



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, 13 September 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.

8 September 2005

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

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, 13 SEPTEMBER 2005
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFIRMATION OF MINUTES	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
4 LEGAL UPDATE (AS AT 1 SEPTEMBER 2005)	2
<u>PART C - ENVIRONMENTAL MANAGEMENT</u>	9
5 PAKANUI STRUCTURE PLAN - UPDATE	9
6 STRUCTURE PLANNING REVIEW: 2005 UPDATE	13
7 ISSUE REPORT AND PROPOSED PLAN CHANGE TO RE-IDENTIFY THE HUMAN ENVIRONMENT IDENTIFICATION OF TWO SITES	17
8 RESOURCE CONSENT SUBMISSION – CLEANFILL DISPOSAL SITE	22
9 BUILDING CONSENT AND BUILDING PERMIT INSPECTIONS	24

**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, 13 SEPTEMBER 2005
COMMENCING AT 9.30 AM**

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, 9 August 2005

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 9 August 2005, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 1 SEPTEMBER 2005)

INTRODUCTION

The following is a list of legal actions in respect of matters 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, parking and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory 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

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

Appeals filed by the applicant Mr Selak and his neighbours, Mr Collett and Ms Nye. Both appeals relate to the operation of a go-kart track on Mr Selak's property at Kennedy's Road, Whenuapai. Mr Selak has appealed a condition disallowing use of the track on Sundays and public holidays. Mr Collett and Ms Nye have appealed Council's decision to allow the go-kart track. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impact of the go-kart track, which was considered by all parties at a Court assisted mediation held on 8 June 2005. The parties are to prepare consent documentation in accordance with the agreement, pending the outcome of a current consent application for a proposed noise mitigation fence.

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) has been concluded.

Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming consent conditions regarding financial contributions payable in respect of a proposed subdivision. The parties attended a Court assisted mediation on 7 September 2004 but no resolution was reached. The matter was set down for hearing (as backup fixture) in the week of 12 September 2005 however the appellant has since sought an adjournment (new date to be advised). An agreed evidence exchange timetable has been set.

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

This matter relates to a reference against the Council's decision approving Plan Change 2. It makes changes to the zoning of land in Harbourview on the Te Atatu Peninsula. The Plan changes the Living Environment and Harbourview South Special Area to 'Open Space Environment' and 'Marae Special Area' respectively. A Court assisted mediation took place on 16 July 2004 and 20 October 2004. The Council has recently resolved to proceed with this plan change. Preparation of evidence is underway and a hearing date is to be allocated shortly (likely to be in November or December 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 seeks to rezone all (or part) of the property as 'Living 2 Environment'. Discussions are to take place on the relief being sought. Settlement discussions are taking place in an attempt to refine the issues in dispute.

Auckland Regional Council v Waitakere City Council (September 2004)

An appeal by the Auckland Regional Council against a decision of the Council to grant approval to an application for subdivision by Mr P Lipsham, relating to a property situated at 146-148 Parker Road, Oratia. The Auckland Regional Council's appeal is based on fundamental concerns with the development being inconsistent with the Auckland Regional Policy Statement. A hearing took place over three days from 11 July. Council presented evidence which supported grant of the consent on the basis that the proposal did not exhibit levels of uniqueness which may create a precedent for future applications. The Auckland Regional Council advocated for refusal on the basis that granting this application would encourage other applications which would in turn undermine the integrity of the Oratia Structure Plan. The Court released its decision on 16 August 2005 and the Environment Court upheld Council's decision and granted consent to Mr Lipsham subject to the conditions imposed by Council and some additional conditions. The Court provided guidance as to when it would have concerns about discretionary subdivision pursuant to the Oratia Structure Plan.

Trichon v Waitakere City Council (October 2004)

Mr Trichon had applied for an enforcement order against Council requiring remediation of minor erosion around a public stormwater drain on his property. There is also a separate matter involving a resource consent application made by Mr Trichon (partially retrospective regarding fill deposited on the property and in relation to future development). A Court-assisted mediation occurred on 17 November 2004 where it was agreed that Mr Trichon's consultants would provide further information in respect of the resource consent application and that Council would undertake the minor remedial work associated with the stormwater pipe. Mr Trichon has now withdrawn his enforcement order application. It is hoped that Mr Trichon's consent application can be progressed shortly, once details are finalised.

E A Haines v Waitakere City Council (December 2004)

This is an appeal against a decision of Council's Commissioner (John Childs). The Commissioner declined to grant consent to a golf driving range at a property owned by E A Haines. Some neighbouring property owners have confirmed an interest in the matter. There were originally issues relating to the property's use as a golf driving range. The appellant has now obtained engineering advice to confirm the facility can be used for such a purpose. The matter has now been set down for hearing in the week of 7 November 2005 and the parties are subject to a timetable for the exchange of evidence.

Auckland Regional Council v Waitakere City Council (February 2005)

This is an appeal by the Auckland Regional Council against the Council's decision granting consent to Shefco Limited to establish a food processing facility at 76-78 State Highway 16. The Auckland Regional Council has confirmed that it intends to continue to oppose the consent based on the allegation that the consent is inconsistent with the Auckland Regional Policy Statement, the Metropolitan Urban Limits and has a potential to create negative precedent effects.

The matter has been allocated a fixture for the week beginning 12 September 2005.

Waitakere City Council v Minister of Defence (February 2005)

Council filed a notice of appeal in relation to a proposal by the Ministry of Defence ("Defence") to remove St Mark's Chapel from the Hobsonville Air Base to its Papakura base. The Chapel is listed as a heritage building and is protected under the Waitakere City District Plan ("District Plan"). The Minister of Defence has rejected the Council's recommendation that the Chapel remain at Hobsonville. Defence is of the opinion that the Chapel is to be used by defence personnel and this use is best served at Papakura where the Chapel will be more appropriately preserved.

The Council has also filed an application for a declaration in respect of the ambit of Defence's designation and whether the proposed removal of the chapel is a "public work". The parties are currently preparing evidence. The matter was set down for hearing as a back-up fixture in the week of 12 September 2005, however the Court has granted the Minister's request for an adjournment due to counsel and a witness being unavailable at that time – a new date is yet to be advised.

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. 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 the Resource Management Act 1991.

On 22 April 2005 the Council filed an application to strike out the appeal on the grounds that there was no jurisdiction to grant the relief sought or any right of appeal in respect of the Council's decision. Mr Mawhinney withdrew his appeal and the Council has been awarded costs of \$5,700. Council has since filed an application to liquidate the Company, to be called in the High Court on 10 November 2005.

T Whimp v Waitakere City Council (April 2005)

An appeal against an abatement notice issued by the Council in respect of a breach of the Transport Environment rules. The appellant has been using the carriageway, footpath and grass berm throughout the City for residential purposes. The Council and Mr Whimp entered into an agreement following Court assisted mediation on 22 April 2005. The parties reported to the Court on 30 June 2005 that no suitable accommodation was found that met both the needs of Mr Whimp and the Council. In the meantime, Mr Whimp has been in a fire and suffered some serious injuries. Mr Whimp has now been discharged from hospital into the care of a friend. The Council has sent Mr Whimp information about pensioner housing but we have yet to hear back. The Council is to report to the Court on or before 31 October 2005.

Auckland Regional Council v Waitakere City Council (May 2005)

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

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc ("WRPS") against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. A judicial conference was held on 5 September 2005 to consider issues including whether these appeals should be heard following resolution of the appeals on the Swanson Structure Plan.

South Kaipara Nominees Limited and Others v Waitakere City Council (June 2005)

A further appeal by South Kaipara Nominees Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. There are two alternative proposals; (a) to widen access lots of the subdivision and make various other consequential changes to the surrounding lots; and (b) a sequenced series of 10% boundary adjustments. Council has filed a notice of reply to the appeal denying the relief sought and indicating that such boundary adjustments would require discretionary or non-complying consents. We have also suggested that this appeal should be adjourned pending the determination of reference appeals relating to the proposed Dilworth Structure Plan. A judicial conference took place on 30 August 2005 in which the Court directed that Council may file its application to strike out the appeal by 6 September 2005 and set a timetable for the parties to file their respective legal submissions and evidence.

M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a 7 lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Inc have lodged applications with the Court in support of the Council as section 274 parties. A judicial conference took place on 5 September 2005.

HIGH COURT

Waste Management v Waitakere City Council, North Shore City Council, Rodney District Council and Christchurch City Council (August 2005).

This is an action for judicial review by Waste Management seeking a declaration that the Local Government Acts 1974 and 2002 do not provide for that part of Councils' newly passed waste bylaws which make provision for imposing levies on waste for the purpose of providing economic incentives and disincentives under section 544 of the Local Government Act 1974. A timetable has been set for the matter. It has been set down for a four day hearing beginning 24 April 2006. All four councils have retained Kensington Swan as solicitors and David Kirkpatrick as barrister.

Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (August 2005).

This is an action for judicial review by Carter Holt Harvey alleging that the Local Government Acts 1974 and 2002 do not permit a waste bylaw which requires it to be licensed for paper recycling activities where that is a private relationship and to impose a levy on waste. There has been some consolidation of this proceeding with the Waste Management proceeding. This matter is set down for hearing within the four days set beginning 24 April 2006. All four councils have retained Kensington Swan as solicitors and David Kirkpatrick as barrister.

Waitakere City Council v Peter William Mawhinney (July 2005)

The Council has taken enforcement action against Mr Mawhinney to require payment in respect of an award for costs of \$75,000. Bankruptcy notices have been served on Mr Mawhinney who has applied to have these set aside. A notice of opposition and evidence opposing Mr Mawhinney's application were filed on 26 July and a hearing is set down for 10 August 2005. If Mr Mawhinney's application is unsuccessful he will commit an act of bankruptcy. This matter is listed for mention in the High Court on 7 September 2005 and Mr Mawhinney must file any further affidavits by 12 September 2005. A half-day hearing has been allocated on 26 September 2005.

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 Associated Judge Sargisson on 2 May 2005. Mr Mawhinney must pay the security sum within six months (or no later than 16 November 2005) or we are 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 in Council's favour. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued). A hearing took place in the Court of Appeal on 1 September 2005. The Court reserved its decision.

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

The outstanding issues as to interest and costs have been resolved in a final decision issued by the Arbitrator on 5 August 2005 and all amounts paid in final settlement.

DISTRICT COURT

McGuigan Syme Chilcott Limited, R McGuigan, G Chilcott, T Donald, G Pitts, M and J Engle, R Foster, D Owens Limited, D Owens - 71 Riverlea Road, Whenuapai (August 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work after the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. First call will be October.

P and D Clark, R Hawkins, R Johnston - 97 Shaw Road, Oratia (August 2005)

Charges laid under the Building Act for unauthorised building work. The nature of the work has been extensive extensions to create new rooms and move kitchen facilities. First call will be October.

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

The Council 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 New Lynn. Restaurant Brands have pleaded guilty to all charges and have asked that their current "A" grade certificate be taken into account as a mitigating factor in the Judge's sentencing decision, which is to be made by a District Court Judge sitting alone in chambers. We are still awaiting a decision.

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

Charges laid under the Building Act for unauthorised building work undertaken to construct pile foundations to support a relocated house which was relocated onto the foundations. No building consent was obtained for the construction of the foundation or the relocation. The matter was adjourned at the first call on 26 August to 23 September.

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. The matter was adjourned at the first call to 23 September.

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

Charges laid under the Building Act for unauthorised building work 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. The matter was adjourned at the first call on 26 August to 23 September.

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 earthworks. This matter is likely to go to a defended hearing. The matter was adjourned to 23 September to allow Sher Mohammad to be represented.

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, Ch 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 stormwater 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 30 September 2005.

D Thompson and Others - 10 Pohutukawa Road, Whenuapai (March 2005)

Charges laid under the Building Act for unauthorised building work undertaken 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 23 September 2005.

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. Mr Kasprzak has entered not guilty pleas and the matters have been transferred to the Auckland District Court to be dealt with by an Environment Judge. The matter has been adjourned to 12 September 2005.

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.

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

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

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

Charges laid under the Building Act in respect of alleged unauthorised building work. Mr Lee is alleged to be the builder who undertook the works. The matter was dealt with on 26 August 2005 when Mr Lee pleaded guilty. Due to the reasons surrounding the offending (including the instructions under which Mr Lee was working) and the relevant sentencing principles, the Court convicted Mr Lee and required him to come up for sentencing if called upon within the next 12 months (i.e. should Mr Lee commit a similar offence then this current matter will come before the Court at that time).

RA Offenkamer - 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 defendant obtained retrospective resource consent. The matter was dealt with on 29 July 2005 - a guilty plea was entered in respect of the building work (the Resource Management Act charges were withdrawn) and Mr Offenkamer was convicted and fined \$2,750 plus costs.

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

Charges were laid under the Resource Management Act 1991 ("Resource Management Act") regarding the 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. Mr Stanic pleaded guilty. A restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was reached that Council would assist the defendant to remove the vehicles from the property and that no further vehicle repair work would be undertaken 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.

RECOMMENDATION

That the Legal Update As At 1 September 2005 be received.

Report prepared by: Setareh Masoud-Ansari, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

5 PAKANUI STRUCTURE PLAN - UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to update the Planning and Regulatory Committee on issues relating to the Pakanui Structure Plan. A proposed course of action is recommended in order to progress this matter.

BACKGROUND

The Pakanui Structure Plan area comprises 180 hectares of a 700 hectare catchment that encompasses land in Waitakere City and Rodney District. The structure plan area is bounded by Amreins Road in the west, McEntee Road in the south, Sunnyvale Road in the east and Rodney District in the north. The Pakanui Structure Plan area is identified as Foothills Environment in the District Plan.

The Pakanui Structure Plan has been developed by Cato Bolam Consultants on behalf of landowners in the Pakanui Structure Plan area. The District Plan anticipates that parties other than the Council may initiate structure plans, but notes that these will be developed in close partnership with the Council. In this regard, Section 6.2.1 of the Plan states:

“It is expected that structure plans initiated by any parties other than Waitakere City Council will be undertaken in close partnership with the Waitakere City Council and in consultation with residents, the Regional Council and other interested parties.”

The Pakanui Structure Plan is the first privately initiated structure plan that the Council has received. If the Council is satisfied that the Pakanui Structure Plan accords with its objectives, then it may elect to adopt the Structure Plan and publicly notify it by way of a District Plan Change.

The Environmental Management Committee considered the Pakanui Structure Plan at its April 2003 meeting. The Committee resolved as follows:

“That consideration of the Pakanui Structure Plan be deferred pending the outcome of the Structure Planning Review.”

778/2003

As a result, the Pakanui Structure Plan has not been progressed further since that time. The issue was brought back before the Committee recently when the landowners' consultant made a brief presentation to the May 2005 meeting, requesting that the Council take steps to progress the Structure Plan. In response to that presentation, the Planning and Regulatory Committee passed the following resolution:

“That a comprehensive report be brought back to the July meeting of the Planning and Regulatory Committee, updating the Committee on all aspects of the Pakanui Structure Plan, related issues, any changes as required, and recommending a course of action.”

807/2005

Unfortunately, staff workloads have prevented this report being prepared until now.

STRATEGIC CONTEXT

The Council's Long Term Council Community Plan sets out nine strategic platforms that provide a basis for the development of a city that is vibrant, environmentally responsive and sustainable. The Urban and Rural Villages platform signals the Council's intention to build a city that is socially inclusive, environmentally sound, economically viable and leading edge in design. Further strategic direction is provided by the Green Network platform, which records Council's objective of protecting and enhancing the City's important landforms, landscapes, range of native plants, wildlife and ecosystems.

Structure plans provide a method for giving effect to these strategic outcomes. The District Plan provides for the introduction of structure plans as a means of protecting the integrity of the foothills as a visual and ecological buffer to the bush-clad Waitakere Ranges, and in order to establish a permanent settlement pattern. Structure plans allow development to be determined by the capacity of the land and the cumulative impacts of settlement as well as providing opportunities for greater environmental protection and enhancement through the regulatory process.

ISSUES

The Pakanui landowners have invested time and financial resources in developing the Pakanui Structure Plan to its current state. It is understandable that they wish to see the Structure Plan progressed so that they can obtain an outcome for their investment. If the Pakanui Structure Plan is to proceed, the Planning and Regulatory Committee would need to agree to publicly notify the Structure Plan as a District Plan Change. This would commence the statutory process required under the Resource Management Act, and would represent an important milestone for the landowners.

However, there are number of unresolved issues that are likely to have some implications for the Pakanui Structure Plan. These issues have the potential to become significant obstacles to the successful navigation of the statutory Plan Change process. It is considered that further work should be undertaken to address these matters before public notification is contemplated. The relevant issues are discussed below.

Stormwater Management

There are a number of unresolved issues relating to stormwater management that may impact on the Pakanui Structure Plan.

Rodney District Council has recently completed a draft Catchment Management Plan for the Upper Kumeu / Kaipara catchment, which includes the Pakanui Structure Plan area. The work that has been undertaken has identified the potential for further development in the upper reaches of the catchment to exacerbate existing downstream flooding. Council's drainage engineers have been advised by their Rodney District Council counterparts that the stormwater modelling did not assume any provision for further development within the Pakanui Structure Plan area.

Clearly, revised modelling would be required in order to accurately assess the effects of the additional development that could occur under the Pakanui Structure Plan. This is work that the Auckland Regional Council would undoubtedly insist on, before they could be satisfied that the Pakanui Structure Plan could proceed without creating adverse effects in relation to stormwater runoff. It is also considered that this would be an important matter for this Council to address before public notification of the Pakanui Structure Plan could be contemplated. Furthermore, it is possible that the Auckland Regional Council would require that the Catchment Management Plan and the Structure Plan be heard jointly.

It is estimated that it could take up to six months to undertake the additional stormwater work, consider the implications of that work on the Pakanui Structure Plan, and liaise with the landowners, Auckland Regional Council and Rodney District Council to ensure that stormwater issues have been addressed and resolved to the satisfaction of all parties.

Changes to Regional Policy

The Auckland Regional Council has publicly notified a number of proposed changes to the Regional Policy Statement in recent months. These proposed policy changes (particularly proposed policies 2.6.17.3 and 2.6.17.6) seek to limit countryside living to that provided for by District Plan provisions existing or publicly notified prior to 31 March 2005. In addition, it is proposed that countryside living should only be provided where it can be demonstrated that insufficient capacity is available within the rural area to cater for anticipated growth. Council's population projection work indicates that the existing structure plans provide this capacity, although this is contingent on the future release of urban land in the north of the City. As a consequence, questions about the capacity of rural land to accommodate growth cannot accurately be determined until such time as the location of the Metropolitan Urban Limit at Westgate, Whenuapai and Hobsonville has been resolved.

Clearly, these proposed regional policy changes have the potential to be a significant obstacle for new structure plans. Waitakere City Council has lodged a submission regarding this aspect of the Regional Council's policy changes, and will actively participate in the statutory process in an attempt to resolve the Council's concerns.

The remaining statutory process is likely to take at least six months to reach the hearing stage, and decisions are not likely until at least one year from now.

City Growth Strategy

The Council is currently commencing work on a City Growth Strategy, covering both the urban and rural areas of the City. The intention of this work is to set some clear policy to guide the Council's approach to the management of urban intensification and pressures for growth in rural locations.

While a great deal of policy development work has been undertaken for the Waitakere Ranges and Foothills heritage area, the remaining area of the Foothills Environment (including the Pakanui Structure Plan area) is considered to exist in somewhat of a policy vacuum. It is anticipated that the City Growth Strategy will review existing policy and establish new development parameters for this area if it is determined that some change is required.

At this stage, the technical studies and analysis that would underpin this work are expected to be completed in approximately six months.

Swanson Structure Plan Appeals

The Swanson Structure Plan appeals are scheduled to be heard by the Environment Court in November this year. A decision would be expected sometime within the first three months of 2006.

There are a number of aspects of structure planning that will be debated through the Environment Court process and determined by the Court. In particular, mechanisms such as prohibited activity status for additional lots, greater landscape and ecological protection and enhancement, and financial contributions for off-site planting will be tested through the statutory process and all parties will be interested in the Court's view on these mechanisms.

At the current time, it is likely that the Council would want to incorporate some of these approaches into the Pakanui Structure Plan, if it is to proceed. However, it would be more than useful to obtain a decision on the Swanson Structure Plan first, so that the Council could be certain that these methods are viewed by the Court as being acceptable under the Resource Management Act.

Modifications to the Pakanui Structure Plan

Council staff are aware of modifications that may be required to the Pakanui Structure Plan. In particular, the owners of one large lot within the structure plan area have contacted Council to advise that they now seek some allocation of development potential under the Pakanui Structure Plan. These owners were not considered in the draft Structure Plan as they indicated that they were not interested in subdividing in the future, and the property was large enough for permitted subdivision to occur under the general District Plan standards in any event.

If the Council wished to progress the Pakanui Structure Plan, it would be appropriate for the Council to consider what revisions were necessary in order to update the Structure Plan and align it with Council's current approach. It is considered that this work could be completed in three months, subject to the other matters noted in preceding paragraphs.

Structure Planning Review

The work that was identified under the Structure Planning Review is now largely complete. Some of the findings of that Review would need to be woven into the Pakanui Structure Plan, but it is not considered that the Structure Planning Review has identified any fundamental reason to prevent the Council proceeding with a structure plan for Pakanui at the appropriate time. However, the Structure Planning Review does identify the need to undertake further policy work in this area of the Foothills Environment, and this could be done as a component of the City Growth Strategy. Ideally, this policy work should have been completed before a decision is made to proceed with the Pakanui Structure Plan.

Waitakere Ranges Heritage Area

The Waitakere Ranges and Foothills Protection Project does not give rise to any direct implications for the Pakanui Structure Plan. However, the Ranges Project has identified the extent of the Ranges heritage area and the Council can now be satisfied that the Pakanui Structure Plan area does not fall within the Waitakere Ranges or its foothills.

One relevant aspect to arise from the Ranges project relates to the use of Local Area Management Plans to more closely align strategic policy and implementation. It is conceivable that this approach could also be used in rural areas that fall outside of the Waitakere Ranges and Foothills, such as the Pakanui Structure Plan area.

RESOURCES

The resources required to progress the work identified in this report are provided through existing budgets.

CONCLUSION

There are a number of issues that need to be resolved before the Pakanui Structure Plan is able to be adopted by the Council and publicly notified as a proposed District Plan Change. The majority of these issues can be addressed within a period of approximately six months.

It is recommended that staff actively attempt to progress these matters over the next six months and report back to the Committee on progress that has been made. At that stage, the Committee can decide whether it is appropriate to publicly notify a Plan Change comprising the Pakanui Structure Plan.

RECOMMENDATIONS

1. That the Pakanui Structure Plan - Update report be received.
2. That Council officers seek to address and resolve the identified issues and report back to the Planning and Regulatory Committee on progress that has been made in April 2006, or sooner if possible, to allow the Committee to consider whether it is appropriate at that time to proceed with public notification of the Pakanui Structure Plan by way of a District Plan Change.

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



6 STRUCTURE PLANNING REVIEW: 2005 UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee an update of the actions relating to the Structure Planning Review that have occurred since the Review was considered by the then Environmental Management Committee on 16 December 2003. A previous update on progress on the Structure Planning Review was considered by the Environmental Management Committee in July 2004.

The Planning and Regulatory Committee will recall that the Structure Planning Review report was prepared by independent consultants, and was peer reviewed. It led to a significant number of Council resolutions that required further work by the Council.

BACKGROUND

The Foothills Environment is a sensitive rural environment adjacent to the bush clad Waitakere Ranges in the northwest of the City and outside the Metropolitan Urban Limits. Structure planning has been one method provided for in the District Plan and used by the Council to:

- assess the environmental capacity of the catchment and the role of land within that catchment;
- assess whether there is potential for any further development or not, taking into account the environmental capacity of the catchment and environmental constraints in the District Plan Foothills Environment of the Waitakere Ranges;
- assess the effects of any future development in relation to the Waitakere Ranges generally;
- assess the upstream, downstream and cumulative effects; and
- assess whether the land is able to absorb growth, to determine what the capacity is for the development of land within each catchment, and to provide for environmental enhancement, such as riparian margin re-vegetation and appropriate re-vegetation of sites.

Structure Plans have been developed by the Council in three Foothills Environment catchments (Oratia, Birdwood and Swanson). The Council has also engaged in the development of a structure plan in the Dilworth catchment, as part of the process of achieving the resolution of an appeal against the Foothills Environment Rules in the District Plan. The privately initiated Pakanui Structure Plan is also awaiting the outcome of the work associated with the Structure Planning Review.

The Structure Planning Review was a District Plan monitoring project that sits within the Council's wider strategic planning and District Plan monitoring framework. The Council has a statutory obligation to monitor its District Plan under section 35 of the Resource Management Act 1991, to ensure it remains an effective planning tool.

The Structure Planning Review arose out of statutory processes initiated by the Council to incorporate structure plans into the District Plan, the strategic directions agreed to by the Council via the development of the Council's Long Term Council Community Plan, and following Environment Court appeals, interest and debate from external organisations and individuals.

In the light of these processes, the Environmental Management Committee resolved in April 2003:

- “2. That Council Officers co-ordinate a review of structure planning as the preferred method for managing development and enhancement of the Foothills and Countryside Environments.
3. That funding for the review be sourced from the budget originally intended to undertake the technical studies directed at identifying the physical constraints to development in the Opanuku Catchment.”

776/2003

The scope of the task identified in Resolution 776/2003 was significantly large enough to require the separation of the review of structure planning in the Foothills and the Countryside Environments.

STRATEGIC CONTEXT

The Foothills Environment is generally beyond the Metropolitan Urban Limit as defined by the Auckland Regional Policy Statement. The Auckland Regional Policy Statement provides for the structure planning approach. The Auckland Regional Council has, however, been a submitter in opposition to all Foothills Structure Plans.

The Council has encountered a long history of advocacy both for and against further subdivision potential for sites within the Foothills Environment. This advocacy has been addressed to some extent by the utilisation of a method within the Council's District Plan, namely the development of structure plans for defined catchments within the Foothills Environment. Structure plans have therefore been a significant policy and operational initiative for this Council since the public notification of the District Plan in October 1995.

Structure plans are intended to enable Council to achieve a number of outcomes that assist in meeting its strategic objectives. These include:

- enhancement of the Green Network;
- comprehensive catchment management;
- participation by local communities in planning for their area; and
- greater subdivision flexibility that is more consistent with an effects-based approach to subdivision and sustainable land management in the City's Foothills and Countryside Environments.

Out of 146 policies in the District Plan, 22 have structure planning as a method of implementation.

The Council did not undertake the Structure Planning Review in isolation. The Council is currently also engaged in the Waitakere Ranges and Foothills Protection Project, which involved extensive public consultation. The majority of the District Plan Foothills Environment have been included within the Waitakere Ranges and Foothills Protection Project area, and hence the area covered by the proposed Waitakere Ranges Heritage Bill. To date, the Waitakere Ranges and Foothills Protection Project helps to set the strategic vision for the Ranges component of the Foothills by establishing policies and objectives for the area in the form of a draft Bill. A landscape assessment has also been undertaken for the Ranges component of the Foothills that better defines the landscape values for the different components of the Foothills landscape. Ongoing policy work is envisaged to inform planning in the future, in particular the requirement for the provision of Local Area Management Plans (a tool included in the proposed Waitakere Ranges Heritage Bill).

In addition, the Local Government (Auckland) Amendment Act 2004 required Auckland Councils to align their Planning documents with the Auckland Regional Growth Strategy and better integrate land use and transportation planning to reinforce metropolitan urban and rural objectives of the Auckland Regional Policy Statement. This has resulted in Plan Change 6 and 7 to the Auckland Regional Policy Statement and Plan Changes 13-18 of the Waitakere City District Plan. Plan Change 16 to the Waitakere City District Plan formalises the urban and rural growth vision for Waitakere City, of which structure planning is an important component.

The Structure Planning Review, being a more technical review, has had a more targeted approach, focussing on the approach to development and implementation of structure planning only in the Foothills Environment. Most recently the review has influenced Council's revision of its position on the Swanson and Dilworth Structure Plans.

The findings from the Structure Planning Review have been included in the debates associated with the Waitakere Ranges Protection Project, to assist in informing the people that are involved in that Project.

ISSUES

Structure Planning Review Resolutions

A1-A6 The Structure Planning Review Report canvassed many matters, and made 17 recommendations. The recommendations related to the Council's strategic policy, the Council's approach to structure plans, the Swanson Structure Plan, and regional and central government actions. The Environmental Management Committee considered the Report's recommendations, the Peer Review comments, and legal advice at its meeting on 16 December 2003. The Environmental Management Committee made 18 resolutions, having considered all of the information available. The original resolutions are attached at pages A1 to A6.

A1-A6 The table attached at pages A1 to A6 groups the resolutions arising from the Environmental Management Committee's meeting on Tuesday, 16 December 2003. The grouping reflects the similar nature of some of the resolutions. The table provides commentary on the Council's approach to fulfilling the requirements within each resolution, as well as comments regarding the implications of the resolutions in terms of the Swanson Structure Plan Environment Court appeals.

A strong focus of the work has been on the Waitakere Ranges component of the Foothills, so that work emanating out of the Structure Planning Review would inform the Waitakere Ranges and Foothills Protection Project and vice versa. Additional work (particularly landscape and ecology) is required to address structure planning issues in the Foothills and within the Countryside Environment outside of the area identified in the Waitakere Ranges Heritage Bill. This work will be carried out to, amongst other things, respond to issues raised through the notification of Plan Change 16.

Key Points From The Table

- That the Resolutions numbered 3d, 4a, 4b, 4d, 5a, 5c are completed;
- That the Resolutions numbered 1a, 1b, and 2i are on-going matters that are part of the Council's day-to-day operations and are inherent in what the Council seeks to achieve;
- That the Resolutions numbered 2a, 2b, 2e, 2f, 2g, 2h have been addressed in the Waitakere Ranges Protection Project;
- That the Resolutions numbered 2c, 2d, 3a, have been addressed in Council's Proposed Plan Change 16;
- That the Resolutions numbered 3e and 5b will be further addressed via the completion of the Environment Court appeals related to Variation 88, the Swanson Structure Plan;
- That the Resolutions numbered 3b, 3c and 4c will require further work once the Waitakere Ranges Protection Project and the Environment Court appeals related to Variation 88, the Swanson Structure Plan have been completed.

Comments On The Table

- That setting the strategic vision for the Foothills Environment via the Waitakere Ranges Protection Project and Proposed Plan Change 16 has encapsulated much of the work associated with many of the Structure Planning Review resolutions. The setting of the strategic vision will thereby inform Council's decision making on a range of other matters identified in the Structure Planning Review resolutions. For example this has occurred in terms of the Council's revised position on the Swanson Structure Plan.
- While the Waitakere Ranges Protection Project will assist with the setting of the strategic vision for the Foothills Environment, any land identified as Foothills Environment outside the Waitakere Ranges boundary will need further consideration in terms of what policy framework applies to that land. This is particularly so for any Foothills Environment land not in a structure plan. This matter is being addressed through Proposed Plan Change 16.
- That the tasks associated with many of the resolutions arising from the meeting that considered the Structure Planning Review on 16 December 2003 are essentially complete, or will be completed following the Environment Court's decision on the Variation 88, the Swanson Structure Plan.
- That the completion of some of the work associated with the resolutions arising from the meeting on 16 December 2003 may require consideration during forthcoming Annual Plans. This consideration may include ensuring that there is adequate staff resource available to complete the work programme, and meeting any additional unanticipated / unbudgeted policy advice / projects / costs.

At the time of the preparation of this report, the Environment Court hearing of the appeals against the Swanson Structure Plan is scheduled for November 2005.

RESOURCES

As indicated in the commentary within the attached table, completion of the work associated with the resolutions will require the development of a work programme over several financial years, and has the potential to be a significant call on staff resource in 2005/2006 and 2006/2007. This may require consideration as part of the Annual Plan cycles for those years.

CONCLUSION

The resolutions arising from the Structure Planning Review Report have been fed into the Waitakere Ranges Protection Project, Proposed Plan Change 16, and the Council's revised position on Variation 88, the Swanson Structure Plan. The resolutions arising from the Structure Planning Review Report have required a significant amount of policy work, and may require District Plan changes and operational adjustments in the future. Much of the Council's approach to structure planning policy (and consequential operational adjustments) is now relying on the Waitakere Ranges and Foothills Protection Project and Proposed Plan Change 16.

Council has made significant progress towards completing the further work identified in the resolutions arising from the Structure Planning Review.

RECOMMENDATION

That the Structure Planning Review: 2005 Update report be received.

Report prepared by: Eryn Shields: Principal Planner.



7 ISSUE REPORT AND PROPOSED PLAN CHANGE TO RE-IDENTIFY THE HUMAN ENVIRONMENT IDENTIFICATION OF TWO SITES

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee an issues report and Proposed Plan Change relating to the re-identification of two sites from Living Environment to Community Environment. This report seeks approval for the Proposed Plan Change to be publicly notified.

A7-A33

A copy of the 'Background Report and Section 32 Analysis' for the Proposed Plan Change, including changes to the Planning Map, is attached at pages A7 to A33.

BACKGROUND AND ISSUES

The Proposed Plan Change seeks to rezone the Human Environment identification for two properties located at 288 and 290 Lincoln Road, located on the corner of Lincoln Road and Daytona Road. Each of the properties is currently identified as Living Environment in the District Plan. The proposed Plan Change is as a result of a private request by the land owner to review the zoning of the subject land. The costs of preparing and notifying the Plan Change are being met by the land owner.

The sites are legally described as Lots 2 & 3 DP 43472 and comprise areas of 1,062m² and 809m² respectively, with a combined site area of 1,871m².

The two sites are currently vacant with a small area of hard standing for parking. It is understood that the land was previously used for display as a show home although there are currently no existing buildings located on the site.

A25

The adjoining and surrounding properties to the west are zoned Living Environment and include residential properties. The main adjoining residential property to the west is currently owned by the same owner of the land that is subject to the Plan Change. The land opposite the subject site to the north is zoned Living Environment, and includes residential properties. The land on the opposite side of Lincoln Road to the east is zoned Lincoln Working Environment and includes a mixture of commercial activities. The land on the adjoining the southern boundary of 288 Lincoln Road is identified as Community Environment and is currently occupied by a car sales yard. This mixture of different land uses in the immediate locality contributes to a mixed commercial character, which is prevalent along Lincoln Road. A Proposed Plan Change map for the subject land is attached at page A25.

The Community Environment of the District Plan includes the town centres and other smaller commercial areas, which are the focus of a number of potential activities including shopping (retail), commercial (offices), service, recreational and community activities. Residential Activities may also be established within the Community Environment.

The Living Environment of the District Plan represents the predominant urban environment within the Metropolitan Urban Limits and traditionally reflects a residential character. The rules of the District Plan seek to protect the amenity values of these areas. In the case of the subject land, the character of the surrounding area means that the land is not particularly representative of a traditional Living Environment. The mixed use nature of the surrounding land uses contribute to the commercial appearance of the area.

STRATEGIC CONTEXT

The Long Term Community Consultation Plan has nine platforms that set out the Council's goals and actions for managing the social, economic and environmental wellbeing of the City. The Urban and Rural Villages pathway identifies that the Council will need to review its planning processes to support integrated planning. The Proposed Plan Change will ensure that the District Plan, as a statutory and strategic document, is accurate and based on the most up to date information available to Council. The Strong Innovative Economy pathway seeks to identify and work towards the overall economic wellbeing of residents.

The existing Human Environment identifications for the subject sites are potentially at odds with the range of activities and effects that the community would expect of the subject land in the context of its commercial location. The Proposed Plan Change would re-identify the two sites and enable them to be managed sustainably and consistently in relation to a more appropriate land use.

The Council has previously prepared a newsletter and indicative Concept Plan (August 2003) for the Lincoln Road Area and has identified that properties fronting Lincoln Road may be suitable for commercial development. While, it is acknowledged that this document has no statutory weight, it does indicate that the proposal is consistent with the Council's strategic vision for the area.

STATUTORY CONSIDERATIONS

Resource Management Act 1991

A7-A33

The Resource Management Act 1991 (RMA) provides for changes to be made to the District Plan. The attached report at pages A7 to A33, entitled, 'Proposed Plan Change: To Identify the Human Environment of Two Sites' clearly identifies the relevant sections of the Act, and other statutory documents, that must be taken into account when notifying a Proposed Plan Change. Summaries of the relevant discussions from that report follow.

Waitakere City District Plan

The proposed Plan Change does not seek to amend any objectives, policies or rules of the District Plan. However, re-identifying the sites will align them with the Community Environment provisions of the District Plan. It is considered that the proposed Plan Change will be consistent with the existing objectives, policies and rules of the District Plan.

Auckland Regional Policy Statement

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

Section 32 of the Resource Management Act

Council's obligations under section 32 are divided into five parts that comprise the following:

- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
- taking into account the benefits and costs of the policies, rules or other methods;
- taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
- summarising the evaluation and reasons for evaluation.

A7-A33

An evaluation under each of the above subsections has been undertaken and is attached at pages A7 to A33. The evaluation fulfils Council's requirements with regard to section 32 of the Resource Management Act.

The section 32 analysis identified that the Proposed Plan Change would enable the Council to manage its land resources efficiently whilst meeting the purpose of the Act by allowing sustainable management of natural and physical resources. The section 32 analysis also concludes that re-identification of the subject sites would ensure that more appropriate rules would apply to the sites. In summary the re-identification of the land would provide a clear direction to the community on the use of the land for commercial purposes.

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

Actual or Potential Adverse Effects on the Environment

Under Section 31 of the Act Council's function includes "*the control of any actual or potential effects of the use, development, or protection of land*". Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment.

It is considered appropriate to extend the Community Environment to the corner of Lincoln Road and Daytona Road as this will serve to establish a more appropriate boundary between the Community Environment and the Living Environment. The Community Environment includes specific rules to protect any adjoining land in the Living Environment from potential adverse effects such as noise, shading from large buildings and loss of privacy. It is considered that re-identifying the sites as proposed would not compromise any existing amenity or landscape values.

The proposed Plan Change has been reviewed by Transport Assets, who have advised that they support the proposed change subject to the owner agreeing to add an encumbrance on the titles for the properties to ensure that access is shared between Daytona and Lincoln Roads, and not solely concentrated onto Daytona Road. The land owner has agreed to enter an encumbrance on the titles to ensure that this occurs.

The proposed Plan Change has been reviewed by EcoWater, who have advised that they support the proposed change. The proposed change of this land from Living Environment to Community Environment will allow any development on the site to be completely impervious. As there is currently no stormwater reticulation serving this site, this is an issue that will need to be dealt with when the site is developed. Previous development proposals for this site proposed extending a sufficiently sized stormwater system from within Daytona Road to within the site. An alternative option to address stormwater run off from the site would be to connect in to the existing stormwater line located at the rear of 4A Daytona Road. Provided future development is designed in accordance with the Council's Code of Practice, it is considered that this would also be an acceptable solution for the subject land. The cost of designing and installing this stormwater infrastructure would be the sole responsibility of the developer of the site.

The land owner has agreed to enter an encumbrance against the title to ensure that the above mitigation is included when the sites are redeveloped. This encumbrance will be entered into and executed in registerable form prior to notification of the Plan Change.

There are no known noise issues associated with the two sites. The District Plan includes rules to protect the interface between the Living and Community Environments. In addition, it is noted that Lincoln Road is a busy arterial road with a high ambient noise level. It is not considered that the proposed re-identification will result in adverse noise effects.

There are no known archaeological or heritage issues associated with the sites.

In summary, it is considered that there are no adverse environmental effects that will be generated by re-identifying either of the sites, which cannot be suitably avoided, remedied or mitigated through compliance with the Community Environment provisions of the District Plan or through encumbrances on the titles. It is considered that the existing provisions of the District Plan will ensure that the amenities of the surrounding Living Environment are protected.

CONSULTATION

Clause 3 to the First Schedule to the Resource Management Act states that during the preparation of a proposed plan, a local authority shall consult with the Ministry for the Environment, other Ministers of the Crown deemed to be affected, other Local Authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a proposed Plan Change.

The Council has written to the Ministry for the Environment, which has not raised any issues. Consultation has been undertaken with local iwi as part of the Plan Change, which has raised no concerns. Given the local nature of the proposed Plan Change it is considered that no other statutory authority is affected.

Landowners and residents of the surrounding sites have been contacted via a letter of explanation dated early 4 July 2005. The letter informed the landowners and residents of Council's intention to rezone the properties and sought comments regarding the Proposed Plan Change. The Plan Change process and timing was also summarised.

No written responses were received in relation to Council's letter of July 2005. However, one telephone call was received. The query related to a further explanation of the process and reason for the Plan Change, and about what rules would protect the interface with the Living Environment.

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

RESOURCES

As the proposed Plan Change is a private request from the land owner, the costs of processing the Plan Change are to be met by the land owner. No additional staff funding or resources are required.

CONCLUSION

The purpose of this report is to present to the Planning and Regulatory Committee a proposed Plan Change relating to the re-identification of two properties at 288 and 290 Lincoln Road. The proposed Plan Change seeks to re-identify the two sites from Living Environment to Community Environment. No changes are proposed to any District Plan objective, policy or rule.

It is considered that the re-identification of the subject sites will better meet the objectives and policies of the District Plan. The re-identification of the subject sites would enable them to be used for a more appropriate use than that currently provided for under the District Plan.

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

RECOMMENDATIONS

A7-A33

1. That the Issue Report and Proposed Plan Change to Re-identify the Human Environment Identification of Two Sites report be received.
2. That pursuant to the First Schedule to the Resource Management Act 1991, the Planning and Regulatory Committee resolve to publicly notify the Proposed Plan Change to the Waitakere City District Plan to re-identify the two sites at 288 and 290 Lincoln Road, Henderson from Living Environment to Community Environment in the District Plan as set out in pages attached at A7 to A33.
3. That prior to public notification of the Proposed Plan Change the land owner shall enter into a legal agreement with the Council in respect of Council's particular requirements.

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



8 RESOURCE CONSENT SUBMISSION – CLEANFILL DISPOSAL SITE

PURPOSE OF THE REPORT

The purpose of the report is to seek the agreement of the Planning and Regulatory Committee to the lodgement of a submission on a notified resource consent application.

BACKGROUND

A34-A65

The Council has been notified of a proposed cleanfill disposal site that would be established on a property at 76 Sunnyvale Road, in Taupaki. The applicant, East Tamaki Transport Limited, proposes to deposit 60,000m³ of fill in a gully on the property over a period of seven years. A copy of the application details are attached at pages A34-A65.

The site falls within the territorial boundary of Rodney District Council, but is situated immediately opposite properties on the eastern side of Sunnyvale Road that are located within Waitakere City. Responsibility for maintenance and management of Sunnyvale Road in this location is shared between Waitakere City Council and Rodney District Council.

A66-A67

A copy of Council's submission in respect of this application is attached at pages A66-A67. Due to time constraints and workload pressure the matter was not able to be reported to the Planning and Regulatory Committee prior to the closing date for submissions. The submission which was submitted by staff is now reported for endorsement or retraction.

STRATEGIC CONTEXT

The Long Term Council Community Plan seeks, as one of five priorities, to ensure that Waitakere City is a safe place to live, work and play.

The purpose of the Council's District Plan is to manage the effects of activities on the environment. The policies of the Plan signal the Council's intention to ensure that development does not compromise the capacity and safety of the road system, and maintain the amenity values that contribute to the well-being of residents.

The District Plan includes a section that addresses 'cross-boundary concerns'. It is noted in that section that:

"The Council will consider significant resource management issues arising in the District of an adjoining local authority which affect the City. In appropriate cases, submissions will be prepared to that local authority in relation to such issues."

ISSUES

The application for resource consent has been reviewed by the Council's traffic and transportation engineers. They have identified that no provision is made for wheel wash facilities for trucks leaving the site, which could result in mud being tracked onto Sunnyvale Road. In addition, consideration needs to be given to road improvements that may be required at the entrance to the site, in order to ensure that movement of trucks onto and from the property would not compromise traffic safety. The applicant has not provided any traffic impact assessment to address these matters.

There is also the potential for more general amenity concerns to arise from the establishment and operation of the proposed cleanfill site. The Sunnyvale Road vicinity has had a history of similar activities in recent years, and it is important that (if consent is to be granted) appropriate conditions are imposed to address amenity and monitoring concerns.

Council is unable to influence the outcome of the resource consent process unless it is actively involved through the lodgement of a submission. For these reasons, it was considered that Council should make a submission in this instance. The submission is now reported for endorsement or retraction.

RESOURCES

Resources that are required to progress Council's interest in this matter are not substantial, and are provided within existing budgets.

CONCLUSION

Notice of an application for resource consent has been received by Council, in relation to a site that adjoins the City boundary. The activity proposed by the application has the potential to create adverse effects in relation to traffic safety and amenity issues. It is recommended that the Council lodge a submission with Rodney District Council in order to address these concerns.

RECOMMENDATIONS

1. That the 'Resource Consent Submission – Cleanfill Disposal Site' report be received.
2. That the actions of staff in lodging a submission to the resource consent application (relating to 76 Sunnyvale Road) be endorsed, and staff be requested to progress the concerns set out in the submission through the consent process.

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



9 BUILDING CONSENT AND BUILDING PERMIT INSPECTIONS

PURPOSE OF THE REPORT

The purpose of this report is to inform the Planning and Regulatory Committee of changes made to the Council's practice of inspecting certain categories of building works and outline the reasons for the changes.

BACKGROUND

The Building Act 2004 came into force on 1 April 2005, and like its predecessor the Building Act 1991, it provides for the regulation and control of all building work. Prior to the 1991 Act which came into force on 1 July 1992 (subject to a transition period of 6 months), building work was regulated by Council bylaw. There are therefore three types of authorised building works in the City;

- (a) Those built with a permit issued under the bylaw prior to January 1993;
- (b) Those built with a building consent issued under the 1991 Act since July 1992; and
- (c) Those built with a building consent issued under the 2004 Act since April 2005.

There are also a number of buildings that have been constructed without a permit or consent throughout all of the above periods.

THE PRE BUILDING ACT 1991 POSITION

(a) Permitted Work

Council's 1984 Bylaw chapter 2 stated that the only inspection specifically required during construction was an examination of the foundation excavations:

2.18.3 *"before the placing of any site concrete or of any part of the foundations structure. In addition, the builder shall give the Inspector specific notice before any structural concrete is placed in the excavation to enable the Inspector to examine all reinforcing steel."*

All other inspections were at the discretion of Council's Engineer. It is understood that Council developed a practice of undertaking four inspections in total for each building, corresponding with certain stages of the development, namely foundations, framing (pre-line), internal works and finished building. There was no charge made for any of these inspections, and no requirement in the bylaw for a final inspection to be undertaken. Final inspections were however often requested so that the builder/owner could recover their vehicle crossing bond repayable on completion.

The bylaw also contained provisions regarding lack of progress on building permits;

2.17.1 *"any permit issued for building construction shall be deemed to be void, if construction is not commenced within six calendar months from the date of issue," and*

2.17.2 *"any permit issued for building construction may be declared void by the Engineer if in his opinion there has been such a lack of progress of construction during any period of 12 months after commencement of work on the site, that deterioration of materials of construction is likely, or that excessive inconvenience is being caused to the public."*

These progress periods were not regularly enforced, and it is unlikely that Council routinely gave notice that permits were in danger of being declared void. Bearing in mind that inspections were request led by the builder/owner and there was no requirement for a final inspection, it is perhaps not surprising. However, the wording of the bylaw does contain a clear intention to encourage progress within a reasonable time frame.

Where a request for a Land Information Memorandum (LIM), reveals that there is a pre-1993 permit which has not had a final inspection, it has been Council's practice to write to the property owner, and offer to undertake a visual inspection at a cost of \$250. The purpose was to provide an 'update' on the works, and in some cases the permit was finalised if the inspector was satisfied that it was appropriate to do so.

For the following reasons, it has been decided to cease this practice:

- (i) There was no requirement in the bylaw for a final inspection. If a vehicle crossing bond remains outstanding, an inspection for that purpose alone can be undertaken upon request.
- (ii) The limitations of a visual 'walk-over' inspection some 13 years (at least) after the building was constructed are clear. Visually a building may look sound, but there may be numerous hidden problems that a cursory inspection would not pick up. Given those limitations, it is not appropriate to charge property owners \$250 for such an inspection, or unwittingly lead the current owners, or prospective purchasers, to place unrealistic reliance on such inspections rather than obtain an independent and more detailed building report.
- (iii) The statutory limitation period for civil claims against Council in respect of property matters is 10 years from the date when a certificate is issued or an inspection is made. Despite the limited scope and extent of these visual inspections, the liability period starts to run again from the date of that inspection. Therefore, in respect of a building permit issued in 1985 but inspected in 2005, Council extends its period of liability in respect of that final inspection until 2015, some 20 years after the initial limitation period expired.
- (iv) Council's insurance cover will ordinarily extend only to activities undertaken by the Council in the ordinary performance of its statutory duties. In the absence of any provision in the bylaw requiring the Council to undertake such inspections there is a risk that Council's insurer may decline cover, on the grounds that the Council has voluntarily assumed that risk without taking any appropriate steps to attempt to limit liability, such as by the inclusion of appropriate loss liability limitation provisions in the "contract" entered into before undertaking the inspection. (While it is possible to contract out of liability in both contract and tort, loss limitation provisions are strictly construed and not necessarily effective. It is always open to a court to look for the defendant with deep pockets and fix that defendant with liability notwithstanding the limitation provisions).

The intended purpose of inspecting building works during the period of construction appears to have been to avert a potential problem through the detection of unsafe building practices. It is moot whether that occurred on a regular basis, and in any event might only be effective in respect of patent, as distinct from latent, defects. What is clear however is that inspecting buildings many years after construction has been completed, does no more than create a problem for the Council through increased risk exposure, (and possibly uninsured risk exposure), to claims arising from allegedly negligent inspections. The Council already has sufficient risk exposure in relation to building matters, particularly in relation to leaky buildings, without going out and looking for further risk.

(b) Unauthorised Work

Where a Land Information Memorandum request reveals unauthorised work undertaken before the Building Act 1991 came into force, or no record of any permit or inspections can be found by Council, it has similarly been Council's adopted practice at the request of the property owner, to inspect the building and if appropriate issue a 'safe and sanitary' report at a cost of \$260. There is no provision in the Building Act 2004 obliging Council to do so, and points (ii), (iii) and (iv) above, are equally applicable.

Under section 222 Building Act 2004, Council has a power to inspect a building for the purposes of determining whether it is dangerous or insanitary. The fact that work was done without a permit does not necessarily mean however that the building concerned is anything but sound and satisfactory. Indeed, the fact that the Council can't find any record of a pre-BA1991 authorisation does not mean that such an authorisation was never issued, particularly when Council has inherited files at amalgamation. An inspection now, with the purpose of establishing whether a building is dangerous or insanitary is unlikely to be justified solely on the basis that Council can find no record of the work. If however there is other information available suggesting a building is dangerous or insanitary, such as complaints received, or the conclusions of a private building consultants report, then Council will inspect the property, reach its own conclusions and decide whether action is required.

(c) The Current Practice

For the reasons given above, pre-1993 building work undertaken with or without a permit is not now being inspected by Council officers. That decision is fully supported by Council's public liability insurers. Prior to the change of practice, property owners had always had the option to commission their own independent building report and submit it to Council for checking and placing on the property bag. Council has previously charged \$107 for receiving and accepting these reports.

Property owners and prospective purchasers will be advised, principally through the Land Information Memorandum process, that Council does not now undertake these inspections and that they should therefore consider obtaining their own report from a suitably qualified building consultant. Whilst there is no obligation to forward a copy of an independent report to Council, if a copy is received (and is prepared by a suitably qualified building consultant), the existence of that report will be disclosed in any Land Information Memorandum application, and a copy made available upon request pursuant to section 10 Local Government Official Information and Meetings Act 1987. It will be made clear on the form completed by the owner when submitting a report that Council does not accept responsibility or assume liability for the contents or accuracy of the report. Building Consultants have also been informed accordingly. The reports are not being disclosed automatically as part of the Land Information Memorandum report.

Section 44A of the Local Government Official Information and Meetings Act 1987 (LGOIMA), which is the provision under which the Council issues Land Information Memorandum reports, does not require the disclosure of this sort of information. The Council does however have discretion to disclose any other information which may be relevant. Section 41 of Local Government Official Information and Meetings Act 1987 provides protection to the Council against any proceedings arising out of the provision of official information under the Act "in good faith". That protection does not extend to information disclosed under section 44A, in a Land Information Memorandum report. Rather than discourage completely the lodging of such reports on the Council file, it is thought preferable to take steps to ensure Council's risk profile from disclosure of these reports held on file, is limited as far as possible. This is achieved by requiring a separate application for disclosure of that information, independently of the application under section 44A of Local Government Official Information and Meetings Act 1987.

As noted above consideration has been given as to whether Council should receive these reports at all. It is acknowledged that many property owners will wish to lodge a copy of their private report with Council, and having ceased offering the option of Council inspections, it is thought that a copy of the report should be received if submitted. The question has also been raised as to whether the private reports should be thoroughly checked and 'accepted' by Field Services before they are placed with the property file. However, if a full peer review of each report is to be undertaken involving an analysis of Council's file, perhaps discussions with the building consultant, and on occasions an inspection of the property itself, then a charge would need to be imposed and arguably Council would be assuming liability again for the contents of the report. Recognising that private reports will cost the owner more than Council's previous charge, and that by stopping these inspections Council has reduced its liability exposure considerably, it is thought inappropriate for Council to impose a further charge on property owners to receive these reports.

THE POST BUILDING ACT 1991 POSITION

(a) Consented Works

The Building Act 1991 imposed a requirement on property owners to apply for a building consent before commencing certain building work, making it unlawful to carry out building work except in accordance with the consent. The Act also envisaged that works would be completed within a reasonable timescale. Section 41 Building Act 1991 states that a building consent shall lapse if:

- (i) The work has not commenced within six calendar months after the issue of the building consent, or within such further period as the territorial authority in its absolute discretion may allow or
- (ii) Reasonable progress on the work has not been made within 12 calendar months after work has commenced or within such further period as the territorial authority in its absolute discretion may allow.

Council has not previously written to consent holders indicating that consents will lapse if progress is not made within that 12 months period (or a reasonable time).

There are currently over 12,000 consents that were issued between 1993 and 2002 under the Building Act 1991 that do not have code compliance certificates. There are no grounds to lapse these consents for 'lack of progress' because in the majority of cases whilst a final inspection has not been requested by the owner/builder, the building has been finished and occupied for many years.

Council's public liability insurers confirm that caution must be exercised in deciding whether to issue code compliance certificates in respect of these old consents. A decision can only be made after careful consideration of all available information. In some cases it is difficult to ascertain whether the works were completed in accordance with the original consent, or whether there was compliance with the building code in force at the relevant time given that the code was amended six times between 1992 and 2004.

Each request for a code compliance certificate must be looked at individually and treated on its merits, bearing in mind that the liability limitation period will begin to run again from the date of the final inspection, and that Council's duty of care extends to future purchasers. For any building where Council does not have reasonable grounds to believe that all building work complies with the code, the proper course of action is for Council to decline to issue a code compliance certificate, and advise the property owner to seek a determination from the Department of Building and Housing.

(b) Unauthorised works

Building consents cannot be issued retrospectively. In respect of any works constructed without a building consent post 1992, it is not now possible for Council to issue a 'safe and sanitary' report. The Building Act 2004 requires the property owner to apply to Council for a Certificate of Acceptance on the prescribed form. A Certificate of Acceptance may only be issued pursuant to section 96(2) of the Building Act 2004, where the Territorial Authority *'is satisfied to the best of its knowledge and belief and on reasonable grounds that in so far as it can ascertain, the building work complies with the building code'*. In the majority of cases a Certificate of Acceptance will only cover what the Council inspector can actually see at the time of the inspection, or in limited circumstances (bearing in mind that these buildings have been constructed outside the consent process), where a suitably qualified professional can certify compliance with the code having supervised and/or inspected the building at appropriate times.

POST BUILDING ACT 2004 POSITION

The Building Act 2004 applies to all consents issued after 1 April 2005. The new Act reinforces the principle that building work should be completed within a reasonable time;

- (a) Section 52 states that a building consent lapses and is of no effect if the building work to which it relates does not commence within 12 months after the consent issue date or any further period that the local authority may allow, and
- (b) Section 93 requires the owner to apply for a code compliance certificate within two years of the date on which the building consent was granted, or any further period that may be agreed between the owner and the authority.

Although inspections are still request led, the difficulties and potential risks associated with Council undertaking inspections many years after a consent was issued have been removed by the imposition of a 2 year time limit on owners/builders to apply for a code compliance certificate, or apply to the Council for an extension of time. Consent Services is introducing a process to ensure consent holders are reminded of the relevant time frames.

Unauthorised work requires a Certificate of Acceptance as outlined above.

STRATEGIC CONTEXT

One of the objectives of the Safe City Priority of the Long Term Council Community Plan is to 'Develop, implement and monitor safety standards'. This has the aim of protecting and improving the health, wellbeing and safety of the community. Two of the aims of Strong Communities platform are to:

- 'Make the City a safe and interesting Place';
- 'Work to ensure that local services match changing need'.

It is therefore appropriate to review the process regarding Building Inspections consistent with these key objectives.

RESOURCE IMPLICATIONS

Field Services estimate that approximately 110 'safe and sanitary' inspections were undertaken last year. It is anticipated that the number of applications for Certificate of Acceptance relating to unauthorised work undertaken after 1992 will increase substantially. The changes to the inspection regime outlined above will therefore have an overall neutral effect on revenue. Officers previously engaged with preparing safe and sanitary reports, will now be fully employed with Certificates of Acceptance.

A number of inspections relating to permitted and unauthorised pre-1993 work, will no longer take place. The Group Manager: Regulatory advises that this will have a minimal effect on overall revenue, and is likely to be offset by the increased income derived from Certificates of Acceptance.

SUMMARY

- (a) In the case of all pre- Building Act 1991 work (whether authorised or not), inspections will no longer be carried out by Council. Owners will be advised to seek a report from an independent building consultant and submit a copy to Council to place with the property file if they so wish.
- (b) Where building works have been undertaken since July 1992 without consent, the owner will be advised to apply for a Certificate of Acceptance.
- (c) Where building consents have been issued since July 1992 but not finalised, every request for a code compliance certificate will be judged on the available information and merits of the case. If Council does not have reasonable grounds to issue a code compliance certificate, the owner will be advised to seek a determination from the Department of Building and Housing.

RECOMMENDATION

That the Building Consent and Building Permit Inspections report be received for information purposes.

Report prepared by: Yvonne Donaldson, Team Leader: Legal Services.

