



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF MEETING

# PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a Meeting of the Planning and Regulatory Committee will be held on:-

**DATE:**        **Tuesday,        8 February 2005**                      **TIME:**                      **9.30 am**

**VENUE:**        **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

4 February 2005

Charlie Inggs  
**DEMOCRACY AND GOVERNANCE  
TEAM MANAGER**

Telephone (09) 836 8000 extn 8854

### MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairperson)
	RP	Dallow, QPM, JP (Deputy Chairperson)
	DQ	Battersby, JP
	PJ	Booth, OBE
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	PA	Hulse
	JP	Lawley
	CA	Stone

Mayor, RA Harvey, QSO, JP (ex officio)

(Quorum 5 members)

★★★★★★★★★★

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE  
TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,  
WAITAKERE CITY, ON TUESDAY, 8 FEBRUARY 2005  
COMMENCING AT 9.30 AM**

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**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE  
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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, 7 December 2004

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 7 December 2004, as circulated, be taken as read and now be confirmed.



**PART B - PRESENTATION**

**4 STONE LEAL NEW ZEALAND**

Peter Pavlovich will make a presentation to the Planning and Regulatory Committee regarding organic treatment for contaminated soils.

## **PART C - REGULATORY / ENFORCEMENT**

### **5 LEGAL UPDATE AS AT 25 JANUARY 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**

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 has filed a claim with the Environment Court seeking costs of up to \$140,000 on an indemnity basis plus disbursements. Mr Mawhinney has counterclaimed for his costs of \$44,525.00 (although no particulars have been provided) and disbursements of approximately \$8000 against both Council and the Auckland Regional Council. It is considered that Mr Mawhinney's costs application is without merit given that Mr Mawhinney lost on all issues (including the legitimacy of s91 deferrals) and was found (by the Environment Court and High Court) to have abused the processes of the Court. In addition costs were awarded against Mr Mawhinney in the High Court and in the Court of Appeal.

A hearing of the costs application will take place in February 2005.

##### **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. A further reporting date was scheduled for January 2005.

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

This is an appeal against 29 consent conditions imposed on a subdivision consent previously held by Abacus. Progress on this appeal had been deferred awaiting the outcome of the declaratory proceedings referred to above. The matter has previously been adjourned, but has now been set down to be heard in February 2005. Mr Mawhinney has filed and served lengthy evidence which is currently being considered by Council's witnesses. Statements of evidence are being prepared currently and will be filed and served in early February.

### **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 achieved. The parties are in discussions regarding timetabling for a hearing on this matter.

### **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. A Court assisted mediation occurred on 16 July 2004 and 20 October 2004. Progress has been made, as a result the Plan Change will be considered at the end of February.

### **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 Road, 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 Auckland Regional Council against a decision by the Council to grant approval to a subdivision by Mr P Lipsham, relating to the property at 146-148 Parker Road, Oratia. Timetabling orders are yet to be made for the exchange of evidence in this matter, which is expected to proceed to a hearing in mid 2005. A Notice of Reply has been lodged.

### **CDL New Zealand Limited v Waitakere City Council (October 2004)**

An appeal against Council's decision granting subdivision consent; the appellant opposes the financial contribution conditions in respect of stormwater. Negotiations between the parties have resulted in agreement on the subject conditions and a joint memorandum and draft order are to be filed in Court to resolve the matter.

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

An appeal against an abatement notice issued by Council in respect of unauthorised earthworks. The matters were referred to a Court-assisted mediation on 17 November 2004 and it has since been agreed that the Trichons' consultants will provide further information with the purpose of advancing 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; the plans have been forwarded to the process planner for review.

### **E A Haines v Waitakere City Council**

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 taken any substantive steps.

Considerations of whether a mediated settlement can be reached will be requested, and if this is not possible, a timetable for the exchange of evidence will be formulated by the end of March 2005.

### **Vault Investments Limited v Waitakere City Council (October 2004)**

An appeal (pursuant to the Local Government Act) against Council confirming its decision to create a pedestrian mall at Todd Avenue, New Lynn as part of the town centre revitalisation (resolution no.1344/2004 on 28 July 2004 confirming resolution no.854/2004 on 26 May 2004), but with amendments to the Todd Triangle redevelopment plan recommended by the Hearings Committee in response to the Appellant's submissions. The Appellant owns tenanted commercial properties in Todd Avenue and submitted that the loss of roadside parking resulting from the creation of a pedestrian mall reduces their commercial viability. They also have an issue with a resource consent parking shortfall in relation to Council's District Plan car parking requirements for their property redevelopment plans given that Council is removing the car parking at Todd Avenue.

As required by the Environment Court, a memorandum was filed in December detailing negotiations between the parties and a further update to the Court is due by the end of February, when it is hoped that the matter can be resolved. Although there is no obligation to provide compensation for the loss of public car parking on Council road reserve, Council officers have arranged for the Todd Avenue car parks to be partially replaced nearby and the Appellant intends to withdraw their appeal upon the resolution of the car parking issues associated with their resource consent application.

### **HIGH COURT**

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

These proceedings have now been concluded following the release of the Court of Appeal decision in September 2004 declining Mr Mawhinney's application for special leave. In effect therefore the judgment of Randerson J in the High Court which vindicates the Council on all issues has been upheld.

The only outstanding issue is costs in the Environment Court (see above). Costs in the High Court and Court of Appeal have already been assessed and set. Mr Mawhinney has since made payment of approximately \$55,000 to Council in respect of those costs awards.

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.

The Civil Proceedings had been deferred until the resolution of the Declaratory Proceedings, but since the release of the Court's decision in that case the Civil Proceedings have been reactivated.

There has been a settlement conference in November before Associate Judge Sargisson in an attempt to reach a negotiated settlement. Although no settlement was reached, some progress was made in defining the issues in the case and it has been agreed to have another half day conference when the Court can accommodate the parties.

We have recently had Council's security for costs application heard by the High Court. The application was part heard as it was unable to be completed within the half day allocation by the Court (we understood that we would have a whole day). A whole day on 28 January 2005 has been allocated by the Court to ensure that the hearing is completed then. The general feeling was that the Judge was 'on board' with Council's arguments and she was showing signs of frustration with Mr Mawhinney's explanations of his alleged control of various assets.

### **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 7 pursued). A hearing will take place in the Court of Appeal in mid 2005.

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

This is an arbitration concerning the valuation of reserve land, Lockington Green at Sturges Road, Henderson. The value of the reserve is to be offset as a credit against payment of reserve contributions by the developer, Estate Holmes. The arbitration was part heard on 24/25 November 2004 and will be completed on 24/25 February 2005. Estate Homes' evidence has been heard and Council's evidence part heard. Valuation evidence and closing submissions will be completed in the February.

## **PROSECUTIONS - DISTRICT COURT**

### **I & A Covich - 40 Sunnyvale Road, Massey (May 2003)**

Charges were laid against Mr and Mrs Covich alleging that the Covich's operated a cleanfill 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. The matter was set down for a trial during the week beginning 20 September 2004 but the Covichs changed their pleas to guilty and the matter was the subject of a restorative justice conference on 16 November 2004. Sentencing has been deferred to a date yet to be advised.

### **R Fowler - 7 Woontons Lane, Titirangi (August 2003)**

Sentencing on the four charges under the RMA (breach of various District Plan rules, including doing building work on the road reserve and in a stability sensitive area) occurred on 8 December 2004. Mr Fowler was fined \$4,500 in respect of one of the charges and ordered to pay court costs and solicitor's costs; and, in respect of the three other charges, the Judge deferred sentencing on the basis that Mr Fowler would be ordered to appear before the Court if he re-offended within the next year, indicating that a fine of around \$10,000 would be imposed if that occurred.

The Council has since registered a statutory land charge against the subject property for the costs incurred in carrying out the remedial work required under the Enforcement Order (approx. \$20,000). An application will be made to the District Court shortly seeking interest on that sum.

**Lance Olsen / Neslo Construction Limited - 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's 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 will be heard on 9 February 2005.

**T, D & S Watford - 55 Derwent Crescent, Titirangi (March 2004)**

Charges were laid alleging failure to comply with a notice to rectify building work. The owners have since obtained building consent and remedial works are underway. The charges have been withdrawn.

**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 lodged a building consent application for removal of the unauthorised works. The matter has been adjourned to 21 February 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; we await allocation of a defended hearing date.

**Yamms Investment Limited - 76-78 State Highway 16, Whenuapai (March 2004)**

Charges laid under the Building Act in respect of the defendant's failure to provide a current building warrant of fitness to Council. The defendant has since undertaken remedial works and has supplied Council with a current warrant of fitness and the charges have been withdrawn.

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

Charges laid under the RMA alleging contravention of District Plan Rules, as the property 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 failed to appear in court and a warrant was issued for his arrest; a new date is yet to be allocated.

**Future Developments Limited & P Slimo - 221 Scenic Drive, Titirangi (June 2004)**

Charges have been laid under the RMA alleging various District Plan breaches and under the Building Act alleging various instances of unauthorised building work and allowing the use of an unsafe building (in respect of fire safety concerns) for residential purposes. The defendants have entered no plea at this stage and the matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 3 February 2005.

**G McGee - 884 West Coast Road, Oratia (June 2004)**

Charges laid under the RMA alleging contravention of an abatement notice issued in respect of unauthorised earthworks in the Managed Natural Area. The matter was dealt with on 29 November 2004 at which time the Judge accepted that the Mr McGee had contravened the abatement notice. However, the Judge took into account the fact that considerable work had been done to comply with the abatement notice after the charges had been laid and discharged Mr McGee without conviction.

**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. Matter adjourned for first call on 24 January 2005.

The defendant has intimated a guilty plea and the matter has been adjourned for sentencing before an Environment Court Judge on 28 February 2005.

**G S & V M Trichon – 70 Tirimoana Road, Glendene (July 2004)**

Charges laid under RMA alleging contravention of an abatement notice which required the stabilisation of the filled area or in the alternative the removal of the fill deposited at the site and revegetation works. The Trichons have since provided further information regarding a geotechnical report and survey plans in respect of their current resource consent application and the charges have been withdrawn.

**MJS & YC Seymour – 39 Onedin Place, Titirangi (July 2004)**

Charges laid under Building Act for alleged unauthorised building work. The matter was called on 29 October 2004 and the defendants entered not guilty pleas. A hearing is scheduled for 15 February 2005.

**Trubuhovich Holdings Limited and Taylor Built Limited- 18 Brigham Creek Road, Whenuapai (August 2004)**

Charges laid under the Building Act and the RMA in respect of the unauthorised construction of numerous poly/shade houses, which were built without building consent and which breach various District Plan Natural Environment Rules. Trubuhovich Holdings Limited has intimated a guilty plea and the matter has been adjourned for sentencing before an Environment Court Judge on 28 February 2005. The charges against Taylor Built Limited have been withdrawn.

**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 matter has been adjourned to 21 February 2005 without plea.

**C Nisbett, Progress Construction Limited (directors: PB Christensen, KG Mormon, IF Stead) - Dovey Place, Massey (September 2004)**

Charges laid under the Building Act for continued building work on two unauthorised houses. The prosecution against Mr Nisbet has been set down for defended hearing on 30 May 2005 and the charges against Progress Construction have been withdrawn.

**EA Haines – 80 Hobsonville Road, Hobsonville (September 2004)**

Charges laid under the RMA in respect of unauthorised removal of protected trees. The matter has been adjourned without plea and is listed for call in the Auckland District Court on 28 February 2005.

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

Charges laid under the RMA in respect of unauthorised removal of protected trees. The matter has been adjourned without plea and is listed for call in the Auckland District Court on 28 February 2005.

**J & M Activities Land Limited (directors: MR Hannett & JM Timoteo) - 77 Fruitvale Road, New Lynn (September 2004)**

Charges laid under the Building Act for using/permitting the use of an unsafe building. The matter has been adjourned to 21 February 2005 on the basis that the defendant is undertaking building works to rectify the dangerous state of the building.

**Ngee Properties Limited (director: GW Chappell) - 21 Enderby Drive, Te Atatu Peninsula (September 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of a garage to a residential unit). The matter has been adjourned to 21 February 2005.

**AR Dean – 30 Edmonton Road, Henderson (September 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of the basement area of a house to form a residential unit). Mr Dean pleaded guilty to permitting the unauthorised work and was convicted and fined \$1,250.

**Steven Lee and Hee Ja Noh - 2/7 Te Atatu Road (December 2004)**

Charges laid under the Building Act in respect of alleged unauthorised building work. The matter is listed for first call on 21 February 2005.

**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 minor household units). The matter has been adjourned to 21 February 2005.

**N & D Alexander and D Pirrit - 11 Cascade Avenue (December 2004)**

Charges laid under the RMA in respect of unauthorised earthworks and vegetation clearance in the Protected Natural Area and on a protected ridge. The defendants have intimated guilty pleas and the matters have been adjourned for sentencing before an Environment Court Judge on 28 February 2005.

**RECOMMENDATION**

That the Legal Update as at 25 January 2005 be received.

Report prepared by Brigid McDonald, Contract Solicitor.



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

### **6 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 report be received.

Report prepared by: Charlie Inngs, Democracy and Governance Team Manager.



### **7 SWANSON STRUCTURE PLAN - SUBDIVISION APPLICATION UPDATE**

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

The Group Manager: Planning and Community Services will provide a update to the Planning and Regulatory Committee on the number of subdivision applications that the Council has received in the Swanson Structure Plan Area.

A regular report will be brought to each forthcoming meeting of the Committee outlining the number and status of the subdivision applications in the Swanson Structure Plan Area.

#### **BACKGROUND**

At its meeting on 10 August 2004, the (then) Environmental Management Committee clarified its negotiating position on the Swanson Structure Plan appeals. In response to a concern that subdivision applications would be lodged with the Council before the resolution of the Environment Court appeals, the Committee resolved:

*“That the Environmental Management Committee acknowledges receipt of the 5 August 2004 letter from the Structure Plan Advocates Network, indicating the Group’s support for a moratorium on Non-Complying Subdivision applications in the Swanson Structure Plan area. That Council Officers to report to the Environmental Management Committee outlining the number and status of any such application that may have been lodged.”*

1510/2004

#### **CONCLUSION**

The provision of an update at each forthcoming meeting of this Committee will provide the requisite information to this Committee.

## **RECOMMENDATION**

That the Swanson Structure Plan - Subdivision Application Update report be received.

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



## **PART E - ENVIRONMENTAL MANAGEMENT**

### **8 CHEMICAL RESIDUES ON HORTICULTURAL SITES: UPDATE**

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

The purpose of this report is to provide the Planning and Regulatory Committee with an update on the matters raised by the existence of past or present horticultural uses of the land within Waitakere City. It also seeks the Committee's endorsement of the decision by the Chief Executive to become a party to two Environment Court appeals related to contamination issues in the Auckland Regional Council's Air, Land and Water Plan.

#### **BACKGROUND**

At its February 2002 meeting, the (then) Environmental Management Committee received information from the Auckland Regional Council and the Auckland District Health Board on a report "Horticultural Soils in the Auckland Region". This report was accompanied by an Agenda item that discussed the issues for Waitakere City arising from it.

The report investigated whether trace chemicals remain in horticultural soils in the Auckland Region, and outlined the results of soil sampling tests carried out on a variety of current and past horticultural sites. It noted both national and international guidelines and standards for acceptable levels of six chemicals. These chemicals are DDT, DDD, Dieldrin, Lead Arsenate and other Arsenicals, Copper, and Mercury.

The report used the joint New Zealand Ministry of Health / Ministry for the Environment Guideline document "Health and Environmental Guidelines for Selected Timber Treatment Chemicals (1997)" as a base document. This Guideline document derives (amongst other things) trigger levels at which further investigation for possible soil contamination is required.

Since that time the Council has required site analysis of past horticultural sites as part of subdivision and development applications, and has undertaken a study of aerial photographs to ascertain the location of old horticultural sites. Legal advice was sought on the matter of the placement of a statement about past horticultural use of land onto Land Information Memoranda (LIMs).

A1-A4 The legal advice which Waitakere City received was on different terms to the legal advice received by Auckland City. This became a matter of discussion at the Chief Executives' Forum in June 2003. An analysis of the conflicting opinions was undertaken and the report provided to the Chief Executives' Forum on 20 August 2003, a copy of which is attached at pages A1 to A4. The Chief Executives' Forum adopted the recommendations contained in that report. The Land Information Memorandum statements adopted by

A5 Waitakere City as a consequence is attached at page A5. You will see that the statement is quite explicit. It states three things:

- There is no evidence that the property "is or is not contaminated";
- The Council may require soil testing to establish new activities or to undertake subdivision;

- The information is supplied under s.44A(3) Local Government Official Information and Meetings Act.

Council continues to place this statement on Land Information Memoranda (LIMs), and to provide information (at no cost) across the Counter or over the telephone. Council is providing information to all inquirers, regardless of whether or not they own the property - often the enquiries are coming from prospective purchasers.

A6 Council has also began to receive soil analysis test results, and where these results show that the soil has contaminant levels below the accepted trigger levels, a revised statement is then placed on the Land Information Memorandum. A copy of the revised Land Information Memorandum statement is attached at page A6.

A7-A8 The Council has refined the circumstances when it requests soil sampling as part of resource and building consents, so that where minor development or earthworks are occurring and the earth is remaining on the site, applicants need not test their soil. The development thresholds are set out in the document attached at pages A7 to A8.

### **STRATEGIC CONTEXT**

In Waitakere City, much of the land in the urban part of the City and both the Foothills and Countryside Environments has been used for vineyards, orchards, market gardening and glasshouses.

One of the roles of Council is to administer the City in such a way as to protect public health and safety. One of the Council's five priorities in its Long Term Council Community Plan is a safe City. This includes a City where the community is safe from adverse effects on its health from the environment. The Council also seeks to ensure that our native and other ecosystems are protected from threats to their ongoing survival. One such threat is potential chemical contamination of waterways, once the land is disturbed by development.

### **Ministry for the Environment: Crown Law Opinion**

The Ministry for the Environment continue to remain engaged in this issue, and have obtained and then circulated two Crown Law opinions in late December 2004. The Crown Law opinions confirmed the advice previously received by Council, i.e. that this information should not be disclosed on Land Information Memorandum reports under Section 44A(2) of Local Government Official Information and Meetings Act, but as a matter of discretion the existence of horticultural use of soils (either past or present) could be disclosed under Section 44A(3) of the Local Government Official Information and Meetings Act. In exercising the discretion to place a statement on the Land Information Memoranda, the Council has acted lawfully and within the bounds of Section 44A(3) of the Local Government Official Information and Meetings Act.

The Committee could exercise its discretion and resolve to remove the statement relating to past horticultural use. There is no compelling reason to exercise this discretion, as most prospective purchasers will be interested in this information, and will be likely to request that the information be provided as part of their consideration of their options when buying a particular property. That information will continue to exist and may still be requested under the Local Government Official Information and Meetings Act, and the Council would have to provide it. If this step was taken Council would then face the potential claim from purchasers and mortgagees that the failure to disclose these circumstances on the face of a Land Information Memorandum has caused loss. This is most likely to arise in relation to green field developments where remediation costs may be significant. The information will, however, continue to be used when applications for building and/or resource consent are received. Therefore if a building or resource consent is received for any of the properties identified as having previously been used for horticultural activities a contamination assessment will be requested.

Any decision to remove the Land Information Memorandum statement must therefore consider the Council's claim risk profile as a consequence of that action and whether that is appropriate for a Council which takes pride in adopting an open and honest approach to all issues. That decision might perhaps be appropriate if taken in conjunction with a decision to continue to make available maps of the areas in question at the Counter. That however is just another way of delivering the same outcome and both existing homeowners and prospective purchasers are left in exactly the same position. Keeping the information available at the Council's Public Counter accords with the advice received from the Crown Law Office. Changing the District Plan to incorporate the horticultural sites on the District Plan Maps is not supported, as the task and cost is substantial and would attract a significant number of submissions and the potential for Environment Court appeals from property owners.

Those whose properties are affected by a notice such as this are likely to support the removal of the Land Information Memorandum statement, as it is often considered to be an impediment to selling their property and/or a cause for a perceived decline in financial value of their property. Against this however, it can be argued that the Land Information Memorandum statement often does no more than confirm, on the record, information which is publicly known already, and/or known to the vendor.

### **Costs Associated With Soil Sampling**

It has become apparent that the cost of obtaining soil samples and having those samples analysed and reported upon generally range from \$1,500 - \$3,000, depending on the number of samples and the size of the site. The Auckland Regional Council is preparing a guideline methodology to assist with the sampling and achieve some consistency across the Auckland Region.

Council has received one request for reimbursement of the cost of sampling for one property. Sampling showed that the property had soil where the levels of chemicals in the soil did not exceed the current thresholds. The Land Information Memorandum statement for that property has been amended to reflect the new information that the Council now has relating to that property. Given that the Council acted lawfully in terms of putting the statement on the Land Information Memorandum, there is no reason to reimburse this cost. To reimburse the owner of this property exposes the Council to an unlimited financial liability that would be unacceptable. The owner of the property now has a property that is verified as being uncontaminated, which, if used for marketing purposes, could lead to a sale that more than recovers the cost of the soil sampling and analysis.

### **Ministry for the Environment Funding**

The Ministry continues to state in the media that it has funding (\$1 - 2 million) to assist with soil testing. It is understood that this amount will not cover all sampling requirements, and Auckland City Council are seeking to undertake a pilot study in relation to sampling in urban environments. The Chief Executive has written to the Ministry indicating its interest in this project, but (at time of writing) had not yet received a reply.

### **Other Councils**

A9-A12

Auckland City Council has resolved to remove the text from its Land Information Memorandum statements. The media release related to that decision is attached at pages A9 to A12. The statement attributed to Mayor Hubbard that "the City previously believed we had no option but to put the information on Land Information Memoranda" is clearly not correct, given that Auckland City Council placed its statements on Land Information Memoranda under 44A(3) of the Local Government Official Information and Meetings Act.

North Shore City Council has prepared a practice note for its consent processing staff, but has not yet finished its survey of aerial photographs. Consequently, it is still considering its position in terms of placing a statement onto its Land Information Memoranda regarding the location of past or present horticultural sites.

### **Auckland Regional Council's Air Land and Water Plan Appeals**

Both the Auckland City Council and the Oratia Residents and Ratepayers Association have appealed aspects of the Auckland Regional Council's Air Land and Water Plan, as it relates to contamination issues.

A13-A16

The statutory deadline for joining the Auckland City Council and the Oratia Residents and Ratepayers appeals under section 274 of the Resource Management Act expired during January 2005. The Chief Executive signed the relevant notices, which have been filed with the Environment Court and served on the relevant parties to ensure that the statutory deadline was met. A copy of those notices are attached at pages A13 to A16. The Committee's endorsement of that action is sought. If the Committee does not consider that becoming a section 274 party to those two appeals is appropriate, the notices can be withdrawn.

### **RESOURCES**

The Council continues to provide staff resource to attend the Regional Liaison Group that the Auckland Regional Council has convened to address matters arising from the horticultural soil issue. Staff will continue to process resource consent applications and Land Information Memoranda, and respond to public queries on this matter. No new resources are required to address this matter at present.

### **CONCLUSION**

The Council has received a copy of the Crown Law opinion on the inclusion of statements about past horticultural uses of land in December 2004. This legal advice from the Crown Law Office does not differ from the previous independent legal advice that the Council has received. The Council has placed this statement to Land Information Memoranda utilising a discretion provided by the Local Government Official Information and Meetings Act 1987. However, the Council could use its discretion to remove the statement.

The Council has also become a party to two Environment Court appeals relating to the Auckland Regional Council's Air Land and Water Plan, and this report seeks the Committee's endorsement of that action.

### **RECOMMENDATIONS**

1. That the Chemical Residues on Horticultural Sites: Update report be received.
2. That the Planning and Regulatory Committee **either**:
  - a. approve the continued placement of the statement relating to horticultural sites on Land Information Memoranda;
  - or**
  - b. direct the Chief Executive to remove the statement relating to horticultural sites on Land Information Memoranda while retaining the public's ability to access this information from the Council.
3. That the Planning and Regulatory Committee confirm that the Council will not refund to individuals any money that the individual has expended on soil sampling, analysis and reporting of that analysis.

4. That the Planning and Regulatory Committee endorse the actions of the Chief Executive in terms of the Council becoming a section 274 party to the Auckland City Council and the Oratia Residents and Ratepayers Environment Court appeals ENVA 0530/04 and ENVA 0458/04.

Report prepared by: Eryn Shields, Principal Planner.



## 9 COMMUNITY BOARD APPOINTMENTS TO HEARINGS COMMITTEE

### PURPOSE OF THE REPORT

The purpose of this report is to consider the request from the Massey Community Board that each Community Board has two representatives participating on the Hearing Committee when issues pertaining to their Wards are to be considered.

The Massey Community Board made this recommendation to Council at its meeting held 24 November 2004 where the following resolution was enacted.

That the following recommendation from the Massey Community Board namely :

*“That each Community Board has two representatives participating on the Hearings Committee when issues pertaining to their Wards are to be considered as the Massey Community Board respectfully believes that two members should be the minimum representation from each community and that this request be referred to an appropriate Council Committee together with an appropriate report for further discussion and decision.”*

1954/2004

### BACKGROUND

The Hearings Committee comprises six (6) members appointed by the Council and one (1) Community Board member from the specific ward in which the matter being heard is located or to which the hearing applies.

The practice of having a Community Board Member on the Committee has operated for many years and has provided input from the local community on issues of a local nature.

The system appears to have worked effectively in the past.

### STRATEGIC CONTEXT

The Council's strategic objectives are to build a sustainable city and it has developed nine platforms on which to base this strategy. One of the Council's nine strategic platforms refers to Active Democracy which is to enable people feel that they can make a difference. This platform supports the involvement of citizens in the Council's decision making process. The District Plan is a tool to assist with the development of a sustainable city. There is a need to ensure a balance in administering the Plan to achieve the desired outcomes whilst engaging with the community for input.

## ISSUES

The Planning and Regulatory Committee is delegated the responsibility to develop strategies and policies with respect to Resource Management Act matters and in particular, to the administration of the District Plan.

The Hearings Committee delegations relate to conducting hearings and making decisions on applications on matters arising from bylaws, plans, regulations and legislation. There is a need in relation to these matters for consistency across the city and the District Plan assists in this regard.

It is appropriate that the request from the Massey Community Board be assessed by the Planning and Regulatory Committee with any changes proposed to the delegations to be recommended to the Council.

The Massey Community Board have requested that rather than have one member appointed and one alternate member that there be two (2) members appointed to the Hearings Committee. If the request was granted the membership of the Committee would be eight (8), which for voting purposes may mean that the Chairperson is required to use their casting vote, should the voting be equal. Under the current membership an uneven number is more beneficial for voting purposes as all Members are required to vote and are unable to abstain.

Decisions of the Committee are becoming increasingly more "strategic" rather than local. For example, recent hearings have dealt with matters such as six (6) storey apartment building at Te Atatu that was pivotal to Council's intensification policy and development beyond the urban limit. It would appear that there are now proportionally fewer matters that are before the Hearings Committee that raise only local issues.

### Other Local Authorities

In a survey of other Auckland City Councils the following information has been obtained.

#### North Shore City Council

For local issues all Community Board members are appointed as Commissioners and are rostered to represent the Board. For city wide issues more frequent use is being made of Independent Commissioners.

#### Manukau City Council

For local issues only, Manukau City Council has a Community Board Resource Consent Hearings Committee which is used infrequently. For city wide issues more use is made of Independent Commissioners.

#### Auckland City Council

Community Board members are appointed as Commissioners as and when required for local issues only. This is normally limited to one Community Board member for each issue.

## RESOURCES

Members on the Hearings Committee are paid a remuneration of \$65 per hour for time spent at hearings. This remuneration is in addition to the standard remuneration paid to elected members. Should another Community Board member be appointed to the Hearings Committee, this would involve another fee of \$65 per hour to be paid in addition to that amounts currently paid. These additional costs will generally be met by the applicant. The aspect of who pays is probably more relevant than the annual quantum.

The Government has sought co-operation from Local Government to reduce costs of compliance in recent years. This approach has been supported by local government. The Government is moving towards a system of training and certification for Hearings Committee Members and Commissioners under the Resource Management Act 1991. In future, the only that can make decisions on resource consent will be those trained and certified. Training costs of additional members (one (1) for each ward) will need to be borne by the ratepayers.

### **CONCLUSION**

There is a trend amongst Council (particularly the larger or "growth" Councils) to reduce the size of Hearings Committees or to use Commissioners to hear applications. A decision to increase the size of the Committee to eight would go against the national trend.

The District Plan, which is the predominant factor for determining hearings, is a city wide document and the current system of having one member from each Community Board appointed to the Hearings Committee has worked effectively in the past.

However, should the Committee consider that the local issues and additional input from Community Board members outweighs other considerations the Committee could endorse the recommendation to Council from the Massey Community Board.

### **RECOMMENDATIONS**

1. That the Community Board Appointments to the Hearings Committee report be received.
2. That the Planning and Regulatory Committee recommend to Council that the current memberships of the Hearings Committee remain unchanged.

Report prepared by: Darryl Griffin, Group Manager: Democracy and Support Services.



## **10 BYLAW REVIEW UNDER THE LOCAL GOVERNMENT ACT 2002**

### **PURPOSE OF THE REPORT**

The Bylaw Review Programme was considered at the Council meeting on 15 December 2004. That report outlined the statutory background as contained within the Local Government Act 2002 (LGA02), listed current Waitakere City Council Bylaws and discussed a proposed review programme including the resource implications. The Council accepted the recommendations contained within the report and resolved:

1. That the Bylaw Review Programme report be received.
2. That the draft timeline for the Bylaw Review Programme, to be completed by December 2006, be approved in principle.
3. That the Planning & Regulatory Committee be directed to review and finalise the Bylaw Review Programme and to consider, and to make recommendations upon, all reports in respect of the review programme prior to those reports coming to Council for final deliberation and decision.

4. That the Planning & Regulatory Committee be delegated:
  - (a) Authority to hear and consider and make recommendations in respect of submissions received as part of the Bylaw Review Programme;
  - (b) Authority to delegate all or any matter under Recommendations 3 & 4(a) above to a sub-committee, or sub-committees, of Councillors appointed by resolution of the Planning & Regulatory Committee. A sub-committee must be comprised only of Councillors and have a minimum of 3 members. If the Chair of the Planning & Regulatory Committee is a member of a sub-committee that person will chair the sub-committee, but otherwise the Chair of the sub-committee will be the person named by the Planning & Regulatory Committee at the time of appointment, or elected by the members of the sub-committee at their first meeting.

The purpose of this report in light of resolution 3 above, is to seek from the Committee more detailed guidance regarding the review programme.

#### **STATUTORY BACKGROUND**

Section 158 LGA02 lays down a requirement for local authorities to review their existing bylaws by 30 June 2008. Once reviewed and confirmed, a bylaw does not need to be reviewed again for 10 years. If however a bylaw is reviewed and revoked, and a new bylaw made under LGA02 the new bylaw must be reviewed within 5 years, and thereafter within 10 years. A bylaw not reviewed within the applicable time limits will cease to have effect 2 years after the date upon which the review ought to have occurred (s.160). The implication of these two sections is that once the initial review of all bylaws is complete, there will need to be a continuing rolling programme of review.

Section 145 LGA02 sets out the general bylaw-making power for territorial authorities. The 1974 Act contained a long list of matters in respect of which a bylaw could be made, by contrast under the 2002 Act a bylaw must have one or more of the following purposes:

- (a) Protecting the public from nuisance;
- (b) Protecting, promoting, and maintaining public health and safety;
- (c) Minimising the potential for offensive behaviour in public places.

The difficulty relating to s.145 is the measure of uncertainty which has arisen relating to the scope of those powers. There are some activities which have been traditionally controlled under LGA74 which might not clearly fall into one of the categories defined above.

Section 155 LGA02 then requires that before making or reviewing any bylaw the local authority must first determine whether a bylaw is the most appropriate way of addressing the perceived problems and if so, what the most appropriate form of bylaw should be and whether there are any implications under the New Zealand Bill of Rights Act 1990.

Matters which have been dealt with by a bylaw in the past eg. public library membership or behaviour in swimming pools, will struggle to meet the requirement of being the most appropriate way to address the perceived problem.

## WAITAKERE CITY'S BYLAWS

A17-A18

Attached at pages A17 to A18 is a list of the current Waitakere City Council bylaws divided into 5 classes for convenience of analysis: Protecting the Public from Nuisance, Health & Safety, Maintenance of Public Order, Miscellaneous and Redundant. The first three classes roughly replicate the requirements of section 145(a), (b) and (c) of the Local Government Act 2002.

The list of bylaws has five columns:

1. Name and number of bylaw.
2. The purpose of the bylaw.
3. The next two columns refer to regulatory action taken under the bylaw. The frequency of enforcement actions taken by the Council is listed in the second column to indicate those bylaws which get the most "use".
4. The final column provides a provisional programme of review. It is suggested that 24 bylaws be reviewed during 2005 and a further 16 in 2006. Those identified for immediate review include those which on an initial analysis may fail to meet the basic criteria contained within section 145 and section 155 Local Government Act 2002 as detailed above.

## RESOURCES AND BUDGET

The major part of staff resources will be provided from the Legal Services Unit. Specialist assistance will be required from those units of the Council with responsibility for particular bylaws. The bylaw review programme will be driven from the Legal Services Unit to ensure rigour and consistency in relation to policy decision-making, record keeping and drafting.

The 2004/2005 Annual Plan includes an allowance of \$50,000 to resource this review work. An additional staff member has been employed to lead this project and to provide additional support to claims management workloads. It is anticipated that staff resources and budget requirements can be accommodated within existing budgetary arrangements for the Legal Services Unit.

Whilst clause 32(1) Schedule 7 of the Local Government Act 2002 states that the Council is unable to delegate "the power to make a bylaw", Clause 32(2) provides that it is in order to delegate "the power to do anything precedent to the exercise" of the power to make a bylaw "(after consultation with the Committee...)".

The Council has given the Planning & Regulatory Committee responsibility for reviewing both the policy analysis underlying the review of each bylaw, and the draft bylaws themselves, and in addition for hearing submissions under the review process, and making recommendations to the Council at each stage. The Planning & Regulatory Committee has also been given a power of sub-delegation so that the committee can deal with the review process in the most efficient manner possible.

## PROPOSED TIMELINE AND REVIEW

The work programme is scheduled to be completed by 31 December 2006. The Committee is requested to consider the scheduled work programme as outlined on the attached Waitakere City Council bylaws document and to decide whether any specific changes are appropriate in light of Council priorities. Given the amount of staff and Councillor time involved in the review and consultation process for each bylaw, it is submitted that a review of more than 24 bylaws during 2005 is not realistic. There may in fact be merit in considering the implementation of a three year programme from the outset.

It is suggested that the first half of each year be devoted to analysing each bylaw to be reviewed that cycle. This will include a consideration in each case as to whether Council has a legal power to prepare a bylaw on the particular subject and if so,

- is a bylaw the best way of dealing with the issue (bearing in mind such matters as other legislative powers common law remedies and enforcement difficulties),
- are there any implications under the New Zealand Bill of Rights Act 1990
- is the bylaw in the community interest, is it practical, enforceable and beneficial.

If appropriate, a new bylaw will then need to be drafted together with a statement of proposal and summary (for use in the Special Consultative Procedure (SCP)). The analysis and option appraisals as outlined above, together with draft bylaws, and statement of proposal will be considered by the Planning and Regulatory Committee before final deliberation and decision by Council. Once approved, the SCP will commence, involving hearings before the Planning and Regulatory Committee and if necessary amendments to the bylaw finally referred to Council for decision.

As outlined above, the Planning and Regulatory Committee has been given authority to delegate all or any of these functions to a sub-committee (or sub-committees) comprising not less than three Councillors. There are in total 40 bylaws to review, representing a considerable amount of analysis for the Committee to consider and digest, and conceivably a large number of hearings once the consultation process commences. The Committee may therefore consider the establishment of a sub-committee (or sub-committees) to be appropriate. However, on that basis not all Councillors would be involved in the consideration and deliberation process. It is therefore suggested that the committee may wish to defer a decision on the appointment of a sub-committee or sub-committees until the review programme commences, and the amount of work involved becomes clearer.

### **RECOMMENDATIONS**

1. That the Bylaw Review under the Local Government Act 2002 report be received.
2. That the scheduled work programme for 2005 and 2006 be approved.
3. That the Committee defers a decision upon whether to appoint a sub-committee or sub-committees to consider specific aspects of the Bylaw Review Programme, until further work is done to identify the level of work required.

Report prepared by: Denis Sheard, Legal Services Manager and Yvonne Donaldson, Team Leader: Legal Services.



**PART F - CONFIDENTIAL ITEMS**

**11 ISSUES SURROUNDING THE WAIAROHIA STRUCTURE PLAN**

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 parts of the proceedings of this meeting, namely, Issues Surrounding the Waiarohia Structure Plan.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"><li>Issues Surrounding the Waiarohia Structure Plan</li></ul>	<p>The withholding of information is necessary to:</p> <ul style="list-style-type: none"><li>enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li></ul>	<p>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.</p>

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) (i) 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 contains information which if released, would affect the Council's negotiations.*

