

**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, 12 JULY 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 - Thursday, 19 May 2005
Reconvened - Monday, 23 May 2005
Reconvened - Tuesday, 24 May 2005

Meeting Minutes - Tuesday, 7 June 2005.

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee (to hear Submissions on the Draft Waste Bylaw and Licence Fee) held on Thursday, 19 May 2005, Reconvened on Monday, 23 May 2005 and on Tuesday, 24 May 2005 and the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 7 June 2005 as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 27 JUNE 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, informations or proceedings were first filed in Court.

ENVIRONMENT COURT

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 settled the matter at a Court-assisted mediation held on 8 June 2005 and consent documentation is expected to be prepared shortly.

Abacus Developments Limited & 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) have 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 has been set down for hearing (as backup fixture) in the week of 29 August 2005. An agreed evidence exchange timetable has been set.

Te Atatu Residents' & Ratepayers' Association Incorporated 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. The Council has recently resolved to proceed with this plan change. A hearing date is to be allocated shortly, probably for September or October 2005.

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 has sought 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 Road, 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. Evidence has been exchanged on behalf of Mr Lipsham and Council.

Trichon v Waitakere City Council (October 2004)

This matter involves an appeal against an abatement notice issued by the Council in respect of unauthorised earthworks, and an application by Trichon for an enforcement order against the Council in respect of erosion around a public stormwater drain on Mr Trichon's property. 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. The abatement notice has since been cancelled by consent. It is hoped that Mr Trichon's consent application can be progressed shortly, once details are finalised.

In respect of the public stormwater drain, the Council is due to undertake remedial work around the affected area shortly.

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.

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 Ltd 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 ("MUL") and the potential for a negative precedent effect.

To date the parties have been unable to agree on the resolution of this matter. However, the issues on appeal has been agreed and confined. The evidence timetable will see the matter ready for hearing from mid August 2005. The applicant has served its evidence and Council is about to serve its evidence.

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 the 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 appealed the Minister's decision and has filed an application for a declaration opposing removal of the Chapel. A hearing date is yet to be allocated.

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.

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. Mr Mawhinney has since withdrawn his appeal and the Council has applied for an award of costs.

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 have had six weeks to find Mr Whimp accommodation that suits the requirements of the parties as set out in the mediation agreement. No suitable accommodation has been found that Mr Whimp wishes to move into. At the Court's request the Council has filed a memorandum seeking a hearing on the matter as the Council wishes to enforce the abatement notice.

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 Incorporated 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 Incorporated 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 Waitakere Ranges Protection Society Incorporated'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.

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 Auckland Regional Council 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 has withdrawn its appeal.

HIGH COURT

Waitakere City Council v Peter William Mawhinney

Council is taking enforcement action against Mr Mawhinney, to require payment in respect of a \$75,000 costs award and several other costs awards. To date the Council has been unable to effect personal service but has now secured orders for substituted service from the High Court and service will be affected shortly.

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

This claim is currently on hold pending the payment in of security for Waitakere City Council's costs of \$60,000 ordered by Associate Judge Sargisson on 2 May 2005. Mr Mawhinney must pay the security sum within six months (or no later than 2 November 2005) or Council will be able to apply to strike out his claims.

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 Limited 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) to Estate Homes Limited. Estate Homes Limited have queried whether there is a calculation error in the award which Council has opposed (both on substantive and jurisdictional grounds) and the Arbitrator will make a final award shortly. There are also outstanding issues over interest and costs which the parties are exchanging further submissions on. Council has made a payment on account so as keep the final interest amount as low as possible. There was a final hearing to determine these issues on 26 May 2005. We are awaiting a decision.

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 set down for hearing on 21 November 2005.

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 since removed the unauthorised works under a building consent and the charges have been withdrawn.

Contract Sealing Ltd, 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 have been 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. Mr Stanic pleaded guilty and 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. The Council will seek an enforcement order to ensure that this occurs. Sentencing was scheduled for 7 June 2005 but Mr Stanic failed to appear. A new date is yet to be set.

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

Charges laid under Resource Management Act 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 29 July 2005 without plea.

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

Charges were laid under the Resource Management Act in respect of unauthorised removal of protected trees. Mr Kiely entered a guilty plea to permitting the unauthorised vegetation clearance at the sentencing hearing on 14 June 2005. He was convicted and fined \$1,500 plus costs.

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

Charges were laid under the Building Act in respect of alleged unauthorised building work. Mr Lee is alleged to be the builder who undertook the works. The matter has been adjourned to 29 July 2005 without plea as Mr Lee has just been granted legal aid.

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

Charges were 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 charges have been withdrawn.

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. The defendants are seeking retrospective resource consent and the matter has been adjourned to 29 July 2005.

John Steed – Public Places Bylaw (March 2005)

An application for an order 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, Chapter 2, clause 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 storm-water drainage system). Council officers have tried to assist him with alternative accommodation but he refuses to consider such options. The Court has granted an interim order restraining Mr Steed from breaching the Bylaw. The final order is to be considered on 15 July 2005, if Mr Steed is able to be served with the notice of hearing before that date.

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. This matter has been adjourned to 29 July 2005. The current owner has applied for Resource Consent.

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

Charges were 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. This matter has been adjourned to 29 July 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 has been adjourned to 29 July 2005.

Restaurant Brands Ltd: KFC New Lynn – 3052 Great North Road, New Lynn (June 2005)

The Council has filed a notice of prosecution alleging contravention of 7 provisions of the Food Hygiene Regulations and 2 provisions of the Food Safety bylaw. These were filed against Restaurant Brands Ltd which is the owner of KFC. Restaurant Brands have until 18 July 2005 to file a response to the charges.

R and P Chand – 16 Archibald Road, Kelston (June 2005)

Charges laid under the Building Act for unauthorised building work done to create a residential unit by converting a downstairs garage, and under the Resource Management Act for the use of the unit in breach of the residential rules of the District Plan. First call is set down for 29 July 2005.

A Mackinnon – 5 Armour Road, Parau (June 2005)

Charges were laid under the Resource Management Act for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. First call is set down for 29 July 2005.

G Nicola, P Freeman, A Casey, and Eurovision Building Removals Limited – 4 Bowers Road, Glen Eden (June 2005)

Charges laid under the Building Act for unauthorised building work done to construct pile foundations to support a relocated house without building consent and relocating a house on to the foundations without building consent. First call is set down for 29 July 2005

RECOMMENDATION

That the Legal Update as at 27 June 2005 be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

5 REVIEW OF BYLAW NO.26 1994 FOOD SAFETY

PURPOSE OF THE REPORT

The purpose of this report is to review Bylaw No.26 1994 Food Safety as amended in July 2003, in accordance with the ongoing Bylaw Review Programme under the Local Government Act 2002, and the Planning and Regulatory Committee's endorsement on 7 June 2005 of the Chief Executive Officer's direction that staff undertaking the review allocate a high priority to the review of this bylaw.

STRATEGIC CONTEXT

One of the objectives of the Strong Communities platform of the Long Term Council Community Plan is to "make the city a safe and interesting place to live". This has the aim of protecting and improving the health, wellbeing and safety of the community. A bylaw with the purpose of improving standards of food protection, and reducing incidents of food related diseases within the City is consistent with this key objective. In addition, the bylaw is wholly consistent with the Chief Executive Officer's Policy initiative that "food safety is not negotiable in Waitakere City".

THE PROPOSAL

A1-A8

The current bylaw is attached at pages A1 to A8. It was drafted in 1994, with an additional section relating to grading certificates, inserted in July 2003.

Pursuant to Section 158 of the Local Government Act 2002, all bylaws that were in existence before the Act came into force, must be reviewed before June 2008 or they will cease to have effect two years later on 30 June 2010. This report concludes that the use of a bylaw is an appropriate mechanism to assist in the regulation of food premises and that the current Bylaw should simply be updated to;

- (a) take account of improvements suggested by officers who enforce the bylaw,
- (b) have regard to similar bylaws in neighbouring authorities,
- (c) increase Council's ability to enforce food safety requirements and prosecute where appropriate, and
- (d) ensure the bylaw is fair, efficient and clearly understandable.

Once a bylaw has been reviewed under Section 158 of the Local Government Act 2002, Section 158(4) states that the next review needs to take place within 10 years from the date of the last review. A brand new bylaw on the other hand must be reviewed within 5 years of the date upon which it is made pursuant to Section 158(3). This enables the Council to be satisfied that new bylaws are working effectively, and any issues that emerge (operational, interpretational, relevance) are addressed. It is submitted that to ensure all bylaws remain relevant and appropriate, a rolling review programme should eventually be adopted at the end of this initial review programme, so that each bylaw is reviewed every five years.

PROBLEM IDENTIFICATION AND ANALYSIS

Section 77 of the Local Government Act 2002 requires local authorities in the course of the decision-making process to seek to identify all reasonably practicable options and to assess those options by considering the benefits and costs, community outcome, statutory responsibility and any other relevant matters.

Waitakere has approximately 780 food premises in the City. Whilst the Council recognises the growing demand for, and supply of a diverse range of food outlets, it also has a responsibility for the health, safety and wellbeing of members of the public who use those food premises.

Standards relating to construction and maintenance of food premises are prescribed by the Food Hygiene Regulations 1974. The penalty for a breach of the Food Hygiene Regulations such as "failure to maintain the premise in a clean condition" is a maximum fine of only \$200. The New Zealand Food Safety Authority has embarked upon a review of the regulation of food within New Zealand, which it is anticipated will include an examination of the penalties for non-compliance, but at present the low level of penalty for breach of a Regulation, is unlikely to act as an effective deterrent against non-compliance. It follows that the current legislative regime may have little measurable effect on food hygiene standards.

The Local Government Act 2002, Section 242(4) imposes a penalty of up to \$20,000 for breach of a bylaw made under the 2002 Act. If an amended and updated Food Safety Bylaw is adopted by Council, any subsequent breach of the bylaw (although this will not affect breaches of the Food Hygiene Regulations), will attract a penalty of up to \$20,000. It is foreseeable that such an increase in penalty would act as a significant deterrent, ensuring that operators of food premises strive to obtain full compliance with the bylaw's provisions.

The current Regulations do not cover either food hygiene qualification requirements for those employed in food premises, or grading certificates. The report by Team Leader: Environmental Compliance to the Committee meeting on 7 June 2005 advised that since the introduction of the grading regime into the existing Bylaw in 2003, there has been 'a significant improvement in the overall level of food safety and hygiene in food premises throughout the City', and that the increase in numbers of food handlers having completed an approved food hygiene course is directly linked to qualifications being a significant factor in the grading assessment.

The Council's objective in relation to food premises is to protect public health by improving food hygiene standards, and in so doing promote the social, economic, environmental and cultural wellbeing of the community. Against that background, the range of options is summarised below:

(a) Do nothing – maintain the status quo

- Confirms Council's commitment to food safety. The amendment to the existing bylaw in 2003 (adding requirements relating to grading certificates) has had a significant and positive effect on the overall level of food safety in the City.
- Leaving the existing Bylaw in place would have no direct cost ramifications. However;
- The existing bylaw was drafted in 1994 and could benefit from a general update.
- The penalty for breach of a bylaw provision is currently \$500. When the bylaw is reviewed under the Local Government Act 2002, the penalty will rise to a maximum of \$20,000.
- Council has a statutory duty to review all existing bylaws before June 2008. This bylaw will need to be reviewed before that date, or it will cease to have effect two years later on 31 June 2010.

(b) Update the current Bylaw

- Confirms Council's commitment to improving food safety;
- Enables the Bylaw to be simplified and improved where necessary;
- Results in an increase in maximum penalty for breach of the bylaw;
- There should not be any obvious cost implications given that there is an operative bylaw now. Funds are already provided for service delivery and enforcement. If the Council continues to use a bylaw to regulate food premises, the costs of enforcement and administration should not be significantly more than already planned and budgeted for;
- The Bylaw is reviewed in accordance with the Council's statutory duty under Section 158 of the Local Government Act 2002.

(c) Revoke Bylaw and rely on Regulations

- The current Bylaw goes much further than the Regulations, setting qualification requirements for staff and providing a regime to grade food premises. To rely solely on the existing Food Hygiene Regulations given the limitations regarding their scope and penalties as outlined above, would be inconsistent with the Council's key objectives and would not accord with community expectations regarding the Council's role in monitoring and regulating food premises within the City.
- It is not considered that by revoking the Bylaw, significant cost savings would result. Environment Health staff would still be required to inspect food premises and issue certificates of registration.

Having defined the problem and identified all practicable options to achieve the Council's objectives, it is recommended that the preparation and sale of food within the City continues to be regulated by a bylaw. In order for the Council to be satisfied that the regulatory regime adopted is fair, efficient, and clearly understood, it is submitted that the best option is to update the current Bylaw.

CONSULTATION

Whilst formal consultation is not required as part of the bylaw making process at this stage, the views of persons likely to be affected, and interested parties should be considered as far as possible at all stages in the decision making process. The major operators and associations have been informed of the draft proposals and given the opportunity to comment. The Committee will be given an update of any responses received at the meeting.

It is the public at large and food premises operators who are 'likely to be affected' by the proposed bylaw changes. All interested parties will have the opportunity to have their views and preferences considered by Council prior to a final decision being made in accordance with the Special Consultative Procedure outlined below. In addition to the public notification, all 780 food premises operators within the City will be individually informed of the proposed changes to the existing bylaw during the period of formal consultation so that Council can be satisfied that all affected parties have been made aware of the proposals and have had an opportunity to comment. Copies of the documentation will also be forwarded to Te Taumata Runanga, the Pacific Island Advisory Board and all Community Boards.

DETERMINATION AND FORM OF NEW BYLAW

The Council has a legal power to make a bylaw in respect of food safety and regulation of food premises. Section 145 Local Government Act 2002 states that one of the general powers to make a bylaw is to "protect, promote and maintain public health and safety". This draft Bylaw's stated purpose falls squarely within that category. Once satisfied that there is a legal power to make a bylaw, the Local Government Act 2002 requires the Council to determine:

Whether a Bylaw is the most appropriate way of addressing the problem? (Section 155 Local Government Act 2002)

On the basis of the problem identification and analysis and in particularly:

- (i) the limitations of the current Food Hygiene Regulations, and
- (ii) the advice of the Team Manager: Environmental Compliance in his report to the 7 June 2005 Committee meeting that that the existing Bylaw is "a powerful tool that has proved to have the ability to bring about a real and significant improvement by food premises operators".

A bylaw is the most appropriate way of addressing the problem.

Is the Bylaw the most appropriate form of bylaw?

A9-A16

In preparing a new draft Bylaw attached at pages A9 to A16, a review of food safety bylaws currently in force at Auckland, North Shore and Manukau City Councils has been undertaken. The table below summarises the contents.

Contents of Bylaw	Waitakere Proposed Bylaw Food Safety 2005	Auckland City Bylaw	North Shore City Food Premises Bylaw 2000	Manukau City Bylaw 1992 Food Hygiene No 2 Food Handlers Training
Closure of premises	√	√	√	√
Staff Qualifications	√	√	√	√
Food Utensil Hirers	√	√	√	
Grading	√	√		√
Food Sales to Private Premises		√		

The draft Bylaw simplifies and updates the existing bylaw drafted over 10 years ago. It has also taken into account improvements suggested by officers who enforce the bylaw, and the bylaws of neighbouring authorities. It should be noted that the three Council's referred to above have not yet reviewed their food safety bylaws under the Local Government Act 2002. The proposals are summarised as follows:

(a) **General Requirements**

A new section has been inserted stating that non-compliance with the relevant legislative requirements, constitutes a breach of the Bylaw. This may enable prosecutions for breach of the Food Hygiene Regulations 1974 to attract the higher penalties referred to in Section 242(4) of the Local Government Act 2002.

(b) **Closure of Premises**

No change is proposed to the section covering circumstances in which premises will be required to close.

(c) **Staff Qualifications**

The staff qualification section has been changed to make it simpler to understand. The existing bylaw Section 7.1 (a) to (e) has been replaced with Clause 6.1-6.5.

The existing bylaw at 7.1(c) states that:

“every other person to be employed as a food handler on those premises has received Credit for Unit Standards 167 and 168 or satisfies an Environmental Health Officer that they are enrolled in an appropriate course and pursuing a course of study with the intent of gaining such credits within 12 months of the date upon which application for registration is made”.

The Team Manager; Environmental Compliance advises that it is not reasonable to insist that every person working in food premises must have an appropriate food hygiene qualification or be enrolled on a course, given the level of staff turn over and the numbers of part time and casual staff employed in the business. Failure to comply with this clause affects the grading of the premises and may artificially affect the overall grading given. It is reasonable to expect at least 50% of staff at any one time have completed an approved course, or will do so within 3 months of commencing work. The existing Bylaw allows a period of 12 months for attendance on the relevant course. That is considered to be too long a period.

The draft Bylaw states that in addition to the requirement that the holder of the Certificate of Registration (or an employed supervisor) has passed an approved food hygiene course and is present on the food premises at all times when food is being manufactured or prepared,

“Every occupier shall ensure that at least 50% of all other persons on the premises at any one time employed as food handlers, have passed an Approved Basic Food Hygiene Course before they commence work on the food premises or within 3 months of commencing work on the premises.”

This replicates the percentage referred to in the North Shore’s Bylaw, however the North Shore’s Bylaw goes on to state that occupiers must require ‘all food handlers who do not hold the appropriate qualification to enrol and complete the course of study or stop working as a food handler’. That suggests that the aim is that every food handler is appropriately qualified.

In Auckland the required percentage of food handlers that must have passed an approved basic food hygiene course (before they commence work or within 3 months) is 75%. In Manukau, there is no reference to ‘all other food handlers’. The qualification requirement relates solely to the person issued with the Certificate of Registration and/or an employed manager.

The 50% figure is thought to be fair and reasonable when coupled with the requirement that the holder of the Certificate of Registration (or an employed supervisor), must also be appropriately qualified and present on the premises at all times when food is being manufactured or prepared. It is open to the Committee to consider and debate that point further.

(d) **Hiring Out Utensils**

A new section has been inserted to regulate and monitor persons hiring out utensils, dishes, glasses, crockery, cutlery and other appliances used in the service or consumption of food. Both Auckland and North Shore’s Bylaws contain these provisions. The Environmental Health Section has received no complaints about such activities within Waitakere City, but acknowledges that the hire of dirty equipment could lead to food borne diseases, similar hygiene standards should therefore be applied.

(e) **Grading**

The proposed bylaw section 8 “Grading” mirrors section 8 in the existing bylaw.

The only significant change relates to the display of certificates. The Team Manager Environmental Compliance advises that clarity is required regarding where exactly the certificate should be displayed. At present Section 8.3 reads:

‘a 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’.

The purpose of the display requirement is to ensure that potential customers are aware of the current grading before deciding whether to patronise the premises. The proposal is therefore to replace with:

“The current grading certificate shall be conspicuously displayed in or about the food premises in a location which is visible to members of the public before they enter the premises. If all points of entry to the premises are not clearly defined, (such as in the case of a food hall in a mall) the certificate must be displayed on the food premises at a location or locations approved by an Environmental Health Officer, being a location which is visible to members of the public before they make a selection or purchase food items and is in accordance with any policy for the display of grading certificates made by Council from time to time.”

Ideally Certificates should be displayed at point of entry, such as on the front door or on a glass window. That is not however always practical because not all food premises (such as food halls and drive-throughs) have an obvious point of entry. The clause has been drafted to emphasise the required outcome, namely that the certificate must be visible to members of the public before they enter and if that is not possible, before they select food or make a purchase.

A17-A18

Attached at pages A17 to A18 for the Planning and Regulatory Committee's consideration is the draft policy, providing further guidance regarding grading criteria, the grading regime, and display of certificates. A copy of the policy will be submitted to Council with the draft bylaw, and attached to the public consultation documents. If the policy is ultimately approved, it will take effect from the date of the bylaw.

(f) **Sales To Private Premises**

Auckland City's bylaw also contains a section relating to the sales of food to private premises which requires mobile food vendors/deliverers to be issued with identification cards. The Team Manager: Environmental Compliance has considered the section, but is of the opinion that it would only apply to home deliveries of take away food, and would not directly affect hygiene standards at premises where the food is prepared and therefore does not further the Council's objective. It has not been included in the proposed draft.

The Committee may or may not agree with the terms of the draft Bylaw, for example the section dealing with the hire of food utensils, or the changes suggested to staff qualifications and the location of the grading certificates. Those matters can be debated now, and/or after the formal consultation process has taken place at which time submissions will also be considered by Council. The terms of the bylaw can always be amended during the final consideration. It would however be preferable if a fully debated version of the bylaw was available for the Special Consultative Process, so that interested parties are aware of the Council's preferred option from the outset. There is likely to be a formatting change to the final version in order to bring this bylaw in line with Council's draft Waste Bylaw. It is recommended that officers be granted authority to make formatting changes in due course.

Does the Bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990?

The proposed Bylaw must meet the legal standards of reasonableness and cannot be inconsistent with the freedoms protected and affirmed in the NZ Bill of Rights Act 1990. It is not considered that the proposed bylaw impacts on any of the protected freedoms or unnecessarily interferes with the rights protected by that Act.

SPECIAL CONSULTATIVE PROCEDURE

A19-A22

If the Committee is comfortable with the recommendation that a bylaw is the most appropriate method of dealing with the issue of food safety, that the draft bylaw is the most appropriate form and that there will be no infringements of Bill of Rights issues, the proposed bylaw must first be forwarded to Council for approval, and then submitted for public consultation in accordance with the Special Consultative Procedure defined in the Local Government Act 2002. For that purpose, Council is required to adopt a Statement of Proposal, and Summary of Information, drafts are attached at pages A19 to A22. Copies of the existing bylaw and draft bylaw will also be attached to the Statement of Proposal. Submissions received as a result of the consultation process will be heard by this Committee on dates arranged for November 2005. A final report in relation to the proposed Bylaw will be returned to the following Council meeting, with amendments as appropriate arising from the consultation process

RECOMMENDATIONS

1. That the Review of Bylaw No. 26 1994 Food Safety report be received.
2. That officers be granted authority to make formatting changes to the draft bylaw, in order to ensure consistency with the format of Council's draft waste Bylaw.
3. That it be recommended to Council that:
 - (a) Having considered the possible options, a bylaw is the most appropriate mechanism to assist in the regulation of food premises and ensure the provision of safe food within the City;
 - (b) For the reasons given in this report the draft form of bylaw produced at this meeting amending and updating the existing Food Safety Bylaw No.26 1994, is the most appropriate form of bylaw to achieve Council's objectives;
 - (c) The draft Bylaw has no implications which are inconsistent with the New Zealand Bill of Rights Act 1990;
 - (d) The Statement of Proposal attached to this report is approved in principle. Officers are authorised to make any necessary editorial and format changes and to implement the Special Consultative Procedure as set out in Section 83 Local Government Act 2002;
 - (e) The Planning and Regulatory Committee will hear any submissions during November 2005 with a final report in relation to the proposed Bylaw to be brought back to Council for final decision.

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



6 BYLAW REVIEW UNDER THE LOCAL GOVERNMENT ACT 2002

PURPOSE OF THE REPORT

The purpose of this report is to progress the Bylaw Review Process in respect of the bylaws considered by the Planning and Regulatory Committee at its meetings in April and May 2005.

BACKGROUND

On 12 April 2005, the Committee considered 5 Bylaws and resolved:

- “2. That it be recommend to the Council that the bylaws listed below be repealed for the reasons given in the agenda report:

No.3 (1990) Land Subdivision and Development
No.12 (1990) Certification Fee for Documents
No.15 (1990) Dangerous Goods Approvals and Inspection Fees
No.16 (1990) Fencing of Swimming Pools
No.23 (1990) Clean Indoor Air

3. That officers prepare a Statement of Proposal and Summary of Information in respect of the proposals to repeal each of these bylaws for inclusion in the special consultative procedure relating to the review of the Council’s bylaws scheduled for October/November 2005.”

631/2005

On 10 May 2005, the Committee considered a further 5 Bylaws and resolved:

- “1. That it be recommended to the Council that the bylaws listed below be repealed for the reasons given in the agenda report:

No.21 (1990) Hazardous Substances
No.24 (1991) Construction Noise

2. That officers prepare a Statement of Proposal and Summary of Information in respect of the proposals to repeal the bylaws listed above for inclusion in the special consultative procedure relating to the review of the Council’s bylaws scheduled for October/November 2005.
3. That officers obtain further specialist advice relating to Bylaw No.25 (1990) “Radio Frequency Radiation”, and report back to the Planning & Regulatory Committee accordingly.
4. That a review of Bylaw No.10 (1990) “Restriction on the Use of Jaw Traps” be deferred pending its repeal by operation of law under the Animal Welfare Act 1999, or expiry by virtue of the Local Government Act 2002.”

810/2005

It was further resolved:

“That the Planning & Regulatory Committee confirms that the Spray Paint Cans Bylaw is an appropriate means of addressing the perceived problem, and requests that the bylaw be redrafted into the most appropriate form, and brought back to the Planning & Regulatory Committee for further consideration.”

809/2005

SPECIAL CONSULTATIVE PROCEDURE

The Local Government Act 2002 s.159 requires that the review of all bylaws under the Act is subject to the Special Consultative Procedure set out in ss.83, 86 and 89 of that Act. Section 83 requires the Local Authority to prepare a Statement of Proposal and a Summary of Information for public consultation.

A23-A24

In respect of the 7 Bylaws which have been recommended for repeal, a Summary of Information and Statement of Proposal (which consists of the Summary of Information and each of the bylaws to be repealed), has been prepared and is attached at pages A23 to A24.

One Summary of Information has been prepared in respect of all 7 Bylaws. The reasons for repeal in each case are summarised from the agenda reports considered by this Committee in April and May 2005. The documents prepared for public consultation in this case are less detailed than would be provided where the proposals relate to a new bylaw or the review and amendment of an existing Bylaw. In this case, all the Bylaws recommended for repeal have been either superseded by subsequent legislation or are not relied upon by the Council for enforcement purposes. The proposals are not therefore considered to be contentious, and have no obvious community implications.

It is requested that the Statement of Proposal and Summary of Information are referred to the Council meeting on 27 July 2005 for consideration and approval, thereafter the period of public consultation will take place. The Council has previously directed that the Planning & Regulatory Committee is to consider submissions received in the Bylaw Review Programme. Hearing dates for any submissions received relating to these proposals, are arranged for November.

BYLAW NO. 27 (1995) SPRAY PAINT CANS

A25

A copy of the existing Bylaw is attached at pages A25. The agenda report to the meeting on 10 May 2005 advised that the stated purpose of the current bylaw (protection of property) did not fit within the general or specific bylaw-making powers contained in ss.145 and 146 Local Government Act 2002. However, defacing property amounts to offensive behaviour and arguably therefore a bylaw aimed at prohibiting the sale of spray paint cans to minors has the purpose of minimising the potential for offensive behaviour in public places (Section 145(c) Local Government Act 2002). The report also outlined difficulties surrounding enforcement, uncertainty regarding the Bylaws' effectiveness in reducing the graffiti problem, and raised the issue of age discrimination leading to possible implications under the Bill of Rights Act. For those reasons the recommendation contained in the report, was that a bylaw is not an appropriate or efficient means of addressing the problem of graffiti within the City.

The Council has a clear commitment to graffiti control. The Committee therefore considered that by revoking the current bylaw, the wrong message would be sent to the community, whereas having a bylaw in place controlling the sale of spray paint cans might act as a deterrent. During the debate, extending the current bylaw to include the sale of other graffiti implements was discussed, and interest was expressed in Manukau City's draft local 'Control of Graffiti' Bill.

A26-A32

Manukau's local draft bill is attached at pages A26 to A33. It is currently out for public consultation within the City and will be further considered by their Council in the near future. Officers responsible for the bill's progress, confirm that Waitakere City Council has already indicated support for the bill. National legislation to deal with the problem of graffiti would be more effective from an enforcement perspective, and provide consistency (such as the sale and display of tobacco products), however in the absence of such, this Council may also wish to consider a similar approach if Manukau's bill is successful.

Before deciding to promote a local bill, Manukau City obtained external legal advice on the Council's available options to address the problem of graffiti. They were advised that a bylaw was not appropriate because:

- it would be potentially ultra vires;
- it would fail the common law test of reasonableness in that the Council would be restricting a legitimate activity (namely sale of spray paint cans) which has no necessary connection to a nuisance or offensive behaviour;
- there are age discrimination issues.

The legislative intention of the Local Government Act 2002 is to ensure that bylaws remain appropriate, relevant and effective in a changing social and legal environment. There is potential for a mismatch between what the community and Council would like to do in order to address a particular problem, and what the Council can actually lawfully deliver. No other local authority has a similar bylaw prohibiting the sale of spray paint cans to minors.

The graffiti problem will be considered again in the review of the Public Places Bylaw later this year because that Bylaw contains three separate provisions relating to defacing public places. The Council has until 31 June 2008 to review the Spray Paint can Bylaw. If it is not reviewed by that date it will cease to have effect 2 years later on 31 June 2010, under Section 160 Local Government Act 2002. Bearing in mind the advice outlined above, it is recommended that the Committee postpone the review of this particular Bylaw until the review of the Public Places Bylaw has taken place, and Manukau City's local bill has been considered by Parliament.

RECOMMENDATIONS

1. That the Bylaw Review under the Local Government Act 2002 report be received.
2. That it be recommended to Council that the Statement of Proposal and Summary of Information attached at pages A23 to A24 in respect of the proposal to repeal 7 bylaws listed below, be approved:

<i>A23-A24</i>	No.3 (1990) Land Subdivision and Development
<i>A33-A35</i>	No.12 (1990) Certification Fee for Documents
<i>A36</i>	No.15 (1990) Dangerous Goods Approvals and Inspection Fees
<i>A37-A38</i>	No.16 (1990) Fencing of Swimming Pools
<i>A39-A44</i>	No.23 (1990) Clean Indoor Air
<i>A45-A49</i>	No.21 (1990) Hazardous Substances
<i>A50-A62</i>	No.24 (1991) Construction Noise
3. That Council officers be authorised to proceed with the special consultative procedure as defined in the Local Government Act 2002 in respect of the bylaws listed above at 2.
4. That the review of bylaw No.27 (1995) Spray Paint Cans, be postponed until the review of the Public Places bylaw has taken place, and Manukau City's local bill (Control of Graffiti) has been considered by Parliament.

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



7 DISTRICT PLAN MONITORING: BUILT DEVELOPMENT IN PIHA

PURPOSE OF THE REPORT

The purpose of this report is to update the Planning and Regulatory Committee on work being undertaken by staff in response to amenity concerns relating to recent built development in Piha. The report also advises of further investigative work that is proposed to be undertaken.

BACKGROUND

As a result of community concern that recent built development is detracting from the amenity of the natural character of the Piha Coastal Village area, staff have been undertaking preliminary analysis to assess the scope of the issue. The focus of concern relates to the built development that has occurred in the last 10 years, under the current Waitakere City Council District Plan.

Staff work to date has included site visits, a brief review of resource consents, a meeting with the Piha Residents and Ratepayers, and the development of an overview of relevant statutory and non statutory documents. The findings to date are discussed below.

Much of the unique character of Piha stems from its location, lying between the coastal edge of the beach and the steep ridges of the bush covered Waitakere Ranges. The coast is a significant element defining the character of Piha and includes coastal vegetation, streams, dune systems, and natural landforms. The elements recognised as contributing to the character of Piha include a sense of quiet; wind-swept beaches; rugged landscapes; low scale development; bush covered ridges; and recreational values relating to surfing, swimming and bush walking. Vehicle access to Piha is restricted to one road, steeply descending from the Waitakere Ranges down to the coast.

For the purposes of this report Piha village is considered to consist of those sites starting at 172 and 209 Piha Road (i.e. west of Karekare Road) to the end of North Piha Road. It is characterised by low density residential dwellings on sites ranging from between 800m² to 3000m². The number of privately owned sites within this area is estimated to be 936. There are approximately 127 vacant sections in Piha, with 90 in the Coastal Villages Environment and 37 in the Waitakere Ranges Environment. In terms of built environment Piha has, until recently, been developed with mostly 1-2 storey small "bach" dwellings used for holiday accommodation.

As early as 1976 it was recognised that Piha was undergoing a change in its function, from a predominantly recreational (holiday) function to that of a more permanent residential nature. Due to its proximity to the Central Business District of Auckland City (within one hours drive) and the value of coastal property, there has been increasing pressure on the character of Piha from both development and visitors.

Over the last 10 years demand for coastal property has resulted in exponential price rises across the country, with Piha experiencing a 36% increase between 2002 and 2003. Anecdotal evidence suggests these property prices have continued to rise over the last two years. A total of 186 resource consents were approved by the Council from 1997-2004, with new dwellings making up approximately 39% of these. Establishment of a dwelling and a minor household unit (on sites larger than 1500m²) is a permitted activity in the Coastal Villages Environment, so additional dwellings will likely have been constructed as permitted activities, requiring only building consent.

It is noted that the concerns expressed by the Piha community extend also to issues relating to visitors. Recent surveys by the Council indicated that up to 10,000 people visit Piha on the busiest day, with these busy days increasing in number throughout the year. However, while the community's concerns are acknowledged the current project does not attempt to address visitor issues. Rather, the focus of the current work is on the District Plan rules that govern physical development that may occur at Piha.

STRATEGIC CONTEXT

There are a number of key statutory strategic documents that are particularly relevant to the consideration of physical amenity issues in Piha. In summary this cascade of legislation (and non statutory strategic documents) gives a clear mandate for the protection of the coastal areas from inappropriate development.

Resource Management Act 1991, Part 6: Matters of National Importance

Under Part 6 of the Resource Management Act 1991 (RMA),

The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:

is listed as a matter of national importance. This creates the onus on the Regional and Territorial Authorities to make relevant objectives, policies, and rules to achieve this outcome.

New Zealand Coastal Policy Statement

Chapter 1 of the New Zealand Coastal Policy Statement states the national priorities for the preservation of the natural character of the coastal environment including protection from inappropriate subdivision, use and development. Regional and District Plans shall not be inconsistent with the New Zealand Coastal Policy Statement. Therefore the District Plan has a clear policy linkage to the New Zealand Coastal Policy Statement that seeks to protect natural character from inappropriate subdivision. Cumulative effects are one element in the definition of "effect" outlined in Section 3 of the Resource Management Act 1991. The policies of the New Zealand Coastal Policy Statement give particular emphasis to cumulative effects as opposed to other types of effects covered by Section 3 (i.e. actual or potential effects).

Auckland Regional Policy Statement

Section 75 of the Resource Management Act 1991 requires that a District Plan must not be inconsistent with the Regional policy statement. The Auckland Regional Policy Statement includes sections on the regional overview and strategic direction, heritage and the coastal environment, which are of particular relevance to Piha.

At the time of writing this report, due to the Local Government Auckland Amendment Act process, various parts of the Auckland Regional Policy Statement are under submission, in particular Chapter 2 and the definitions, which both address matters around urban growth and the interrelationship with development in rural and coastal locations. In addition the Heritage section of the Auckland Regional Policy Statement, Chapter 6, which refers to landscapes and their protection is also in the process of being reviewed and should be notified before the end of the year. Both of these review processes will impact on any further work that is undertaken in relation to Piha, particularly if the work was to include changes to the Waitakere City Council District Plan. Chapter 7, Coastal Environment, of the Auckland Regional Policy Statement is also relevant, and relates specifically to subdivision, use and development.

Heritage issues surrounding landscape quality and sensitivity to development are identified in Chapter 6 of the Auckland Regional Policy Statement, where the Waitakere Ranges is identified within the Maps (2 and 3) as being a significant natural heritage area (landscape quality value of 6); and significant landscape sensitivity (landscape sensitivity value of 7 and 5). Specific policies (6.4.19 – Landscape) within the Heritage Chapter seek to control subdivision, use and development within those areas identified in Maps 2 and 3.

The Waitakere City Council District Plan identifies “outstanding landscapes” in Map 3.6(B) in Part 3 of the Policy Section. Although this map reflects the Auckland Regional Policy Statement identification of the Waitakere Ranges as ‘outstanding,’ much of Piha Village is not included.

Waitakere City Council District Plan

The District Plan identifies key issues, including Urban Consolidation, the Green Network, Landscape, Amenity Values and Neighbourhood, all of which are associated with management of development in Piha. Development within Piha contributes to the strategic direction of Council by providing options for where people live, by assisting in protecting the Waitakere Ranges and natural ecosystems associated with the Green Network, and also by seeking to protect the natural landscape characteristics. However, the scale and speed of development at Piha has resulted in some degradation of the landscape, amenity and ecological values of the area.

Although Part 6 of the District Plan begins to provide for some elements and characteristics to the coastal environment, it is not specific regarding the particular character of Piha, and thus provides a somewhat limited basis to assess the suitability of activities at Piha (not just landscape). This is because the District Plan, at the time that it was developed, took a more general approach, considering all coastal villages as having similar characteristics, such as low scale development with a bach heritage, assuming that specific landscape character will be assessed as part of future development. Piha is identified as being generally a Coastal Village Environment, with much of the village also identified as an ‘outstanding landscape’ being part of the West Coast Area. Notably, the ARC review of the region’s outstanding landscapes, discussed above, has resulted in a downgrading of the landscape values of part of Piha because of the level and nature of development that has occurred there in the past few years.

The objectives and policies of the Waitakere City Council District Plan, relating to development in the Coastal Village form the basis for managing development in Piha, including the recognition of character and outstanding landscape. The most relevant objective that relates to the Coastal Villages Environment is Objective 11, recognising that there are different patterns of development and attributes that contribute to character. Therefore although specific reference is made to the ‘coastal village’ it is the unique character of that environment that must be considered further, and for which further work is required.

The rules of the Waitakere City Council District Plan have set out a two-tiered approach to manage the effects from land use activities. This has entailed assigning an appropriate Human Environment and Natural Area identification to all land within the City. These layers of land-use management form the basis for applying the policies and rules of the District Plan. The Natural area rules pertain to matters such as vegetation removal and earthworks. The Human Environment rules pertain to matters of bulk and location of buildings, and cover specifics such as density, height, yard setbacks and building coverage. These rules also cover non residential activities.

Long Term Council Community Plan

The Long Term Council Community Plan identifies nine outcomes for sustainability, of which the following two are most relevant to issues surrounding Piha:

Urban and Rural Villages - options for living, working and playing: Although neither the terms urban or rural are explicit to coastal villages, this platform looks at the difference between the City’s urban environment and the less urbanised areas. The Long Term Council Community Plan has a precautionary approach to development to enable sustainable development of the city under the Local Government Act 1974, recognising that more intensive development should be directed to the urban areas, maintaining the character of village communities. Development in Piha is therefore expected to reflect and maintain the village character, and not urbanise it with unsympathetic materials and intensified development patterns.

The Green Network is a key strategic platform set out in the Long Term Council Community Plan, and seeks to protect and restore the life supporting capacity of the environment. The Green Network strategy seeks to protect and enhance native plants, wildlife and ecosystems (of both land and water), and the high quality landscapes of the city on both public and private land. The strategy intends to (amongst other things) improve the linkages between the Waitakere Ranges and the Waitemata Harbour, through streams and ecological corridors. Development within this area has a direct impact on the Green Network.

Waitakere Ranges and Foothills Protection Project

The Waitakere Ranges and Foothills Protection Project was initiated in 2003 by the Waitakere City Council and the Auckland Regional Council, together with Rodney District Council, local Members of Parliament and Iwi, in close consultation with stakeholders.

The project has now progressed to the stage where it has been developed into a Bill, the intention of which is to give long-term protection to the important heritage features of the Waitakere Ranges, its foothills and coastal areas in the face of increasing pressures for subdivision and development. This Bill responds to growing concerns about the adverse cumulative effects that this growth pressure is having on the ecological, landscape, historic, traditional and cultural heritage of the area. The issues of development at Piha have featured large in the consultation and policy development that has occurred under the auspices of this project.

This Bill, if enacted, will give effect to a key element of a package of initiatives developed by the Waitakere Ranges and Foothills Protection Project in order to ensure permanent long-term protection of the Waitakere Ranges and Foothills. Piha falls within the area of this Bill, however the matters contained in the Bill are unlikely to have any significant bearing on the outcome of any resource consent processes until such time as the Bill has been enacted.

ISSUES

The key issue revolves around the increasing development pressure for new and larger dwellings. The number of developments over the past 10 years has raised concerns within the community about cumulative effects on the character of Piha. Conversely, concerns have been raised by some residents wishing to develop sites who have found the current District Plan provisions overly restrictive, where rules are not responsive to the changing patterns of development, nor reflective of the development constraints of difficult sites (e.g. steep gradient). The number of recent developments has introduced a more urban context to the coastal environment, and the continuation of this type of development has the potential to irrevocably change the nature of Piha, particularly given the current desire of many landowners to maximise the value of their properties.

However, it must be recognised that these pressures will continue, and must be responded to. The challenge is finding ways to enable the community to look after its needs while protecting and (where possible) enhancing those characteristics of Piha that are so highly valued. The above discussion of the range of statutory and non-statutory measures can, to some degree, be distilled down to the idea that appropriate development should result in the built form not dominating the natural environment, such that there will not be adverse cumulative effects on the character of Piha or the natural environment in which development exists.

Other matters of concern that would have a bearing on any decisions to be made are discussed briefly below.

Infrastructure

For the most part the coastal village areas are self servicing in terms of domestic infrastructure. Currently, there is not an integrated stormwater management system for Piha or any of the other Coastal Village areas. The stormwater in these areas is managed on a site by site basis, and under current requirements a site must be able to achieve hydrological neutrality to receive consent and commence development. However, flooding has been an issue at Piha, and any changes to District Plan provisions would have to ensure that a precautionary approach is taken.

Given the current focus on the work required under the Local Government Auckland Amendment Act process it is unlikely that Piha or any of the other coastal villages could be considered for the work required for a catchment management plan process for another 4-5 years. However, it is to be noted that the stormwater strategy is currently under review, and this could have an impact on methods currently accepted and used.

With regard to water and waste water there is no public waste water system in Piha and for most of the area no reticulated water supply, although North Piha does have reticulated supply. In the event of the controls being changed, this would have to be in the context of any known constraints in relation to the implementation of domestic infrastructure, with a strong emphasis on ensuring that development does not lead to adverse effects from inadequate infrastructure.

Related Statutory Processes

As indicated above there are currently several statutory processes occurring that will have a direct bearing on the next stages of this review process, as they are concerned either wholly or partially with the protection of the coastal landscape. These processes are the continuing development of the Waitakere Ranges and Foothills Protection Project, and the review of the Auckland Regional Policy Statement, under both the Local Government Auckland Amendment Act process, and a separate plan change relating to the Heritage chapter that encompasses landscape protection. It is anticipated that these processes will not see conclusive results until well into 2006.

Given the likely significant impact of these processes, it would not be appropriate to proceed with a comprehensive review of the District Plan provisions at this time. Nevertheless, there are actions that can be immediately taken to help improve outcomes at Piha, and these are discussed below.

Overall, a precautionary approach will continue to be taken with regard to future development, to ensure that the special nature of this West Coast village is not further compromised, until such time that the further direction for the development in the village can be clearly determined. This approach has to assume that a certain level of development is inevitable, given the number of vacant lots. It will take some time to follow through with the areas of investigation outlined below that will contribute to the final measures that will be utilised to maintain the character of this coastal village.

Next steps

Given the environmental sensitivity around the West Coast settlements, the Council has usually taken a precautionary approach when dealing with resource consents. It is considered that this approach, to the management of development in Piha, will continue until such time as the investigations outlined below can be completed. Clearly though, applications will continue to be assessed on their merits in the existing District Plan framework and outcomes cannot be predetermined.

The following further investigation will be instigated:

- Landscape work will be commissioned. This work will have to be undertaken in conjunction with work being undertaken as part of the Waitakere Ranges and Foothills Protection Project, and in response to proposed changes to the Auckland Regional Policy Statement. It is anticipated that this work will assess the current situation, and make recommendations in relation to past and future activities, with a view to protecting and enhancing the existing landscape character. It would guide (and justify) the need, if any, for the modification of District Plan controls relating to both the built and natural environment.
- As a result of the landscape study determine the nature of any changes to the District Plan Objectives, Policies, or Rules.
- That consideration is given to the rules relating to non residential activities. There is a need to ensure that they are sufficiently robust, given the concern in relation to visitor numbers at Piha.
- That consideration should also be given to the context of this work in relation to the other coastal villages, and if the scope of the work/any future changes should be extended to cover them.
- Clarify that the provision of on site infrastructure will continue to be a viable method of infrastructure provision.
- Ongoing monitoring and reporting.

In addition, the Council can and is attempting to influence the outcome of the current review of the regional statutory provisions applying to the area. This includes making submissions to the Proposed Plan Change 6 to the Auckland Regional Policy Statement, in relation to the proposed definition of urban activities, in that it should give more appropriate regard to the less urbanised nature of rural and coastal settlements.

RESOURCES

It is anticipated that for the most part existing staff, utilising current work streams will be able to undertake the majority of work required in terms of the further investigation outlined above. The landscape investigation work will have to be undertaken by a specialist consultant from outside the Council. This work can be covered by the budget of the proposed work streams for 2005/2006. It is expected that this specialist work will be coordinated with the continuing work for the Waitakere Ranges and Foothills Protection Project, and any work required in response to the Auckland Regional Policy Statement in relation to the Plan Changes discussed above.

CONCLUSION

The coastal village of Piha, has, through a recent upsurge in built development over the last 10 years, started to take on a more urbanised appearance. However, recent statutory and non statutory processes have emphasised the community's view that the coastal environment has a unique character that should be retained, or in this instance not eroded any further.

Therefore, it is appropriate that the current statutory and non statutory interventions in Piha are reviewed to establish if they are sufficiently robust to achieve the outcomes desired by the community, or if some modifications to these interventions are required. This review must be carried out in the context of the several significant projects that are currently underway and which will affect the provisions applying to Piha.

It is intended that the findings of the work listed under the heading, "Next steps" will be reported back to this Committee later in the year.

RECOMMENDATIONS:

1. That the District Plan Monitoring: Built Development in Piha report be received.
2. That, upon completion of the further landscape and strategic work outlined in the report, this matter be brought back to the Committee for further consideration

Report prepared by: Carolyn McAlley, Planner, Policy Implementation.

