ministry of Culture and Heritage's policy on management of Crown owned heritage buildings. It is understood that New Zealand Defence Force has removed the Chapel fittings and furniture. New Zealand Defence Force should be required to return all furniture and fittings to maintain the integrity of the Chapel.

### **RECOMMENDATIONS**

1. That the Update on St Mark's Chapel – Hobsonville Airbase report be received.
2. That Council confirms that it will continue with the appeal in the Environment Court opposing the Ministerial decision on the St Mark's Chapel.
3. That if the fittings have been removed then they should be returned.
4. That Council takes all reasonable steps to resolve the matter to ensure that the St Mark's Chapel remains in Hobsonville.

Report prepared by: Graeme McCarrison, Manager: Consent Services



### **PART E - PUBLIC EXCLUDED MATTER(S)**

#### **8 PROPOSED PLAN CHANGE 2: RE-IDENTIFICATION OF LAND FROM LIVING ENVIRONMENT AND HARBOURVIEW SOUTH SPECIAL AREA TO OPEN SPACE ENVIRONMENT AND MARAE SPECIAL AREA**

This item will be considered in the Confidential Supplement of the agenda, and has been circulated to members separately with this agenda.

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, namely Proposed Plan Change 2: Re-identification of Land from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation of the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each of / the matter to be considered.	Reason for passing this resolution in relation to each of / the matter	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"><li>Proposed Plan Change 2: Re-identification of Land from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area</li></ul>	The withholding of information is necessary in order to: <ul style="list-style-type: none"><li>Maintain legal professional privilege.</li></ul>	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(g) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- The report deals with an appeal currently lodged before the Environment Court.*

