

**DISTRICT PLAN
DECISION NOTICE**

PLAN CHANGE 12

TITLE: Open Space Environment Provisions

Outline

As a result of information presented both in submissions and at the hearing on 26 September 2005, the Environmental Management Committee ("the Committee"), acting under delegated authority to issue decisions on plan change submissions, has made the following decisions in relation to Plan Change 12 to the City of Waitakere District Plan.

1 INTRODUCTION

This decision notice follows the hearing of submissions received that relate to **Plan Change 12** to the City of Waitakere District Plan (referred to in this decision notice as "the Plan"). The submissions and further submissions, along with evidence provided to the Committee are analysed and summarized in this Decision Notice. The analysis, together with the formal decision in Section 5 of this decision notice, are provided in part fulfillment of section 32 of the Resource Management Act 1991.

Plan Change 12 seeks to amend the provisions relating to the Open Space Environment in the Plan to improve the sustainable management of development and general maintenance within parks and reserves in the City. The Plan Change includes new policies and definitions for parks activities, amendments to the rules and assessment criteria in the Open Space Environment and the Natural Areas.

2 BACKGROUND

2.1 LAND AFFECTED BY THE PROPOSED PLAN CHANGE

The Proposed Plan Change would affect all the land identified as Open Space Environment, which is located in Waitakere City. The land in the Open Space Environment is publicly owned by Waitakere City Council, publicly owned and or managed by the Auckland Regional Authority (ARC) or the Department of Conservation (DoC) and constitutes the parks and reserves estate. The ARC are the stewards of 16,500 hectares of land which comprises the Waitakere Ranges Regional Park (WRRP) and includes approximately 240 kilometres of tracks. The majority of the approximately 991 hectares of parks and reserves in the Open Space Environment administered by Waitakere City Council is vested in the Council although it holds some land in fee simple. (Private sports fields and golf courses such as Titirangi Golf Club are not in the Open Space Environment). DoC administers smaller land holdings in the City.

2.2 Reason for Plan Change

The planning process to develop Proposed Plan 12 was initiated in 2002. Following a number of reports by the Parks Planning Section of the Council relating to the development and management of parks and reserves in the City within the framework of the current provisions of the District Plan, an analysis of resource consent applications on land in the Open Space Environment over a two year period (2000 – 2002) was undertaken. The concerns that related to the rules for the Open Space Environment and Natural Areas which require resource consents for a wide range of activities on parks and the associated costs were clarified and a report was prepared for the Committee's consideration in December 2003.

When the District Plan was formulated the intention was to prepare a Parks Strategy followed by the preparation of reserve management plans for all of the City's parks and reserves. Reserve management plans are prepared under the provisions of the Reserves Act. The

reserve management plan mechanism is designed to provide a means of involving the public in the strategic management of reserves and in the allocation of land within reserves where there are competing interests. However, the reserve management approach is not intended to address the effects of various activities that are conducted on reserve land, this being the domain of the Resource Management Act.

Each reserve management plan that was prepared was expected to outline specifically what activities/development would be provided on the park. The Waitakere City Council Parks Strategy was completed in April 1999, however, currently only 24% of parks and reserves in the City have Reserve Management Plans. Several of these are due for review. The Open Space Environment makes no provision for permitted activities on a park or reserve without an Operative Reserve Management Plan. Reserve Management Plans relate to the classification and purpose of the reserve and consequently the provisions for future development are often generalised which prevents proposals from being assessed as Permitted Activities under the rules of the Open Space Environment and necessitates resource consent applications. Reserve Management Plans also may not adequately address potential adverse effects on the surrounding environment. Thus both the lack of reserve management plans for the City's parks and reserves and the lack of detail for future development in existing reserve management plans necessitate a large number of resource consents. The rules for the Natural Areas in the District Plan control vegetation alteration and earthworks, and without an Operative Reserve Management Plan there is limited provision for general maintenance to be undertaken in parks without resource consents being required. The end result for the Parks Section is that the number and cost of obtaining resource consents to undertake work in parks and reserves is a significant annual cost. As all parks and reserves are publicly owned it is the Council that meets most of the costs for resource consents and ultimately the ratepayers of the City.

The reliance on the District Plan Open Space rules was only considered an interim measure. As the Decision notice states "In the interim until the (Reserve Management) Plans are operative the District Plan bulk and location rules for the Open Space Environment apply to all reserves. These rules will be reviewed as the Reserve Management Plans are implemented."

Section 35 of the Act requires that Council monitor the suitability and effectiveness of its District Plan and take appropriate action to ensure that it can effectively carry out its functions under the Act where this is shown to be necessary. The concerns raised by the Parks Planning Section of the Council required investigation and once the issues were analysed amendments to the provisions of the District Plan were formulated.

The Proposed Plan Change will ensure that the provisions for the development and management of open space in the City are appropriate, and effective in achieving Council's strategic objectives. The revised rules will enable routine works to be carried out more simply, while ensuring that there are no adverse effects on the environment.

2.3 Statutory Requirements

Resource Management Act

The Resource Management Act provides a statutory framework for the management of natural and physical resources. The purpose of the Act is *'to promote the sustainable management of natural and physical resources'*.

The RMA defines 'sustainable management' as:

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

- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

- (b) *safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) *avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Section 6 of the RMA relates to 'Matters of National Importance'. Matters of national importance include:

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

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

- (a) *Kaitiakitanga:*
- (b) *The efficient use and development of natural and physical resources:*
- (c) *The maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (e) *Recognition and protection of the heritage values of sites, buildings, places or areas:*
- (f) *Maintenance and enhancement of the quality of the environment:*
- (g) *Any finite characteristics of natural and physical resources:*
- (h) *The protection of the habitat of trout and salmon*

Section 8 requires that when managing the use, development and protection of natural and physical resources, a territorial authority shall take into account the principles of the Treaty of Waitangi.

Part III of the RMA sets out Duties and Restrictions to, amongst other things, subdivision of land. Section 11 states that no person may subdivide unless the subdivision is expressly allowed by a rule in a district plan or resource consent. In addition, Section 17 states that every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of that person, whether or not that activity is in accordance with a rule in a plan, or a resource consent.

Part IV of the RMA relates to functions powers and duties of Central and Local Government.

Section 31 sets out functions of territorial authorities for giving effect to the RMA in its district including:

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

Reserves Management Act 1977

The current legislation for administering reserves in New Zealand is the Reserves Act 1977. The purpose of the Reserves Act is set out in Section 3 of the Act:

- Providing for the preservation and management of areas for the benefit and enjoyment of the public.
- Ensuring, as far as possible, the survival of all indigenous species of flora and fauna.
- Ensuring, as far as possible, the preservation of access for the public.
- Providing for the preservation of representative samples of all classes of natural ecosystems and landscape.
- Promoting the protection of the natural character of the coastal environment and the margins of lakes and rivers.

The Reserves Act requires that all reserves be classified and gazetted according to the classifications laid down by the Act. There is also a requirement under the Reserves Act that every reserve (other than Local Purpose reserves) has a Management Plan. The function of the Reserve Management Plans is to manage the development and operation of parks. The preparation of reserve management plans includes a process of community consultation to identify the needs of the public and to ensure park development and enjoyment is based on sound principles. Once this Plan has been adopted by the responsible authority, it is subject to continuous review, so that it adapts to changing circumstances or increased knowledge about the reserve. The review process is outlined in the Reserves Act. The management plans for the larger more significant city wide parks are approved by the Environmental Management Committee of the Council and plans for smaller parks are approved by the relevant Community Board.

3 MATTERS CONSIDERED IN RELATION TO PLAN CHANGE 12 OPEN SPACE ENVIRONMENT PROVISIONS

3.1 Assessment Of Policy Considerations

3.1.1 Auckland Regional Policy Statement

The Auckland Regional Policy Statement (RPS) provides a regional resource management policy framework for managing environmental effects associated with urban and rural development within the region. Regional strategic objectives seek to ensure that soil resources, water quality, amenity values, rural character and landscape values are protected from the effects of inappropriate subdivision, use or development and that the Region's growth is accommodated in a manner that gives effect to the purpose and principles of the Resource Management Act 1991. Briefly, the following policies are relevant:

Chapter 2 provides the 'Regional Overview and Strategic Direction' for the Auckland Region and in 2.5.1 lists nine Strategic Objectives.

The second strategic objective is "To maintain and enhance the overall quality of the environment of metropolitan Auckland, including its unique maritime setting, volcanic features, cultural heritage values, and public open space." (writer's emphasis). This objective is particularly relevant to the plan change which relates to public open space.

It is considered that the plan change will facilitate the maintenance and enhancement of the overall quality of public open space by providing an improved framework for managing parks and reserves. Two new policies introduced by the plan change recognises the two functions that public open space serves, being the conservation of the natural environment and provision for the recreation needs of the public.

Objective 5 of the strategic direction is "To protect the intrinsic values of the Region's natural resource base, and to make appropriate provision for the avoidance, remediation or mitigation of adverse effects on the Region's environment, including the identification of significant natural features and landscapes, and areas of significant indigenous vegetation and habitat, and protection of these from inappropriate subdivision use and development."

The Policy Section of the District Plan includes inventories of outstanding and significant landscapes, vegetation and fauna and the Natural Areas rules reflect in general terms these natural resources. Changes to the natural areas rules for vegetation alteration and earthworks provide for a range of parks maintenance, parks furniture and signage as permitted activities provided the work meets performance standards that are defined in the rules.

Other objectives that relate to the Plan Change are in the chapters 6 Heritage and 7 Coastal Environment. Objective 6.3 is:

To preserve or protect a diverse and representative range of the Auckland Region's heritage resources.

To maintain, enhance or provide public access to the Region's heritage resources consistent with their ownership and maintenance of their heritage value.

To protect and restore ecosystems and other heritage resources, whose heritage value and/or viability is threatened.

To maintain the overall quality and diversity of the landscapes of the Auckland Region.

Much of the region's natural, geological and landscape heritage are found within the WRRP and the plan change would ensure that these resources continue to be protected and restored where degraded. It should be noted that the plan change is but one of the methods in a raft of methods and initiatives that will ensure a positive outcome for the region's natural resources. As the explanation to the objective notes the Council "can provide for re-vegetation programmes through": financial contributions upon subdivision and conditions of resource consent; "in their own reserve management activities..."

A number of objectives in Chapter 7 are relevant to the plan change. The complex nature of the coast is recognised in the District Plan by the Coastal and Riparian Margins/Coastal Edge Natural Areas Rules. The proposed plan changes provide for parks maintenance within these areas as a permitted activity but the provision of parks infrastructure requires resource consent to ensure protection of the natural environment is balanced with the provision of public access and recreation opportunities. The plan change continues to give effect to the objectives and policies of the ARPS.

The Auckland Regional Council (ARC) has expressed support for the plan change although a number of relatively minor changes have been requested through their submission. These changes have been incorporated where possible.

Therefore it is considered that the Proposed Plan Change is entirely consistent with strategic objectives of the Auckland Regional Policy Statement as the Plan Change will ensure the protection of natural and physical resources and the efficient use and management of publicly owned land.

3.1.2 Waitakere City District Plan

The Open Space Environment, comprises areas of publicly owned space ranging from large park areas in the Waitakere Ranges to small local reserves in the urban environments. The Open Space Environment includes land in both the urban and non urban parts of the City.

The land identified as Open Space Environment in the District Plan includes the entire range of natural areas. The objectives and policies relating to the protection and enhancement of water quality, indigenous fauna and flora, ecosystems – stability, natural features including coastlines and streams form the basis for the comprehensive management of the “Green Network” of which the City’s network of parks is a major component. The approach taken in the District Plan has been to integrate Reserve Management Plans to direct activity in the Open Space Environment. Reserve Management Plans were considered to be more effective in terms of managing impacts on the reserves themselves, while District Plan rules are deemed to be most effective in managing the effects on surrounding areas. The Open Space Environment includes bulk and location, noise, glare, infrastructure and traffic generation rules for parks buildings and sports fields that apply to the various activities and a rule for park signs.

When there is an Operative Reserve Management Plan for a park, activities such as parks buildings and signs are provided for as permitted activities in the Open Space Environment rules as long as they satisfy the bulk and location rules, the Natural Area rules and are specifically included in the reserve management plan. Other activities such as new parks infrastructure even when provided for in a reserve management plan required resource consent under the Natural Areas rules.

The Open Space Environment rules for all activities in parks with no Operative Reserve Management Plan require resource consent and the status of the activity is automatically Non-complying, which can mean full public notification of the resource consent application.

The rules for the Natural Areas in the District Plan control vegetation alteration and earthworks, impermeable surfaces and in some cases buildings and stock. In parks that have an Operative Reserve Management Plan, vegetation alteration for the maintenance and/or the provision of track and trail systems is the only parks activity provided for and it is a permitted activity. However, it should be noted that the earthworks rules do not include permitted activities for the maintenance and/or the provision of track and trail systems, which means that earthworks required for tracks and trails require resource consent even where there is a reserve management plan for a park, unless the work is currently being done without consent.

Policies in the District Plan relating to the Open Space Environment include the design and location of new public open space and the provision of public access when land is subdivided. The methods for achieving these policies are articulated through the subdivision rules rather than the rules of the Open Space Environment. There are some existing policies relating to the protection and restoration of native vegetation and fauna habitat within the Green Network which includes both public and private land. Therefore it is considered that the range of activities and development that can be undertaken on parks under the existing rules for the Open Space Environment and the Natural Areas are unduly restrictive.

3.2 Consultation

Consultation and liaison with staff at the Auckland Regional Council has been ongoing since the Council's approval in principle of the first draft of the Proposed Plan Change. This provided an opportunity to address matters raised prior to notification.

The sports clubs and community groups, such as Playcentres, Scout Groups and Returned Servicemen's Associations usually have leases over the buildings, facilities or land they occupy on parks and reserves that are owned and administered by the Council and they were individually notified of the Plan Change, along with the major ARC leasees of the Waitakere Ranges parkland.

Special interest and environmental groups such as the Royal Forest and Bird Society and the Waitakere Ranges Protection Society with a greater interest than the general public were also individually notified. Those residents living next to a park or with an interest in a park were able to make submissions once the Plan Change was publicly notified.

Council also consulted with Ngati Whatua and Te Kawerau a Maki about the Proposed Plan Change. These discussions were held with Iwi representatives through the usual channels in Council.

3.3 The Plan Change – what it involves

Two new policies would be introduced for the Open Space Environment. The first policy is included under Objective 10 Amenity Values – Health and Safety. This focus of this policy is to ensure that while public open space provides for the recreation needs of the City's residents with a range of activities, facilities and experiences, that the development and use of parks is appropriate in terms of the scale and function of the park, and is well designed located and maintained with respect to adjoining properties. The second policy under Objective 11 relating to development being sympathetic to and protecting the natural and physical features which contribute to the amenity values of landscapes, local areas and neighbourhood character is to ensure that the management and development of recreation facilities is sensitive to the natural landscape elements and qualities and that outstanding vegetation is protected and that planting/restoration is used to enhance the natural environment and that the maintenance of infrastructure and facilities provides a high level of amenity.

New definitions are provided for the various parks activities such as parks maintenance, parks facilities parks sports fields and sports structures and the like. The Proposed Plan Change is an activity – based approach to the provision of a range of activities or development that occurs in parks, with the Open Space Environment rules controlling the effects of those activities or development on adjoining environments such as residential neighbourhoods. The Proposed Plan Change also utilises effects – based principles to manage the effects of development on the natural environment via the Natural Area rules. In essence the Proposed Plan Change provides for a range of activities and development of parks regardless of whether the park has an Operative Reserve Management Plan. The activity status for the development or activity on parks will relate to the potential environmental effects of that use or development, so that those activities with the potential to create adverse effects require an application for resource consent to establish either as Limited Discretionary or Discretionary Activities.

Reserve Management Plans will remain an important reference for assessing all proposals on parks which require an application for resource consent by being included in new assessment criteria in all Open Space Environment and Natural Area rules. The usual activities and development that occur in the Open Space Environment have been developed into an activity list with those activities that are unlikely to generate any adverse effects on the environment provided for as permitted activities and those with potential to create minor adverse effects provided as Limited Discretionary or Discretionary Activities.

The Plan Change also requires several consequential changes. These include amendments to some definitions. For example the current definition for signs is amended to exclude 'signs defined as parks signs.' The rules for signage in the Transport Environment are amended to provide for parks signs outside land in the Open Space Environment as a Limited Discretionary Activity. This would accommodate signage for parks where it may be more appropriate to locate a sign in the road reserve such as in the non-urban areas of the City where the boundary of the park is either some distance from the carriageway of the road or is obscured by dense vegetation.

The Introduction to the Rules of the District Plan includes guidance on the general circumstances for written consents or notification for Discretionary and Non-Complying Activities. It was necessary to clarify how this applies to the Open Space Environment when a proposal complies with an Operative Reserve Management Plan. Hence, Discretionary Activity proposals that comply with an Operative Reserve Management Plan are less likely to be notified than those proposals in the Open Space Environment on a park without an Operative Reserve Management Plan. This acknowledges the process of community consultation that has been undertaken in the preparation of a Reserve Management Plan. However, affected neighbours approvals would be required for proposals which do not comply with the bulk and location rules for the Open Space Environment, but otherwise comply with an Operative Reserve Management Plan.

Finally, under the Procedural Guideline for the Open Space Rules there is information relating to the need for the written approval of the landowner in relation to any proposed activity on a park, and that if applicable, leases may need amending.

3.4 Section 32 Considerations

Section 32 of the RMA requires every territorial authority to consider alternatives, and assess benefits and costs before adopting any objective, policy, rule or other method in relation to its district plan.

- (a) *Have regard to –*
 - (i) *The extent (if any) to which any such objective, policy, rule or other method is necessary in achieving the purpose of this Act; and*
 - (ii) *Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and*
 - (iii) *The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and*
- (b) *Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and*
- (c) *Be satisfied that any such objective, policy, rule or other method (or combination thereof) –*
 - (i) *Is necessary in achieving the purpose of this Act and*
 - (ii) *Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.*

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

The Section 32 analysis concludes that the proposed plan change would provide for more efficient management of the Open Space Environment which includes all parks and reserves in the City. The Proposed Plan Change provides an appropriate set of rules for the activities that occur in the Open Space Environment and relate to the various Natural Areas. The use of reserve management plans as a tool for managing development in the Open Space Environment has proven inefficient given that most activities normally associated with the development and use of parks without an Operative Reserve Management Plan require a resource consent, or, if included in a reserve management plan may not be detailed enough thereby also requiring an application for resource consent to ensure assessment of potential adverse effects on the surrounding environment. With Operative Reserve Management Plans for less than thirty percent of the parks in the City the Parks Section is incurring significant annual costs and delays in terms of achieving efficient and effective asset management.

Several other options have been evaluated and have been found to be impractical or unacceptable. This included options such as completing all the Reserve Management Plans as fast as possible. This option would not be possible because there has been no financial provision in the LTCCP to employ the additional staff that would be required to complete all the Reserve Management Plans within a much shorter time frame. The LTCCP is not due to be reviewed until 2006 and should funding be gained there would be a further two or three years, at least, to actually undertake and complete the work as the process of preparing management plans involves extensive community consultation and each plan generally takes about two years to complete.

Retaining the existing rules would result in a continuation of the need for resource consents for activities such as parks maintenance with increasing costs a likely outcome as fees increase, including those of consultants used to prepare the applications for resource consent.

Another option such as retaining the existing provisions for the Open Space Environment but eliminating fees for processing applications for resource consents for development would not resolve the funding of the Parks Section of the Council because costs would continue to be borne by the ratepayer. Already the Council has made provision for no processing fees for vegetation alteration not associated with a development in order to encourage the protection of vegetation in the city and to encourage compliance with the rules.

It is considered that the Proposed Plan Change achieves the purpose of the Act as the proposed framework of policies and rules within the existing context of the District Plan for public open space is aligned with the purpose of achieving the sustainable management of natural and physical resources in the City. The newly defined parks activities and development have been assessed in terms of their potential effects on the built and natural environment. This assessment has determined the status or category of the activities in terms of the rules of the Open Space Environment and Natural Areas. The amendments to the rules, which include associated performance standards and assessment criteria will ensure adverse effects on the environment are avoided, remedied or mitigated. Monitoring the new rules would be undertaken as part of the Council's responsibilities under the Act.

The City's parks and reserves constitute a large part of the Green Network, and enhancing and protecting it, is an integral part of the Council's strategic direction. Internal processes and documents for managing the Green Network have been evaluated to ensure that the Proposed Plan Change is appropriate within the context of the City's strategic direction. The equivalent regulatory methods for open space in adjoining local authorities have been compared for consistency, the various Auckland Regional Authority planning documents considered and it is concluded that the Proposed Plan Change is not inconsistent with any relevant statutory or non-statutory document as discussed above.

Currently Council spending on parks and reserves each year is over 15% of every dollar from the rates, being the second highest expenditure after wastewater. In the context of

existing expenditure on parks, the importance placed on the Green Network and the provision of open space for the well being of the city's residents, and the increasing usage of parks expected in the future, the provision of timely, cost effective and sustainable development is essential. To conclude, Proposed Plan Change 12 is required to ensure that the District Plan provisions allow for the timely, cost effective and sustainable development of parks and reserves in the Open Space Environment consistent with the Council's strategic direction.

4 ANALYSIS OF SUBMISSIONS

A total of **eight** submissions and **nine** further submissions were lodged in respect of Plan Change 12. No late submissions or further submissions were received. As there were a small number of submissions received, the approach taken in the analysis of submissions in the Hearing Report was to take each submission and discuss the points raised in it for the consideration of the Committee. This included reference within the discussion to further submissions that supported or opposed the subject submission to ensure a comprehensive resolution of issues.

The submitters raised a number of issues in their submissions, including:

- The use of commissioners to hear the submissions to the plan change
- Abandonment of the Plan Change in its entirety
- Removing reference to landowners documents from definitions
- The need for the network utility operator Watercare Services Ltd to be able to maintain infrastructure as provided for by the existing permitted activities that allow vegetation alteration in the existing Natural Areas
- Minor amendments to the wording of new definitions, and the assessment criteria associated with the Natural Area rules,
- Inclusion of a Special Area Identification or new policy and new rules for Harbour View – Orangihina Park
- Identifying all significant resources in parks in the District Plan, and
- Providing policy or policies for protection of natural and cultural heritage resources in parks
- Re-identifying unused paper roads in the City bounded by WRRP as open space,
- Protecting the Pleistocene terraces in Harbour View – Orangihina,

At the hearing, the following submitters presented evidence:-

Auckland Regional Authority

Watercare Services Ltd

Anne Grace presented evidence jointly for herself and for the Te Atatu Residents and Ratepayers Association

A full copy of the submissions and further submission was attached in an appendix to the Hearing Report for the Committee.

The following analysis is a record of the issues raised through the submissions and further submissions, a description of the evidence presented (if any), and a discussion of the Committee's consideration and decision in relation to each submission. The decision relates

directly to the relief sought in the submissions, rather than each individual issue that was raised in the evidence. Those issues are summarised in the Hearing Report.

Submissions Relating to the use of commissioners to hear submissions on Proposed Plan Change 12 (12/6/-)

- 4.1.1 The Atatu Residents and Ratepayers Association Inc (12/6/-) sought the hearing of submissions on Proposed Plan Change 12 by independent commissioners, with the Council making the final decision pursuant to section 34 of the RMA to ensure the Council's role as administrator of the land subject to the plan change was separate from its operational role.
- 4.1.2 Submission (12/6/-) was supported by a further submission from Anne Grace (12/18/-10). This support was based upon the reasons given in the original submission.

Evidence Presented:

The Committee heard evidence from Anne Grace, presented jointly for herself and for the Te Atatu Residents and Ratepayers Association in support of their request for the use of independent commissioners. The evidence included a *report* that was presented to support the submitters' assertion that the RMA does not require the Council to hear the submissions and that this provides the Council with the opportunity to appoint independent commissioners where there is a public perception of conflict of interest (and this does not relate only to pecuniary interest) but also to Council's regulatory and non-regulatory responsibilities. Reference was made to section 39 (b) and (c) of the Local Government Act 2002 in relation to these governance requirements and the need for effective open and transparent decision making. Comments in 1997 by the Parliamentary Commissioner for the Environment, relating to planning issues for Harbour View land were referred to, as was a Council staff organisation chart showing that Parks Planning and Resource Management were both included under the umbrella of the Community and Planning Services Manager.

Ms Grace's evidence included reference to the Section 32 for the Plan Change which she considered justified the need for the Plan Change primarily as a means of the Council reducing the costs of obtaining resource consents for activities in Open Space Environment. Ms Grace agreed with the Council's legal opinion that the Reserves Act is irrelevant to the plan change because it relates to the non-regulatory landowner function. However, Ms Grace argued that the Council has a statutory responsibility for the preparation of Reserve Management Plans and that the costs of undertaking this work is irrelevant in terms of the cost benefit evaluation in the Section 32.

Ms Grace's evidence challenged the reason given in the Hearing report for rejecting some submissions because they are beyond the scope of the plan change. Her evidence noted that there are examples of other plan changes, such as Plan Change 2 where new policies have been introduced that she considers go beyond the scope of the plan change.

The final matter raised by Ms Grace related to the request to have a pre-hearing with submitters to the plan change which was ignored by the Council staff.

Discussion:

Mr Robert Enright of Kensington Swan provided legal advice to the Committee on the need for independent commissioners. Firstly he considered Ms Grace's assertion that the Local Government Act overarches other legislation as being legally debatable. Mr Enright advised the Committee that the Resource Management Act 1991 provides that only Councils may make decisions on district plan formation and Plan Changes, and that it does not permit a council to delegate that decision to anyone else. Therefore the Council is able to make decisions on Proposed Plan Change 12.

Mr Enright discussed the issue of appointing independent commissioners because of some submitter's concerns that there is a public perception of 'conflict of interest' and he advised the Committee that this needed to be considered in terms of whether the allegations of bias are actual or perceived. In this regard although there could be a public perception of conflict

of interest in terms of the hearing of submissions the Council has the ultimate responsibility of making the decision on Plan Change 12. Any references to the Environment Court on the decision of Plan Change 12 would be considered in terms of its substantive merit and not the 'number of hats that the Council is wearing'.

Mr Enright discussed the issue relating to the rejection of the relief sought in some of the submissions because they were considered in the planning report to go beyond the scope of the Plan Change. Mr Enright advised the Committee that the legal test for considering whether the 'relief sought' in a submission is within the scope of the Plan Change is that the matters must relate to the Plan Change.

Mr Enright advised the Committee that the reasons the request by Ms Grace for a pre-hearing was not arranged by Council officers was because many of the matters raised were considered to be outside the scope of the Plan Change as it pertains to publicly owned land, or were for the introduction of new rules which could affect private land owners, or were matters relating specifically to Harbour View – Orangihina Park and these will be determined by the Environment Court as part of the current appeal against Plan Change 2 (ENV A0026/05) relating to this land.

Mr Enright advised the Councillors to consider the issues raised by the submitters, of their obligation to approach the decision making on Proposed Plan Change 12 with an open mind, and to not disregard any relevant consideration raised in submissions or in evidence presented at the Hearing.

For these reasons, it was considered legally appropriate that the Councillors at the Hearing of Proposed Plan Change 12 make the decisions on Proposed Plan Change 12.

The Committee understood its responsibility to be objective with respect to the matters raised in all the submissions to this Plan Change. However, the Council has a statutory responsibility to make the final decision to decide on the merit of the Plan Change and whether to proceed with it and the Committee did not accept that there was a conflict of interest as had been raised in the submissions from the Te Atatu Residents and Ratepayers Association Inc and Anne Grace.

Schedule 1 Clause 10 Decision of local authority sets out the provisions relating to the matter of decision making. The case law and practice for this clause identifies the three formal requirements of a decision as follows:

- the submission determination: each decision must state whether the Local Authority accepts or rejects in whole or in part each and every part of the submission on a specific or matter, and
- the provision determination: the decision on submissions that are accepted in whole or in part need to identify the changes or any deletions or additions to the provisions, clearly, consistently and unambiguously, and
- the reasons for each decision

Therefore, the Committee decided to reject the submission of Te Atatu Residents and Ratepayers Association Inc and further submission by Anne Grace in relation to the appointment of independent commissioners to hear the submissions.

4.1.3 Decision

Submission (12/6/-)

The Submission by Te Atatu Residents and Ratepayers Association Inc for the hearing of submissions to Plan Change 12 by independent commissioners is rejected by the Committee.

Further Submission (12/18/-10)

The Further Submission by Anne Grace (12/18/-10) supporting the request for independent commissioners is rejected by the Committee.

4.1 Submission of Watercare Services Ltd (12/1/-)

4.2.1 The submitter seeks the deletion of the proposed changes to the Vegetation Alteration rules in the General, Restoration, Managed and Protected Natural Areas to allow them to continue to undertake minor works that have insignificant environmental effects.

4.2.2 Submission (12/1/-) is opposed by a further submission from the Te Atatu Residents and Ratepayers Assn. (12/12/-4).

Watercare Services Ltd further submission (12/9/-1) opposed the submission from Te Atatu Residents and Ratepayers Assn., (12/4/-) because permitted activities in their proposal for the Orangihina – Harbourview land do not provide for vegetation clearing and provision of infrastructure and should be the same as in the Open Space Environment.

Evidence Presented

The Committee heard evidence from Annabel Davies from Watercare Services Ltd., which owns and manages the business of bulk water supply, and sewage treatment and disposal for much of the greater Auckland area. Watercare is owned by six of the Auckland Region's territorial authorities. It was noted that Watercare is conscious that its operations have a direct impact on the environment and the Company is committed to a high standard of environmental performance. The Operations Management arm of Watercare operates and maintains all Watercares water and wastewater assets. The five water supply lakes and their catchment areas are in the Waitakere Ranges, but there are a myriad of water and wastewater pipelines, pump stations, chambers and associated infrastructure located in the more urban Open Space Environments throughout the City.

Watercare opposes the proposed amendment to Rule 2 Vegetation Alteration in the General, Restoration or Managed Natural Areas which sought to ensure any alteration of vegetation in the Open Space Environment would no longer be a permitted activity. Watercare maintains the position that it must be allowed to undertake minor alteration to vegetation for maintenance purposes without seeking consent. In the case of the Protected Natural Areas Watercare requests that to be subject to the same standards as those being applied to parks maintenance and infrastructure.

Watercare Services Ltd supports the recommendation in the Hearing Report to delete the clause 'and is not in the open space environment' from Rule 2 Vegetation Alteration in the General, Restoration and Managed natural areas rules. The Committee was presented with two further requests to meet Watercares concerns being:

- The addition of a clause to include water or wastewater infrastructure in the rule that proposes to permit parks maintenance in the Protected Natural Area within the Open Space Environment.
- Other general and related amendments recognising that essential utility services in Open Space Environments should be subject to the same activity status and vegetation alteration rules that apply to Parks Maintenance and Parks Infrastructure.

Discussion

Watercare Services Ltd has responsibility for the operation and maintenance of their water and wastewater assets. Deleting 'and is not in the open space environment' from Rule 2 Vegetation Alteration in the General, Restoration and Managed Natural Areas rules will restore the ability of Watercare Services Ltd to undertake vegetation alteration that is a permitted activity for the maintenance of Watercare assets.

The additional changes Watercare Services Ltd seeks to enable them to undertake maintenance of water or wastewater infrastructure in the Protected Natural Area by including provision for this in the definition of Parks Maintenance was not contemplated in a definition

that relates to maintaining parks assets such as footpaths, foot bridges and the like. If Watercare Services Ltd were incorporated into the definition of Parks Maintenance there would be no reason not to include provisions for other network utility operators and this is not within the scope of the Plan Change. Parks Infrastructure relates to the establishment of new parks assets such as footpaths, boardwalks and footbridges and does not include establishing network utility operator assets. Parks Infrastructure requires a resource consent in all natural areas except the General Natural Area.

Watercare Services Ltd is a designating authority and has fourteen designations in the District Plan. The majority of this designated land is located in the Open Space Environment with large areas held in the Waitakere Ranges Regional Park (WRRP), and it includes different Natural Areas. Rule 2 of the City Wide Designations in the District Plan contains requirements for all designations. The conditions relating to Watercare Services Ltd designation requires an Outline Plan for proposed works in accordance with the designation. The designations relating to Watercare Services Ltd are not subject to all relevant Natural Area Rules or relevant Human Environment Rules or specified City Wide Rules unlike the requirements of some other designating authorities.

For these reasons the Committee accepts the submission by Watercare Services Ltd to the extent that the relief sought is consistent with the deletion of the proposed clause 'and is not in the Open Space Environment' from Rule 2 Vegetation Alteration in the General, Restoration and Managed Natural Areas Rules as it will retain the existing provisions for the maintenance of Watercare Services Ltd infrastructure.

The Committee rejects the submission requesting that a change to the existing provisions for vegetation alteration that is a permitted activity in the Protected Natural Area is needed, and other general and related amendments recognising that essential utility services in Open Space Environments should be subject to the same activity status and vegetation alteration rules that apply to Parks Maintenance and Parks Infrastructure.

The submission from Te Atatu Residents and Ratepayers Association (12/4/-) proposed new rules and policies for the Harbour View - Orangihina land. Watercare Service Ltd operations include a wastewater pump station and pipeline in the Harbourview - Orangihina Park and their further submission (12/9/-1) opposed the Te Atatu Residents and Ratepayers Association submission because there is no provision for permitted activities for vegetation clearing and provision of infrastructure in their proposals. Watercare Services Ltd seek to have the same rules for the Open Space Environment apply to this land. The Te Atatu Residents and Ratepayers Association further submission (12/12-4) opposed the Water Care Ltd submission.

The Committee accepted the further submission of Watercare Services Ltd to the extent that it also considers the same rules for the Open Space Environment proposed in the Plan Change should apply to Harbour View - Orangihina Park. For this reason the Committee rejected the further submission by Te Atatu Residents and Ratepayers Association.

4.2.3 Decision

Submission (12/1/-)

*The Submission by Watercare Services Ltd to delete the additional clause 'and is not in the Open Space Environment' Rule 2 Vegetation Alteration in the General, Restoration and Managed Natural Area **is accepted** by the Committee to ensure that regardless of the human environment the status quo is retained in all natural areas, **but***

*The addition of a clause to include water or wastewater infrastructure in the rule that proposes to permit parks maintenance in the Protected Natural Area within the Open Space Environment, and other general and related amendments recognising that essential utility services in Open Space Environments be subject to the same activity status and vegetation alteration rules that apply to Parks Maintenance and Parks Infrastructure **is rejected** by the Committee because there is adequate provision City Wide Designation Rules in the District*

Plan for the establishment of Watercare Services Ltd infrastructure, and existing provision for vegetation alteration as a permitted activity in the Protected Natural Area.

*The Further Submission by Watercare Services Ltd (12/9/-1) for the Open Space Environment rules to apply to this park is **accepted** by the Committee.*

Further Submission (12/12/-4)

*The Further Submission by Te Atatu Residents and Ratepayers Association Inc (12/18/-10) opposing the entire submission as it is unacceptable in terms of achieving the purpose of the RMA is **rejected** by the Committee.*

4.3 Submission by Auckland Regional Council (ARC). (Submission 12/2/-)

4.3.1 The ARC makes the submission in support of the Proposed Plan Change but seeks a number of amendments and additions to the definitions, and assessment criteria for the Natural Area rules. These amendments seek to better accommodate its operations and administrative responsibilities.

The Auckland Regional Councils submission relates to four specific sections of the plan change that are:

- General issues relating to the context of the plan change
- Introduction to the Rules, Rules Content, Written Consents and Notification
- City Wide Rules – definitions
- Natural Areas Rules and the associated Assessment Criteria

4.3.2 Submission (12/2/-) is supported by a further submission from the Department of Conservation (DoC)(12/10/2) - (10 points) and one point (3.10.1) is opposed in part. The DoC submission opposes provisions for vegetation alteration for parks maintenance beyond 1 metre of the edge of footpaths, tracks, boardwalks and internal roads because while some tree maintenance may be required consideration must be given to threatened plants that may be present in the vicinity of footpaths, tracks, boardwalks and internal roads

4.3.3 ARC Submission (12/2/-) is opposed in its entirety by a further submission from the Te Atatu Residents and Ratepayers Association (12/13/-5).

DoC Submission (12/8/-) is opposed in its entirety by a further submission from the Te Atatu Residents and Ratepayers Association (12/15/-7).

Evidence Presented

The Committee heard evidence from Emma Oliver from the ARC in support of the changes that had been made as a result of their ARC submission. The evidence presented sought clarification of the actual changes made for references 3.9.2 and reference 3.10.3. Reference 3.9.2 relates to the request to make specific provision for farm fencing in the definition of Parks Infrastructure and it was unclear from the report whether this had been included. Reference 3.10.3 relates to the definition of Parks Maintenance and the need to ensure that building repairs and maintenance maybe undertaken by the ARC's licensees or leasees.

The remainder of the ARC evidence related to three submission points that the Hearing report had recommended be rejected. These references are 3.10.1; 3.10.2 (ii) and (iii) and they relate to vegetation alteration for Parks Maintenance.

Reference 3.10.1 seeks changes to broaden the scope of vegetation alteration permitted in the definition of Parks Maintenance as it is considered that the 1.0 metre distance from the edge of a track or road is inadequate.

Reference 3.10.2 (ii) and (iii) seeks provision for the re-alignment of tracks within specified parameters because limiting it to within a metre of the existing track is not practical.

The evidence presented included a brief synopsis of the legislative framework under which the ARC operates and manages the Waitakere Ranges Regional Park (WRRP), an area of over 16,000 hectares of land. The evidence noted the ARC's ongoing challenge for the

management of both the regionally significant natural and cultural heritage values of the Park and public access in a sustainable manner.

The relevant bullet point in the definition of Parks Maintenance is as follows:

- *vegetation alteration of native and exotic vegetation* less than 6.0 metres in height and less than 600mm in girth (measured 1.4metres above the ground), within 1.0m of the edge of an existing footpath, track, footbridge or boardwalk to provide for unimpeded pedestrian access on the path

The reasons put forward in the evidence for the ARC is that limiting vegetation alteration to a maximum distance of 1 metre from the edge of footpaths is more applicable to urban paths as the rugged nature of the Waitakere Ranges Regional Park means that providing 'unimpeded pedestrian access' on tracks after heavy rainfall events is very much dependent upon the extent of damage and the site context – topography and location of native vegetation and significant trees. Ms Oliver also acknowledged that there are a number of threatened plant species in the WRRP and that vegetation alteration associated with parks maintenance activities has the potential to threaten species and their habitats within a metre of a track or path. However the Committee was advised that the ARC, WCC and DoC are currently working to identify 'environmentally sensitive areas' in the Waitakere Ranges with appropriate signage to warn track maintenance workers of the likely presence of threatened or rare species. The evidence presented included a possible condition to overcome the limitation of vegetation alteration 1 metre from the track for Parks Maintenance. This would be for an ecological survey to be undertaken to identify and avoid any significant vegetation, including threatened plants, the habitats of threatened species or wildlife habitats. This would enable the Protected Natural Area survey report and information held by DoC on threatened plants in the Waitakere Ranges to be reviewed. It was Ms Oliver's opinion that such a condition would be consistent with the effects based approach of Plan Change 12 and would reflect environmental best practices already employed by the ARC in terms of policy directives, and provisions of the Regional Parks Management Plan and technical publications.

The reference 3.10.2 (ii) and (iii) relates to the bullet point in the Parks Maintenance definition that states:

- track and trail maintenance and repair including resurfacing, ~~remotalling, re-shelling~~ bush tracks and including clearing/reforming drainage channels alongside tracks, and minor re-alignment of tracks within 1.0m of the edge of a track to minimise erosion.

The ARC would like minor realignments of tracks as a separate category without being limited to a distance of 1.0 metre from the edge of a track. The reasons included that the standard maybe more applicable in an urban park context as opposed to that of the Waitakere Ranges. The Committee was informed about the greater need for minor realignments of tracks or parts thereof that are necessitated by environmental conditions such as high localised rainfalls, steep slope, clay soil types and remote locations which make the logistics of access difficult and costly when importing materials (structures and metal) to maintain tracks.

The final matter related to Appendix 'C' of the Hearing report containing the list of non-statutory documents incorporated by reference into the District Plan including the Regional Parks Management Plan Volumes 1 and 2. Ms Oliver pointed out that the Regional Parks Management Plan is a 'statutory' document prepared in fulfilment of the Local Government Act 2002 and the Reserves Act 1977, and that the Regional Parks Management Plan 2003 Volume 3: Maps needed to be referenced in this Appendix.

Ms Oliver concluded her evidence by emphasising that the changes are to ensure that the ARC's ability to undertake routine park maintenance is not unduly constrained, and activities, facilities and development undertaken in the WRRP is sufficiently recognised in the District Plan rules.

Discussion

The Committee was informed that a change had been made in relation to the submission point 3.9.2 to the second bullet point of the definition of Parks Infrastructure by adding the words in bold as follows:

- entry gates, track marking bollards, soldier bollards and chains, post and rail fences or **similar fencing**

However in view of the need for clarity the Committee considered that the ARC's request for the words 'farm fencing' should be included in the definition.

Reference 3.10.3 relates to the definition of Parks Maintenance and the need to ensure that building repairs and maintenance maybe undertaken by the ARC's licensees or leasees. The Committee noted the recommendations in the Hearing report relating to the changes to the definition of Parks Maintenance would allow licensees and leasees to undertake building repairs and maintenance as follows:

Repairs and maintenance to the exterior of parks buildings, parks facilities, parks field structures, parks furniture and parks signs....

provided that the above work is **authorised by WCC, ARC or DoC and/or under taken by their staff, lessees or contractors.**

The Committee accepted that the word 'licensees' should be added to this definition for clarity.

The Committee noted further submissions were received to both general and specific points in the ARC submission, including the further submission from DoC (12/10/2), opposing in part reference 3.10.1 that stated 'while it is recognised that some tree maintenance may be required outside of the 1.0 metre edge of an existing footpath, track, footbridge or boardwalk consideration must be given to threatened plants which may be in the vicinity of footpaths, tracks, boardwalks and internal roads specified in the Plan Change'. DoC's submission also supported this same issue in points 6 and 7 of the submission by Anne Grace (12/5/-) stating that protection of scarce plant species is a priority for the Department, and that documents referred to in the Parks Maintenance definition needed to be sufficiently robust to ensure that the co-ordination or replanting schemes and the protection of threatened species is guaranteed. A further submission (12/13/-5) from The Te Atatu Residents and Ratepayers Association Inc also seeks a separate policy and rules for parkland in the Waitakere Ecological District/ WRRP.

Ms Grace had noted in her presentation of evidence that she was currently involved with scientists plotting the location of threatened species using Global Positioning System (GPS).

The Committee considered the changes recommended in the Hearing report to the Natural Area rules that would provide for Parks Maintenance as a permitted activity and 'require the work to be:

- authorised by WCC, ARC or DoC, and
- undertaken using environmental best practice methods that include accepted modern arboricultural practices, and measures to protect adjoining vegetation, and
- in accordance with the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004)',

would be consistent with the relief sought in the ARC submission as they had recommended the use of the Standard and that the changes balance the maintenance of parks assets with environmental protection. (The words 'authorised by WCC, ARC or DoC,' are really unnecessary given that they are already included in the Parks Maintenance definition).

The above standard provides detailed specifications for the design, construction and maintenance of different categories of paths, walks and tracks and tramping tracks. The width, surfacing, gradient and amount of vegetation clearance are included in Table 5 of the Standard. Vegetation clearance is measured from the centre of the track. Given that the maximum vegetation clearance is 1 metre from the centre line of the path or track the wider the path the less vegetation clearance is provided for. For example the standard includes a range of track widths for a walking track from 0.75m - 2m wide and this would mean if the track is 1 metre wide the permitted vegetation clearance (when measuring from the centre line is 0.5m, but if it is narrower slightly more clearance is permitted on either side of the

track using the standards. The standard relates more to backcountry parks in the DoC estate and its importance relates specifically to safety and construction standards for outdoor structures.

It is considered that these standards are not applicable to urban parks which provide a range of path widths, sometimes in combination with cycle ways with planting setbacks from the edge of paths for pedestrian safety and mowing requirements. Clearly this is not an issue within the General Natural Area of parks.

Within the other Natural Areas (Managed, Coastal, Protected and Riparian Margins Coastal Edges) that form the Green Network compliance with the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004) would be necessary, and would partially address the concerns raised in the submission by Ms Anne Grace.

Evidence was presented seeking provision for track realignments to address storm damage to tracks in the WRRP. It was proposed that track realignments could be a separate provision in the Permitted Activity rules with performance standards that included undertaking an ecological survey to identify and avoid any significant vegetation, including threatened plants, the habitats of threatened species or wildlife habitats to ensure that environmental effects are adequately assessed. This would enable the Protected Natural Area survey report and information held by DoC on threatened plants in the Waitakere Ranges to be reviewed. However although the SNZHB8630:2004 limits vegetation clearance along bush paths and tracks it is considered that new tracks which are classified as Parks Infrastructure and require resource consent are the appropriate process to consider track realignments. Temporary measures may need to be put in place for track subsidence to allow access. Providing for track realignments may result in the slow modification of a track over time, whereas the establishment of a new alignment would be more comprehensively assessed as it would require an application for resource consent as *Parks Infrastructure*. Some submitters have raised address concerns about the use of performance standards and it is considered that they must be recognised such as the erosion and sediment controls and the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004) because they provide a level of certainty.

The Committee understood that prior to the introduction of Plan Change 12 vegetation alteration for track and trail systems was a Permitted Activity with no parameters defining the extent of the work. Parks Maintenance is now clearly defined and although a Permitted Activity in the Green Network must meet the requirements of SNZHB8630:2004. Any new infrastructure requires a resource consent if it is within the Green Network.

4.3.4 Decision

Submission (12/2/-)

The reference 3.10.3 of the submission by ARC to include provision in the definition of Parks Infrastructure for farm fencing under the bullet point 'entry gates, track marking bollards, soldier bollards and chains, post and rail fences or similar fencing' is accepted by the Committee as it will provide clarity to the definition.

The reference 3.9.2 of the submission by the ARC for the definition of Parks Maintenance to include licensees in the bullet point 'repairs and maintenance to the exterior of parks buildings, parks facilities, parks field structures, parks furniture and parks signs...provided that the work is authorised by WCC, ARC or DoC and /or undertaken by their staff, leasees or contractors' is accepted by the Committee because it provides clarity to the definition.

The reference 3.10.1 of the submission by the ARC to broaden the scope of vegetation alteration permitted in the definition of Parks Maintenance for a distance greater than 1.0 metre from the edge of an existing track, or park access road is rejected by the Committee. The ARC submission requested that the Parks Maintenance definition should include reference to the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004), and the Hearing Report recommended that this standard be incorporated into the rules as a performance measure. The standard provides for vegetation alteration up to 1 metre from the centreline of any paths or tracks because it is measured

from the centre line of the path or track. This is a National Standard that should apply to the paths and tracks in parks and reserves in the Green Network (Restoration, Managed, Coastal, Protected and Riparian Margin/Coastal Edge Natural Areas).

A consequential change will require the definition of Parks Maintenance to be amended by amending the words of the second bullet point for "vegetation alteration.... 'up to a maximum of 1.0 metre from the edge' of an existing footpath to provide for unimpeded pedestrian access on the path and from the edge of existing cycleways, bridle trails or boardwalks" This will apply in the General Natural Area which includes urban parks where the provisions need to be relaxed to accommodate the various widths of paths which are sometimes combined with cycleways and for requirements for safety. The actual vegetation alteration rules will contain the differentiation between the General Natural Area and the Natural Areas in the Green Network

The reference 3.10.2 (ii) and (iii) in the submission by the ARC seeking provision for the re-alignment of tracks within specified parameters because limiting it to 1.0 metre of the existing track is not practical **is rejected** by the Committee. It is necessary to have approved performance standards for permitted activities to provide a level of certainty for the sustainable management of resources.

Further submission (12/10/2)

The further submission by DoC (12/10/2) reference 3.10.1 **is accepted** by the Committee to the extent that vegetation alteration should relate to the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004) in the Natural Areas that comprise the Green Network as these areas contain significant and outstanding native vegetation.

This standard provides for vegetation alteration up to 1 metre from the centre line of the path or track rather than the edge of any paths or tracks. Compliance with these standards would ensure that existing threatened or scarce plant resources next to existing tracks are more likely to be afforded protection.

The rules for the Natural Areas in the Green Network will be relaxed to the extent that a new category in the Parks Maintenance definition will include provision for minor track realignments to damaged sections of track up to a maximum length of 30m in a year with the proviso that an ecological survey is undertaken prior to undertaking the work of realigning a track.

Further submission (12/13/-5)

The further submission by Te Atatu Residents and Ratepayers Association (12/13/-5) opposing in its entirety the ARC Submission (12/2/-) is rejected because it does not present an appropriate alternative framework for the management of publicly owned open space.

4.4 Submissions by Te Atatu Residents and Ratepayers Association (12/3/-) and (12/4/-)

4.4.1 The Te Atatu Residents and Ratepayers Association makes the submission (12/3/-) identified by the submitter as Submission 'A' in opposition of the plan change in its entirety and the operative provisions.

Submission (12/4/-) is identified by the submitter as Submission 'B', and opposes the entire Plan Change, the operative District Plan provisions, Proposed Plan Change 2 and the current appeal.

4.4.2 Submissions (12/3/-) and (12/4/-) are supported entirely by further submissions from Anne Grace (12/16/-8)

4.4.3 Submission (12/4/-) is opposed by a further submission from WaterCare Services Ltd (12/9/-1) because the proposals for Harbour View – Orangihina by the Te Atatu Residents and Ratepayers Association do not make provision for vegetation clearance and infrastructure which should be the same as in the Open Space Environment.

Evidence Presented

The Committee heard evidence from Anne Grace, presented jointly for herself and for the Te Atatu Residents and Ratepayers Association that both parties did not accept the reasons in the Hearing Report for recommending some of their submissions be rejected because they are beyond the scope of the Plan Change. The evidence covered many issues and the first point raised in the evidence noted that the Council is able to amend the District Plan 'any way it chooses in response to submissions on Proposed Plan Changes'.

Much of the evidence in the submission focused on the importance of the Open Space Environment being public land in which significant natural and cultural heritage resources are located which need protection in perpetuity for future generations and that the use and development of open space must ensure that there are no adverse effects on these resources. Parkland in the Waitakere Ecological District was the focus of particular concern and Ms Grace included a policy and rule in her evidence to ensure absolute protection from inappropriate development and use until the area is encompassed by the Waitakere Ranges National Heritage Area legislation.

It was also the submitter's opinion the Plan Change 12 sets up processes for the Council and other public land owners that do not always include public involvement and this is contrary to the RMA as its processes are inclusive to enable the community to participate. Ms Grace also raised concerns about the deficiencies she saw with Operative Reserve Management Plans, and that there needed to be a definition for them in the District Plan which would include a full assessment of effects in accordance with the Fourth Schedule of the RMA, along with a new definition for Resource Protection. Ms Grace's evidence included opinions about the lack of protection of natural resources and that the proposed activities that could occur as a result of the Plan Change would be to the detriment of the environment. The re-identification of unformed roads was raised. The last section of the evidence included discussion and new proposals specifically for the Harbour View – Orangihina Park.

Discussion

The evidence presented by Ms Grace on behalf of the Te Atatu Residents and Ratepayers Association included many examples to illustrate the points raised in the original submissions. Proposed Plan Change 12 includes a new framework for the management of land identified as Open Space Environment. The two new policies, new definitions and amendments to the Open Space Environment and Natural Areas rules are part of this framework for managing parks and reserves.

Proposed Plan Change 12 needs to be considered in the context of all the existing objectives, policies and methods in the District Plan. The objectives and policies in the District Plan are formulated around the natural resources of water, land, native vegetation, air, landforms, natural character of the coast, margins of lakes and rivers, landscapes and heritage and so on. The Appendices of the Policy Section of the District Plan contain inventories of the City's natural resources, including areas of outstanding and significant fauna habitat, outstanding natural features, landscape elements, views and coastal protection areas, many of which are located in the Open Space Environment. It is considered that Ms Grace's evidence about the importance of these natural resources and the relief sought, which includes a suggestion for a new policy for the protection and preservation of natural and cultural heritage features in the Open Space Environment is worthy of consideration. Ms Grace suggested that the policy should be included under Objective 12 as it relates to Heritage. It was considered at the time the plan change was initiated that there needed to be a greater focus on the Open Space Environment and this was the reason two new policies were introduced, one relating to the role of parks for recreation and the other to the need to balance recreation and protection of the natural environment. However the introduction of a third policy that focuses in general on the significant natural and cultural heritage resources in the Open Space Environment under Objective 12 has merit and would be appropriate. The new policy would be general and not specific to particular parks. The inclusion of specific items in the District Plan Appendices that Ms Grace has identified on Harbour View – Orangihina Park could not be included in the policy as there is an appeal on that land and its resolution is independent of this Plan Change. Furthermore, a rule to cover the land within the Waitakere Ranges is also not

considered necessary. In the Open Space Environment activities or development in the Green Network that require an application for resource consent will be assessed in terms of the assessment criteria relating to the rule and the objectives and policies in the Plan.

A point (15) raised by the submitter relating to the perception that the changes to the Introduction to the Rules, Rules Content, Written Consents and Notification enabled Waitakere City Council and other public agencies to treat themselves differently from private landowners is rejected. It is stated clearly and in bold at the beginning of the section (Page 6 Vol 1) that it is a **guideline only**. The changes have been made to existing provisions for Discretionary Activities that either will not generally be notified, will not be notified if the written consents of owners of adjoining sites are submitted or will generally be notified. As a result of a submission from the ARC that written consents of the many owners of sites adjoining their large parkland holdings may be onerous when the proposal may be some kilometres away from a site boundary the Hearing Report included a further amendment to the guideline stating that written consents would be required from those persons affected by the proposal, to cover this possibility.

Another point (16) of the submitter's evidence noted that the Introduction to the Rules section (Page 3) discussed above, did not distinguish between land owners and administrators in the description of Open Space under the heading of Human Environments. This description was not changed by Plan Change 12 but was used in the Plan Change text and the ARC submission requested a minor change to include the additional words 'or managed' to reflect the difference between ownership and management. The points raised by Ms Grace are noted but it is not considered necessary to include the word 'administer' in this existing description as managed has a similar meaning.

Point 20 of the submitter's evidence raises issues about what constitutes an Operative Reserve Management Plan as it has not been defined by the Plan Change. Reserve Management Plans are not defined in the Reserves Act 1977, but Section 41 of the Act contains the procedures to be adopted in preparing them. Parks Concept Plans are not a statutory document but Plan Change 12 only refers to both documents as reference sources in the assessment criteria of the rules of the Open Space Environment and Natural Areas. The reason that these documents were included in the assessment criteria was to ensure that any relevant studies or planning that has been undertaken by the Parks Section of the Council are considered. Section 104 Consideration of applications (RMA) lists the matters to be considered when assessing applications and 1(c) of that section states 'any other matter the consent authority considers relevant and reasonably necessary to determine the application' which indicates that the authority should include all factors that may have a bearing on the matter under consideration.

Another matter raised by the submitter in a range of contexts is that it is the Council's responsibility to ensure the sustainable management of the resources held within public parks and a rule for resource protection is proposed. However, the Committee understands the purpose of the Act is the sustainable management of resources. Sustainable management is defined in the Act as "*managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while*

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

The Committee considers that sustainable management is not necessarily about locking up resources in perpetuity in parks as advocated by the submitter but is about sustainably managing resources and mitigating effects on the environment to meet the requirements of

the RMA. The Natural Areas rules in the Plan reflect the different natural resources in the City.

The introduction of the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB8630:2004) as a performance standard for Parks Maintenance which is a Permitted Activity in the Vegetation Alteration rules for all Natural Areas, will ensure that vegetation alteration for track maintenance meets national standards in the Green Network. This necessitates a minor amendment to the definition of Parks Maintenance.

4.4.4 Decision

Submissions (12/3/-) and (12/4/-)

*The submission by the Te Atatu Residents and Ratepayers Association opposing the entire Plan Change 12 and operative provisions because it does not promote the sustainable management of natural and physical resources and otherwise conflicts with the purpose and principles of the Resource Management Act 1991 (Part II) is **rejected** by the Committee because the Plan Change is an improved framework for managing the Open Space Environment within the context of the existing objectives, policies and rules in District Plan, which is an effects based document.*

*However, the introduction of a new policy in the Heritage Objective that focuses on the protection and preservation of natural and cultural heritage features in the Open Space Environment is **accepted** by the Committee in so far as it will highlight the importance of these resources which are already largely identified in the District Plan Maps and Appendices.*

*The introduction of new rules relating to both the Waitakere Ranges Regional Park and more particularly to Harbour View – Orangihina Park are **rejected** by the Committee because Plan Change 12 introduces policies and rules with some amendments that maintain a balance between the recreation needs of the community and the protection of natural and cultural resources.*

*The introduction of new rules relating to Harbour View – Orangihina Park are **rejected** by the Committee because Plan Change 2 relating to that land is the subject of an appeal which will be resolved in the Environment Court.*

Further Submission (12/16/-8)

*The further submission by Anne Grace (12/16/-8) supporting the Te Atatu Residents and Ratepayers Association is **accepted** by the Committee to the extent that a new policy in the Heritage Objective that focuses on the protection and preservation of natural and cultural heritage features in the Open Space Environment will be included in the Plan Change that highlights the importance of these resources which are already largely identified in the District Plan Appendices.*

Further Submission (12/9/-1)

*The further submission by WaterCare Services Ltd (12/9/-1) opposing the proposal to have separate rules for Harbour View – Orangihina Park which do not include any provision for vegetation clearance for the maintenance of their infrastructure on the park is **accepted** by the Committee because the rules would not fit into the proposed framework for the management of the Open Space Environment.*

4.5 Submission by Anne Grace (12/5/-)

4.5.1 Ms Anne Grace makes her submission in opposition to Plan Change 12 in its entirety.

4.5.2 Submission (12/5/-) is supported entirely by further submissions from Te Atatu Residents and Ratepayers Association (12/11/-3) and Anne Grace (12/17/-9)

4.5.3 Submission (12/5/-) is supported in part (points 6 and 7) by a submission from DoC

Evidence Presented

The Committee heard two separate submissions from Ms Grace. The particular matters that Ms Grace raised in her evidence elaborated on the primary concerns of the submission and that Plan Change 12 is contrary to various provisions of the Resource Management Act. The Parks Maintenance definition includes provisions for vegetation alteration up to a metre in width from the edge of tracks, persistence in not addressing the issues associated with 'genetic pollution' through inappropriate 'natives' being planted in the vicinity of significant natural indigenous vegetation (permitted already in all natural areas) which is inconsistent with the Auckland Regional Policy Statement 1999, and the omission of provisions to control people and dogs in the habitat of threatened bird species.

Ms Grace also noted her opposition to the proposed changes in the Hearing Report recommending the removal of the words 'environmental best practice methods' from the definition of Parks Maintenance to their inclusion as a condition in the Natural Areas rules.

Evidence was presented about threatened plant species in parks in Waitakere City, and the lack of protection of them in the District Plan. Evidence, including some examples, was given that many threatened plant species in parks are small and close to the sides of tracks where they are most vulnerable to track maintenance programmes, although they can also be destroyed with the establishment of new tracks and other park infrastructure and facilities. The relief sought was reiterated as being the introduction of a new City Wide rule to protect threatened species and included recommendations and proposed wording for the content of such rules.

Ms Grace also raised other biodiversity issues that are a matter of concern, including the unnatural genetic modification of remnant ecosystems at various levels – through the mixing of exotic species with indigenous ones (weeds and pests), through the introduction of native species that do not occur naturally in the locality, and through alteration of the locality specific genetic composition of individual species, both qualitatively (range of genes present) and quantitatively (proportions present). An example was given that related to recent weed removal and revegetation in Harbour View – Orangihina Park, and the evidence noted also that the District Plan currently permits the planting of any species except those listed in the 'Environmentally Damaging Plants Appendix of the Plan. Issues with the current provisions of the District Plan relating to native vegetation, such as the need to protect indigenous vegetation that is specific or naturally occurring in the City, the permitted activities for pruning vegetation where 20% of the foliage can be removed each year were also raised.

The final part of the evidence included the reiteration of a request for discussions with relevant parties and deferring making decisions on Plan Change 12 pending such discussion.

The second part of the evidence related to the landform located in Harbour View – Orangihina Park. It is Ms Grace's opinion that the landform meets the criteria in Policy 6.4.13 of the Auckland Regional Policy Statement 1999 and that it must be protected in the City's District Plan. The evidence included a detailed explanation of the geology of the landform which consists of two marine terraces separated by an ancient coastal cliff face or 'escarpment'. Her evidence included draft wording to include the Harbour View landform in Appendix H Outstanding Natural Features of the District Plan and a plan showing the geological features and extent of the terraces. According to the evidence presented by Ms Grace the Harbour View Landform is listed in the Inventory of Important Geological Sites and Landforms in the Auckland Region, being part of the Geopreservation Inventory of the Geological Society of New Zealand, with the Pleistocene terrace landform classed as a Category C. Ms Grace's evidence included a description and history of the landform and its importance as an example of one of the four major phases of the geological history of the Auckland region. Her evidence noted that as residential development has encroached along the coast it represents the last remnant and being in a very good state of preservation its aesthetic, scenic, scientific and educational value has increased in the last decade.

In addition Ms Grace's evidence included the criteria from Appendix D Methodology of the District Plan for determining sensitive ridges, headlands, scarps and cliffs, and the evidence concluded that the Harbour View landform met the assessment criteria for inclusion as a Natural Sensitive Ridge.

The last part of the evidence summarised potential adverse effects likely to arise from the activities provided for by Plan Change 12 in Harbour View – Orangihina Park particularly within the area classified as General Natural Area. Ms Grace concluded by stating that the best option for the sustainable management of the landform is to protect and preserve it from development. Ms Grace's disagreed with the conclusion in the Hearing Report that the Plan Change could not deal with the incorporation of the Pleistocene terraces into the District Plan because it was beyond the scope of the Plan Change.

Discussion

The relief sought in Anne Grace's submission included nine points, the first being to abandon the Proposed Plan Change. As was discussed previously the submitter seeks a completely different framework for managing open space. The approach, suggested by the submitter would require a change in the philosophy of the District Plan's management of resources. The Committee considered that the Green Network through the Natural Areas is currently the most appropriate framework for the sustainable management of natural resources. In addition the Committee considered that reserve management plans are another tool for the management of natural resources, and the Council is gradually preparing them for its parks.

Ms Grace's submission requested the removal of reference to landowner's documents in the definitions for Parks Maintenance and Parks Infrastructure and the Committee accepts the changes as recommended in the Hearing report. However, contrary to the evidence presented the Committee considered that it is appropriate to include the performance standard 'environmental best practice methods' in relation to Permitted Activities in the Natural Areas Rules, because it is a method that is currently part of the Natural Areas rules relating to both vegetation alteration and earthworks in the District Plan.

The provision in the definition of Parks Maintenance allowing vegetation alteration up to a metre from the edge of a path or track has been reconsidered given it is different from the requirements of the New Zealand Standards Handbook for Track and Outdoor Visitor Structures (SNZHB 8630:2004) which make the measurement from the middle of the path or track. Therefore the Committee accepted Ms Grace's submission to the extent that the provisions should apply to the Green Network Natural Areas but not to the General Natural Area which may include urban parks with wider paths and cycle ways but would certainly not be through protected vegetation.

Ms Grace's evidence included her opinion relating to various biodiversity issues including her views on the unnatural genetic modification of remnant ecosystems at various levels, and noted that the Plan Change provides an opportunity to ensure that indigenous biological diversity is maintained on parks through the "management" of the protection of these resources. While the science of ecology has probably evolved in the ten years since the Proposed District Plan was publicly advertised in late 1995, the Committee considered that the existing framework of Natural Areas that reflect the Green Network is the most appropriate framework for the sustainable management of natural resources. In addition reserve management plans provide another tool for the management of specific natural resources on parks, and they are gradually being prepared for all parks.

The Committee considered that the biodiversity concerns raised by Ms Grace cannot be addressed by the Plan Change as the provisions in the District Plan would need to be reviewed and further scientific opinion would need to be canvassed including consultation with DoC and the ARC to ensure changes, if required, were appropriate. The Committee considered that ecological restoration in the City is undertaken by both private and public

land owners and that current methodology and techniques reflect best practice. Therefore the Committee rejected incorporating the proposals in this evidence into Plan Change 12.

Ms Grace's evidence included examples of Council consents that she considered illustrated her concerns and did identify process matters that can be remedied now that the Council has a Heritage Advisor. Furthermore the current District Plan rules for the Open Space Environment had been used to assess the applications and not the Proposed Plan Change. The Committee considers that Plan Change 12 will achieve its objectives of improving the framework for the management of the Open Space Environment, and the Committee rejects the changes proposed by the submitter.

The Hearings Report addressed Point 8 of the submission relating to the protection of the Pleistocene Terraces following communication with the Convenor of the Geopreservation Inventory. As his advice was that 'sometime when the District Scheme is being reviewed it could be considered for adding to it – I see no hurry'. However, the Convenor subsequently advised Ms Grace 'that these comments were a result of not being fully aware of potential changes to the District Plan that could allow for development of the park.' Ms Grace considers that the landform meets the criteria for inclusion in the District Plan in terms of the methodology for identifying outstanding landforms in Appendix 'D' of the Plan and has provided information and a plan showing the geological features and extent of the terraces in response to the Hearing Report, which noted that, if the Council agreed in the future to their inclusion by way of a Plan Change, a thorough investigation and survey to exactly define the area would be required. However, the Committee considered that matters that include seeking specific changes to the land in the Harbour View – Orangihina Park are outside the scope of Plan Change 12 as the Environment Court will determine that as part of the outcome of the current appeal against Plan Change 2 (ENV A0026/05) relating to this land. Thus the matters relating to Harbour View - Orangihina are all rejected.

Points 15, 18 and 41 in Ms Grace's evidence raised issues with the changes to the provisions for notification/non-notification and the contention that the Council and other public agencies wished to treat themselves differently from private landowners. The Rules Introduction section of Volume 1 (page 6) of the District Plan deals with written consents and notification of discretionary and non-complying activities. It is a guideline only (in bold in the text) and was changed by Plan Change 12 to include applications in the Open Space Environment. The changes to this section were to recognise the importance of Operative Reserve Management Plans which have been through a community consultation phase and contain the detailed planning for the use of parks. The further changes requested by the ARC were in response to their large landholdings where there are often many adjoining land owners but only a few may be directly affected by a proposal. The Committee considers that although this section is a guide only the changes provide greater certainty and it is entirely appropriate to make provision for non notification when the circumstances apply rather than using public funds wastefully. The Committee rejects Point 41 of the evidence that the District Plan 'guide' provides special rules for the Open Space Environment because the following environments - Community, Working, Living and the Transport Environment are all included. Sections 93 and 94 of the RMA set out the requirements for notification/non-notification and will always be the determinant of whether an application for resource consent is notified or not. As case law RM94.06 Rights of public participation states: "the scheme of the Act is that the general rule as to non-notification is predicted upon routine applications consistent with the district plan in which the public interest is to be discerned from the plan itself."

Point 16 in Ms Grace's evidence raised issues about the difference between landowners and administrators of public reserve land. The Rules Introduction section of Volume 1 (page 3) of the District Plan includes a summary of the natural areas and human environments. The description of the Open Space Environment was not changed by Plan Change 12, but the description was used in the text of the Plan Change and the ARC made a submission advising that not all land in the Waitakere Ranges Regional Park is owned by the ARC and seeking a correction to the wording by adding 'or managed'. This change was recommended in the Hearing Report because it is important that the wording is accurate and legally correct. The Committee considers that managed has a similar meaning as the word administered and it is not necessary to make any further change.