

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 8 AUGUST 2006 COMMENCING AT 9.30 AM

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PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

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

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

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



3 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 11 July 2006.

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 11 July 2006, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 24 JULY 2006)

INTRODUCTION

The following is a list of legal actions in respect of matters which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include references to Council's District Plan, minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes.

COSTS OF SWIMMING POOL LITIGATION

At the last meeting of the Planning and Regulatory Committee a question was raised as to the amount of external legal costs incurred by the Council to litigate matters relating to the Fencing of Swimming Pools Act. External legal costs were incurred in relation to the declaratory judgment proceedings commenced in 2003 and the recent prosecution for breaches of the Act against Mr and Mrs G. A. Osborne.

External legal costs incurred by the Council in relation to the declaratory judgment proceedings were approximately \$55,000 plus GST and disbursements made up as follows:

Kensington Swan	35,000
Contribution to respondents' costs	<u>20,000</u>
	\$55,000

In relation to the contribution made to the Respondents' costs, Councillors will recall that one of the reasons why a decision was made to proceed by way of declaration was that in such proceedings it is normal for the party that initiates the proceedings (in this case the Council) to meet the costs of the party that agrees to stand on the other side of the argument.

At the hearing Justice Randerson made an order for costs on the basis of scale 2B, which was calculated to be an amount around \$12,000. Council was, however, aware that the respondents' had a late change in representation which had involved them in extra expense beyond their control so that costs in excess of \$30,000 had been incurred by the respondents. In those circumstances the Chief Executive authorised an additional payment of \$8,000 as a contribution towards the respondents' costs.

External legal costs incurred by the Council in relation to the prosecution against Mr and Mrs Osborne were \$28,217 plus GST and disbursements. Since this was the first occasion, in the memory of current staff, in which the Council had faced a defended hearing in relation to a prosecution for offences against the Act, Patrick Mulligan from Kensington Swan was retained. The proceedings were protracted. The first hearing date allocated was abandoned when the Judge was not available. When the matter was heard, the hearing lasted all day. The subsequent sentencing hearing was also adjourned to allow the parties to make written submissions in relation to sentence.

As a consequence of the fines imposed and orders for costs made by the Judge the Council will make a recovery against costs incurred as follows (subject to payment of the fine and costs by the defendants):

90% of Mr Osborne's fine	900.00
90% of Mrs Osborne's fine	180.00
Solicitors costs and disbursements to be paid by Mr Osborne	1,593.34
Costs to be paid by Mrs Osborne	<u>150.00</u>
Total	<u>\$2,823.34</u>

The unrecovered net cost of the prosecution will be \$25,400 approximately, plus GST.

SUPREME COURT

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

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

A hearing took place in the Court of Appeal on 1 September 2005. The Court released its decision on 11 November 2005. The Court overturned the decision of Justice Venning in the High Court. However, the Court of Appeal did not restore the Environment Court findings, but instead referred the case back to that Court to reconsider its decision. The Court of Appeal agreed that the Environment Court had not taken into account the District Plan requirement that subdivision roading patterns should maximise connections within and between local neighbourhoods ("connectivity"). However, the majority judgment held that it was for the Environment Court to decide what weight should be placed on this factor, rather than for an appellate Court to do so.

The problem with the reasoning of the majority of the Court of Appeal is that it equates Council's role when approving subdivision consents, (particularly as to the roading component) as engaging in the expropriation of private land for public use, and overlooks (or at least relegates) Councils' district planning role. This has significant consequences especially as it carries the implication that councils may be required to compensate developers for the "public benefit" aspects of subdivisions. Leave to appeal to the Supreme Court was granted.

The appeal was argued on 11 and 12 July 2006. While there can be no assurance of the outcome the arguments presented on behalf of the Council appeared to find some favour with the court and a number of indications were given that the Court of Appeal decision was unlikely to stand. The real uncertainty relates to whether or not the Supreme Court will deal with the matter for itself or a further matter back to the Environment Court for further consideration.

It may be some time before we received the court's decision. The court has decisions outstanding in relation to appeals which it heard in October and November 2005.

COURT OF APPEAL

(Unchanged) Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (April 2006)

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and have already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt have appealed this aspect of the decision. This appeal is likely to be heard by the Court of Appeal later in the year.

HIGH COURT

(Changed) C W Williams and others v Waitakere City Council (February 2006)

Council has now been served with seven sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. An initial telephone conference was held on 23 May 2006. Council has filed applications to strike out the various claims on the basis that the events which trigger an obligation under the Public Works Act occurred prior to the offer back obligation came into force. This application has been set down for hearing in September 2006.

(Unchanged) Waitakere City Council v P W Mawhinney (February 2006)

The background to this matter is that Mr Mawhinney was served with a bankruptcy notice on 21 October 2005 in relation to \$5,063.16. This is a costs award due to Council for winning a security for costs application in May 2005 in relation to the High Court proceedings referred to below. Mr Mawhinney opposed the application. This matter was heard on 21 March 2006. After oral argument the proceeding was stood down and Mr Mawhinney paid \$5,468.00 for the debt and costs of the bankruptcy notice. Associate Judge Faire then struck out Mr Mawhinney's application and awarded Council costs of \$2,610. An order has been made for Mr Mawhinney to pay within 14 days. Mr Mawhinney has not paid. A bankruptcy notice will be issued against Mr Mawhinney to recover this debt.

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

Mr Mawhinney filed an amended 62 page statement of claim on 31 March 2006, being the last day for doing so. A five day hearing has been allocated by the Court for the week of 6 November 2006. The amended claim has been reviewed and an application to strike out appeal has been filed with the Court.

The Associate Judge has made timetable orders leading up to the strike out hearing on 10 August 2006. Mr Mawhinney is also in breach of timetable orders in relation to an outstanding costs application with regard to security for costs. In light of the breach, we have requested that the Court make an order dismissing the claim. That matter will be called in Court at the next available date.

Mr Mawhinney has filed a very substantial affidavit (over 400 pages) in response to Council's strike out application. A response will be filed shortly.

ENVIRONMENT COURT

(Unchanged) Perceptus Limited & Swanson Heights Limited v Waitakere City Council (June 2006)
Waitakere Resource Consents Limited & Glorit Subdivision Limited v Waitakere City Council (June 2006)
Glorit Subdivision Limited & London & Greenwich General Trading Company Limited v Waitakere City Council (June 2006)

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under section 358 Resource Management Act 1991 declining subdivision consents and certificates of compliance. Notices of reply are still to be filed.

(Changed) David Paul Leaky v Waitakere City Council (May 2005)
All Seasons Properties Limited v Waitakere City Council (May 2006)

These are appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 & 386 Te Atatu Road and 9 Karamu Street. The activity is a non-complying activity. The appeals allege that the location of these premises in a residential area will adversely affect the integrity of the District Plan. The appeals were filed in late May and the parties are currently trying to agree on a draft timetable. It is anticipated that the appeals may well be heard later in 2006, if not settled before. The parties will seek timetabling orders shortly.

(Unchanged) Weddings Etc Limited v Waitakere City Council (January 2006)

These proceedings concern the noise levels generated by the operation of "Cassels" function centre in Scenic Drive. Weddings Etc Limited obtained a stay of the abatement notice (proceedings which were begun by the Chapmans) so that it can continue to operate at current levels (taking into account some proposed and already implemented noise mitigation measures). The Court granted the stay conditions which were proposed by Weddings Etc. Weddings Etc has agreed to obtain the necessary consents and undertake noise attenuation works during July 2006 (on a without prejudice basis) - a resource consent application was lodged recently and is currently being assessed by a consultant planner.

The appeal on the abatement notice has been set down for hearing in the week of 4 September 2006 (when building works are expected to have been completed in respect of noise mitigation measures).

(Unchanged) Waitakere Resource Consents Limited v Waitakere City Council (December 2005)

This is an appeal against a refusal to issue a certificate of compliance under s139 Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The Application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

Mr Mawhinney (the director of the appellant company) has breached timetable orders in relation to exchange of the evidence. The Court has determined to place this matter on hold pending the outcome of the Dilworth Structure plan proceedings (RMA 886/98) which are to be heard in mid May 2006. Following the resolution of the structure plan, Council is to file a memorandum with the Court suggesting a way forward.

(Changed) Auckland Regional Council v Waitakere City Council (October 2005)

An appeal by the Auckland Regional Council ("ARC") against a decision of this Council to grant consent to a proposed private high school and associated facilities. The Auckland Regional Council opposed the consent application alleging that granting consent to a new school outside of the Metropolitan Urban Limits ("MUL") would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limits ("MUL") and would create negative precedent effects. The matter had been taken off the "on hold" list at the request of the Auckland Regional Council. The matter is now on the standard track list of the Environment Court. Parties are now in the process of establishing an agreed a timetable for the exchange of evidence. Upon agreement, the parties will seek timetabling orders. It is likely the appeal will be heard in late 2006 or early 2007.

(Unchanged) Denver Holdings Limited v Waitakere City Council (October 2005)

An appeal by the applicant (Denver) against certain conditions imposed on a resource consent for a medium density housing development at 23 Denver Avenue, Sunnyvale. A related appeal by Mr J Baran against the Council's decision to grant the consent has since been withdrawn. The appeal has been placed "on hold" at the appellant's request. The appellant and Council have met recently to discuss the conditions on appeal with a view to resolving the appeal by consent, if possible (the appeal relates primarily to conditions requiring further clarification of the development, staging of landscaping works, financial contributions and fees payable).

(Changed) R & G Britten – 19 Church Street, Swanson (October 2005)

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Brittens property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. We are seeking final orders to require that the Brittens undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

The application and supporting evidence has been filed and served. At the last judicial conference in November 2005 Mr Britten gave an undertaking that there would be no further use of the access road and no earthworks would be undertaken in the vicinity of the slip and surrounding (potentially unstable) land. Mr Britten's engineer has undertaken an assessment of the affected land which has been filed in Court in affidavit form. On 24 March 2006, the Council filed further affidavits in reply (geotechnical, hydrological and planning evidence).

On 7 April 2006, Counsel for both parties met to discuss options for remedial works. Engineers for both parties are to discuss options for remedial works. The Council's engineer has advised of possible remedial works. However, the exact course to be taken will depend on the results of further investigative works at the property. Mr Britten's lawyers have been advised of the options. The Court has set a further reporting date of 31 July 2006. The Council will by this time report to the Court on the outcome of the private mediation with Mr Britten.

Separately and in parallel, the Council has initiated a mediation process with Mr Britten in an attempt to find an alternate resolution to expedite the matter. As a consequence of that process the parties are working towards concluding an agreement for the completion of remedial work in accordance with the Council resolution at its meeting on Thursday, 20 July 2006.

(Changed) I & Z Farac v Waitakere City Council

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It seeks to rezone all (or part) of the property as 'Living 2 Environment'. The Council has retained consultants to assess the Farac proposal; as a consequence, the Council has requested further information from the appellant (outstanding matters relate to stormwater and geotechnical issues regarding development of the subject land). Council has not yet received a response from the Faracs.

**(Unchanged) Auckland Regional Council v Waitakere City Council (May 2005)
Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)**

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

(Changed) Glorit Subdivision Limited and P W Mawhinney v Waitakere City Council (June 2005)

A further appeal by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Court in December 2005 and Mr Mawhinney's application to rehear has also been dismissed by the Environment Court (Judge Shepherd). Council has filed an application for costs.

However, Mr Mawhinney filed an appeal against both the strike out and rehearing decisions in the High Court. The appeal in relation to the original strike out was out of time and there was a hearing this month to determine whether leave should be given. After hearing submissions, the High Court determined to grant leave to the late appeal, but awarded costs of \$3,805.00 to the Council. Steps are being taken to enforce that award currently. There will also be a hearing on 2 August 2006 in relation to Council's costs in the Environment Court.

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

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a 7 lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Inc have lodged applications with the Court in support of the Council as Section 274 parties. A judicial conference took place on 5 September 2005 at which time the Court directed that this appeal be put 'on hold' to await the resolution of the Swanson Structure Plan appeals. Although the Swanson Structure Plan hearings have been completed, no final decision has been made by the Court. Therefore this appeal remains on hold until the Court releases its final decision.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth structure plan proceedings (RMA 886/98) have been concluded.

DISTRICT COURT

(New) H K Graham – 11 Karaka Road, Whenuapai (July 2006)

Charges have been laid under the Resource Management Act and Building Act 2004 in respect of the use of numerous unauthorized minor household units on the site. There are also fire safety and insanitary (drainage facilities) issues at the site due to the buildings being used for residential purposes.

These matters are listed for first mention in the Waitakere District Court on 4 August 2006.

(Unchanged) Rogers Earthmoving Limited, LM and KP Rogers, GP Fitzpatrick – 312 Lincoln Road (April 2006)

Charges laid under the Building Act 2004 for erection of a structural retaining wall that is not building code compliant and built without building consent, as well as a change of use from residential home to a business without building consent. This matter was adjourned on 19 May to permit service. The Court granted an adjournment on 23 June 2006 to 27 October for disclosure to be completed.

(Unchanged) Property Solutions Group Limited, Pratt G, Power R - 77E Colwill Road, Massey (April 2006)

Property Solutions Group acted in an advisory capacity to the owners of the property. They advised the owners to complete the development undertaken underneath the house even though no building consent had been granted. The company, its director and primary advisor have been charged under the Building Act 2004. This matter was adjourned on 19 May to permit service. The Court granted an adjournment on 23 June 2006 to 27 October for disclosure to be completed.

(Unchanged) J A and G R Drew – 42 Christian Road, Swanson (April 2006)

Charges laid under the Building Act 2004 for the conversion of the basement area of the house into a minor household unit. Building work was undertaken to create bedroom, bathroom, lounge area, including alteration and building of structural walls. The work is not building code compliant and no building consent was granted for the work. This matter was adjourned on 19 May to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

(Unchanged) W B and L A Henderson – 1/21 Arawa Street, New Lynn (April 2006)

Charges laid under the Building Act 2004 for significant alteration work undertaken at the property. This work extended the living area of the property. Structural walls were removed and replaced. None of the work meets the Building Code. No building consent was granted. The work has resulted in the possibility of excessive moisture penetration into the house. This matter was adjourned on 19 May to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

(Changed) J D Heays - 13 Turanga Road, Henderson (February 2006)

This matter relates to charges laid under the Building Act 2004 and the Resource Management Act 1991. The Building Act charges relate to the unauthorised building work which includes conversion and alteration of a building on the property, the erection of a double garage and new unit. The Resource Management Act charges relate to the contravention of the Waitakere City Council District Plan relating to increasing the net site area of the property without land use consent. The matter has been transferred to the Auckland District Court to be heard by an environment warranted judge. The matter was called on 11 May 2006 but the defendant was not ready to enter a plea. Counsel for the defendant sought an adjournment to initiate discussions with the Council in respect of the charges. The matter was set down for a call on 9 June 2006 to report back to the Court on those discussions. The defendant intimated the he would be entering a guilty plea to one charge of doing unauthorised building work. The Court heard on 9 June 2006 that the defendant was to apply for a certificate of acceptance for the unauthorised building work and retrospective resource consent for the contraventions of the District Plan. Mr Heays has made his applications; the Council is processing these applications. The Court has given the parties until 11 September 2006 to resolve the granting of the certificate of acceptance and resource consent.

(Changed) Graham W Gordon - 159A Scenic Drive, Titirangi (October 2005)

This matter relates to breaches of the Resource Management Act ("RMA") and Building Act 2004. Both matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter will proceed to a jury trial. The Resource Management Act matter was set down to be called on 26 April 2006 for pre-hearing issues to be considered. At the call-over on 26 April 2006 Mr Gordon entered not guilty pleas to all the charges. The matter has been set down for depositions on 15 June 2006. In respect of the Building Act 2004 matters, a defended hearing is set down for 30 October to 1 November 2006. The matter will be heard with other similar offences to which Mr Gordon has pleaded not guilty. The Resource Management Act charges have been set down for 5 days at the Auckland District Court before a jury in May 2007.

(Unchanged) McGuigan Syme Chilcott Ltd, G Pitts, D Owens Limited, M Engel, - 71 Riverlea Road, Whenuapai (August 2005)

Charges laid under the Building Act 2004 for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was called on 19 May 2006 where all but the owner of the site, Mr Engel, entered a guilty plea. As the engineering company McGuigan Syme Chilcott Limited entered a guilty plea, charges against the directors of the company were withdrawn. Sentencing is set down for 9 August 2006 for McGuigan Syme Chilcott Limited, and G Pitts. D Owens Limited will be sentenced on 28 September 2006 due to the unavailability of Counsel for the defendant.

Mr Engel entered a not guilty plea through his solicitor on 19 May 2006. The Court set the matter down for 23 June 2006 and required that on that date the defence set out a prima facie defence, the number of witnesses it wishes to call and the number of days the parties think the hearing will take to complete. The Court was informed on 23 June 2006 that the defendant wished to run an argument based on the defence that Mr Engel could not reasonably have known that an offence was being committed. On behalf of Council the applicability of the defence was opposed based on correspondence received from the defendant stating that he was going to breach the Building Act. The matter is set down to be heard on 23 and 24 November 2006. A total of four witnesses will be called, two for each side.

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

Charges were laid under the Resource Management Act 1991 for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. The defendant was the mother of the offender and took responsibility for permitting the clearance. A restorative justice conference was held on 3 April 2006 where the defendant took responsibility for the actions of her son and agreed to a planting and a maintenance programme for five years of 100 trees. The parties reported to the Court on 7 April 2006 for sentencing. The defendant was discharged without conviction as a result of the agreement reached at the restorative justice conference and her willingness to co-operate with the Council. The planting programme is to be prepared and submitted to the Council for consideration. Planting is to take place by September of at least 100 trees. The Council will report back to the Court on 13 October 2006.

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

Charges were laid under the Resource Management Act regarding the contravention of District Plan Rules (as the property is being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent) and for contravention of an abatement notice. Mr Stanic pleaded guilty. A restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was reached that Council would assist the defendant to remove the vehicles from the property and that no further vehicle repair work would be undertaken at the property. The property has since been sold; there are no on-going issues.

Sentencing took place on 10 July 2006. Mr Stanic was convicted and sentenced to 150 hours' community work and was ordered to pay \$452 towards the prosecution costs.

RECOMMENDATION

That the Legal Update (As At 24 July 2006) be received.

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



PART C - ENVIRONMENTAL MANAGEMENT

5 DRAFT GROWTH MANAGEMENT STRATEGY FOR WAITAKERE CITY

PURPOSE OF THE REPORT

The purpose of this report is to seek from the Planning and Regulatory Committee endorsement of the Working Draft Growth Management Strategy for Waitakere City (the Strategy) to be used to support Waitakere City's case in the Local Government Auckland Amendment Act 2004 growth hearings in late August 2006.

BACKGROUND

In March 2005 several District Plan Changes were notified as part of the Growth and Transportation Integration Programme in accordance with the requirements of the Local Government (Auckland) Amendment Act 2004 to align District and Regional Plans with the Auckland Regional Growth Strategy and better integrate land use and transportation planning. To support this package of plan changes a preliminary draft version of the City Growth Management Strategy was submitted to the Auckland Regional Council. At the time it was recognised that further work needed to be undertaken in order to finalise this draft Strategy. This included further population and employment capacity modelling, a broadening of the Strategy to consider wider growth issues, and a refocus to appeal to a wider audience.

The capacity work has now been completed. This has allowed employment capacity data to be added to existing population modelling work to provide a more comprehensive vision for the City. Further work looking at key infrastructural and environmental issues has also meant the Strategy could more comprehensively detail key growth issues. The addition of area profiles has meant that information on specific urban and future urban growth areas in relation to past land use, present census data and future employment and population profiles has been incorporated. This has made the Strategy more useful to a wider audience in that people who are interested in growth generally can focus on Part One of the Strategy whilst those interested in specific areas can focus on Part Two which contains area profiles.

The Committee will be aware that significant work has been undertaken to develop the Long Term Council Community Plan, and as part of that process the Council has endorsed a long term framework approach to city growth that looks out 100 years. Currently the Auckland Regional Council is also updating the Regional Capacity Study, developing a regional Long Term Framework (the START Project) and reviewing the Regional Growth Strategy. 2006 is also census year for which detailed data will be released in 2007. It is proposed that the Waitakere City Growth Management Strategy remain draft until this relevant and important work is finalised. In the interim it is important that the new working draft Strategy be approved so that the document can be utilised to support Waitakere City Council's case at the Local Government (Auckland) Amendment Act 2004 hearings in August 2006.

It is anticipated that the new Working Draft of the Growth Management Strategy for Waitakere City will have been circulated and presented to Councillors in a workshop prior to the Planning and Regulatory Committee meeting in August 2006.

STRATEGIC CONTEXT

The Working Draft Growth Management Strategy for Waitakere City will be utilised to inform all aspects of Council work ranging from supporting the strategic direction outlined in the Long Term Council Community Plan to detailed asset planning for the City. The Strategy has been developed in light of regional and sub-regional growth strategies and the Local Government (Auckland) Amendment Act 2004 principles to support quality urban consolidation in a manner that better integrates land use and transport planning, provides opportunities to maximise local employment, and protects highly valued and sensitive natural areas such as the Waitakere Ranges.

Key strategic platforms which relate to the Draft City Growth Management Strategy are:

- The *Urban and Rural Villages* platform, which seeks to deliver vibrant town centres;
- The *Strong Innovative Economy* platform, which seeks to provide quality local employment for Waitakere City residents;
- The *Green Network* platform, which seeks to retain and enhance the qualities of the natural environment within the areas that are proposed to be urbanised, while seeking the relief of development pressure on the non-urban areas such as the Waitakere Ranges and Foothills; and
- The *Integrated Transport and Communication* platform, which seeks to deliver sustainable urban form integrated with passenger and other transport networks in a way that reduces vehicle trips, reduces the dependence on private motor vehicles, and supports alternative transportation modes such as public transport, walking and cycling.

ISSUES

A full copy of the current Working Draft Growth Management Strategy for Waitakere City has been circulated to Members separately.

The key changes between the March 2005 version and the June 2006 version are as follows:

- Area profiles for Urban Growth and Future Urban Growth areas have been added looking at the past, present and future land use and growth of these areas (refer pages 29-108 of the Working Draft Growth Management Strategy for Waitakere City).
- Employment capacity information has been added to population data as a check to ensure that Council can achieve its residential and employment aspirations for the City out to 2021 (refer graphs page 31 of the Working Draft Growth Management Strategy for Waitakere City).

- More detailed information regarding energy, communications, and social infrastructure has been included to show the clear link needed to coordinate growth and infrastructure planning (refer pages 19-21 of the Working Draft Growth Management Strategy for Waitakere City).
- The environmental issues associated with growth are more widely canvassed particularly in relation to the City's natural resources and the impacts of climate change for growth planning (refer pages 14-16 of the Working Draft Growth Management Strategy for Waitakere City).
- Incorporation of the City's commitment to principles and long term approach to City planning.
- Discussion of the Regional START (Sustaining The Auckland Region Together) project has been included (refer page 13 of the Working Draft Growth Management Strategy for Waitakere City).

As noted this Strategy will support Waitakere City Council's case in the Local Government (Auckland) Amendment Act 2004 hearings in August 2006. This Strategy is not new but a refined version of the one that was submitted to the Auckland Regional Council in March 2005 to principally support Plan Change 16 "Managing City Growth". The proposed changes seek to address submissions received on Plan Change 16. Accordingly, no further consultation is considered necessary at this stage particularly as further consultation will be completed following the incorporation of additional key data and prior to the Strategy being finalised.

RESOURCES

Funding and resources have been provided in the 2005/2006 Annual Plan and the draft 2006/2007 Annual Plan to develop the Working Draft Growth Management Strategy for Waitakere City as part of the Growth and Transportation Integration programme.

CONCLUSION

The Working Draft Growth Management Strategy for Waitakere City has been updated to include key data to support the Council's position in the Local Government (Auckland) Amendment Act 2004 hearings in August 2006 and to appeal to a wider public audience. Whilst the Strategy will stay draft pending the completion of significant regional and City growth planning work it is important that an updated draft is adopted by Council so that staff can proceed to hearing with an agreed Council position.

RECOMMENDATIONS

1. That the Draft Growth Management Strategy for Waitakere City be received.
2. That any changes recommended at the workshop be approved and incorporated in the strategy.
3. That the Planning and Regulatory Committee endorse the June 2006 Working Draft Growth Management Strategy for Waitakere City.

Report prepared by: Matt Heale, Team Leader - Sustainable Management.



6 DRAFT SUBMISSION ON THE WASTE MINIMISATION (SOLIDS) BILL

PURPOSE OF THE REPORT

A1-A7 The purpose of this report is to provide the opportunity for the Planning and Regulatory Committee to submit on the Waste Minimisation (Solids) Bill currently before the Local Government and Environment Committee of Parliament. Submission on the Bill are attached at pages A1 to A7.

BACKGROUND

The Waste Minimisation Bill (the Bill) is a private member's Bill presented for its First Reading to the Local Government and Environment Committee in June by Nandor Tanczos for the Green Party. The Green Party has a goal of achieving a Waste Free Aotearoa New Zealand by 2010 through specific Waste Minimisation legislation.

The Local Government and Environment Committee are seeking comments on the Bill before the closing date of 1 September 2006. Local Government New Zealand is encouraging local government to submit on the Bill and/or contribute comments for a Local Government New Zealand submission.

A3-A7 Discussions and consultation has also occurred over the last three months on a draft proposal for a national waste levy. Significant feedback was received from Councils and will be relevant in considering the proposals in the Bill for a national waste levy. Auckland Territorial Councils' Waste Managers, as a group, have had significant input into the Ministry for the Environment's investigations into waste levies, and have drafted a submission on the Bill, relating to a waste levy as attached at pages A3 to A7.

The Committee is invited to

- Submit its comments on the Bill;
- To forward its comments to Local Government New Zealand as contribution to a joint submission;
- Endorse the Auckland territorial councils' joint submission prepared by the respective waste managers.

STRATEGIC CONTEXT

The Council's strategic platform for Zero Waste holds the vision that Waitakere will be a clean and attractive city that turns all its waste into resources. This strategic direction aligns with the New Zealand Waste Strategy: Towards zero waste and a sustainable New Zealand, 2002. The Waste Minimisation Bill aims to legislate for actions identified in the Waste Strategy that so far have only been implemented through voluntary action or not implemented at all.

ISSUES

Zero Waste Efforts

In March 2006, a workshop on initiatives in the Council's Waste Management Plan 2005 to meet zero waste objectives was held with Councillors. At this workshop it was identified that new initiatives to further reduce waste to landfill will only be able to achieve an additional 3-4% reduction through collection and composting of kitchen waste, 1-2% from full operation of the Resource Recovery Centre and better management and diversion rates from the inorganic collection, and 10-12% from recycling of construction and demolition waste. All this could potentially reduce landfill from the current 75% of

waste received down to 60%. It was further emphasised that this could only be possible through funding the initiatives from a waste levy.

The Waitakere City Council Waste Bylaw 2005 introduced a provision which was intended to authorise the Council to impose a waste levy on all collectors, transporters and disposers of solid waste. The levy was intended as a mechanism to provide funding for waste minimisation proposals and also to provide economic incentives and disincentives for particular waste generation activities. However, this provision was challenged by way of judicial review that Court found that the Council did not have the legal power to impose such a levy and that part of the bylaw was held to be *ultra vires* and accordingly was quashed. Without the ability to impose a waste levy, the Council has to rely on rates or user charges to fund additional waste minimisation initiatives.

In addition, the Council has a level of control only over the household refuse it collects, which represents only approximately 50% of the waste generated in Waitakere. The Council is largely dependant on the range of voluntary mechanisms introduced by the Government to reduce waste, namely; the Packaging Accord and Product Stewardship schemes.

The Waste Minimisation Bill attempts to legislate for these schemes to become mandatory and for landfill bans to be imposed for certain waste streams. The Bill further legislates for a national waste levy. All these provisions will assist the Council in meeting zero waste objectives.

Summary of the Bill

The Bill contains a number of measures with the objective of minimising waste disposal including:

- Establishing a centralised Waste Minimisation Authority;
- Specifying roles of territorial authorities for waste minimisation and management (waste control authorities);
- Enabling prohibition on disposal of certain materials;
- Introducing a levy on residual waste to provide both a disincentive and a funding source for waste minimisation;
- Ability to require extended producer responsibility programmes for certain products including related targets for waste reduction;
- Requiring organisational waste minimisation and management plans to be implemented by all sectors to be phased in over a 10 year period starting with largest organisations;
- Requiring all public organisations to implement procurement policies which give priority to waste reduction and also to report on their resource use, waste generation and waste management.

Waste Minimisation Authority (Part 2 of the Bill)

The Waste Minimisation Authority (the Authority) would be dedicated to facilitating waste minimisation at a national level specifically through education, promotion, and support. The Authority would be a similar type of organisation to the Energy Efficiency and Conservation Authority.

The Authority would also be responsible for monitoring waste generation and reduction; updating the New Zealand Waste Strategy every 5 years; setting waste reduction targets; administering the waste levy; arranging research and development; approving and monitoring producer responsibility programmes required under the Bill; supporting all sectors to minimise waste; assisting with development of markets for recovered materials.

The Authority would be made up of 8-10 members appointed by the Minister following public nomination. Members would evenly represent public, private and community sectors and have relevant knowledge and experience.

The Authority is funded by levies, rent and charges received for carrying out any of its functions and by any funds appropriated by Parliament. The Authority must appoint a chief executive and may appoint employees to administer the affairs of the Authority.

Waste Control Authorities (Part 3 of the Bill)

This part of the Bill would effectively replace the waste management provisions in Part 31 of the Local Government Act 1974 and is therefore a key part of the Bill in respect of local government waste management responsibilities.

The "Waste Control Authority" is the territorial authority within each district. Territorial authorities can join together to form a joint Waste Control Authority. A Waste Control Authority has responsibility for waste management and minimisation in its area which explicitly includes:

- Promoting effective and efficient waste minimisation and management in accordance with the New Zealand Waste Strategy;
- Adopting a waste minimisation and management plan that is consistent with the New Zealand Waste Strategy (using the special consultative procedure) and reviewing its waste minimisation and management plan every 3 years.

Many territorial authorities already operate jointly or regionally on waste management issues. The ability to formalise this in terms of waste management plans and administration is positive. The requirement to have a waste minimisation unit would likely encourage further joint initiatives as it would be inappropriate and unnecessary to have a waste minimisation unit in every district. If a waste disposal levy is introduced as suggested in the Bill, then territorial authorities who do not have a landfill in their district will not receive any proceeds from the levy unless they form a joint Waste Control Authority with the territorial authority which contains the landfill serving their district. Residual waste from Waitakere is disposed of at the Redvale landfill which is in Rodney District. In order for Waitakere to be able to benefit from a waste levy under this Bill, the Council would have to negotiate joining together with Rodney District Council to form a joint Waste Control Authority.

Prohibition on Disposal of Materials (Part 4 of Bill)

This part of the Bill enables disposal of particular materials to be prohibited by order in council made by the Minister. The Waste Control Authority has the power to make inspections of either transported waste or the disposal facility to enforce the prohibition.

Waste Disposal Levy (Part 5 of Bill)

This part of the Bill imposes a waste levy on disposal of all residual waste. Disposal is defined as burying or burning of waste without any associated energy recovery, and includes cleanfills.

Every disposal facility would be required to have a weigh bridge, the operator is required to keep full records of waste received, report to the Waste Control Authority monthly and pay the levy to the Waste Control Authority monthly. The waste levy must be a separate line item on any receipt issued by the facility operator.

The amount of the levy will be set by regulation but the initial amount is set in the Bill at \$25/T. The effectiveness and amount of the levy is reviewed annually by the Minister.

A concern for the Council is that much of the levy would be taken up by administration of the Waste Minimisation Authority, Waste Control Authorities and by reviewing and enforcing organisational waste minimisation plans (Part 7 of the Bill), leaving little for waste minimisation initiatives.

Extended Producer Responsibility (Part 6 of Bill)

This part of the Bill sets up a regime for requiring producers to take responsibility for the lifecycle of products including disposal. Regulations will specify which products require a product stewardship programme.

Organisational Waste Minimisation Plans (Part 7 of Bill)

This part of the Bill requires every business and public organisation to develop, adopt and implement an organisational waste minimisation plan consistent with the New Zealand Waste Strategy. An organisational waste plan must also conform to the Waste Control Authority's own waste minimisation and management plan. Deadlines are given for all existing organisations to complete these plans depending on their size. New organisations must complete their plan before commencing operation.

The contents of the waste minimisation plan are prescriptive and include a requirement to separate organics, reusables and recyclable waste streams (and have separate collections) and to keep full records of each waste stream. It is the role of the Waste Control Authority to monitor organisations' compliance with this separation.

It is also the role of the Waste Control Authority to approve these plans and to enforce the requirement for the plans to be completed by the stated deadlines. The Waste Control Authority must accept or reject a plan within a timeframe of 20 working days.

This part of the Bill is very prescriptive and onerous for business. The related approval and enforcement role of territorial authorities would be a significant new function and would also be onerous.

Public Procurement Policy (Part 8 of the Bill)

This part of the Bill requires every public organisation to have a procurement policy that promotes waste minimisation and demonstrates commitment to the New Zealand Waste Strategy.

Public Reporting (Part 9 of Bill)

This part of the Bill requires public organisations to include in their annual report information about their material use and waste reused, recovered, recycled or disposed of and to also include an assessment of performance against their organisational waste minimisation plan.

Regulations (Part 10 of the Bill)

This part of the Bill enables the making of regulations relating to a number of purposes referred to earlier in the Bill. Additional items included as possible regulations include: prescribing requirements in relation to labelling of products and packaging; prescribing requirements in relation to the materials of which products are made; and prohibiting materials from being used in the manufacture of products.

RESOURCES

There are no additional resource implications in submitting comments on the Bill.

CONCLUSION

The Council can support the Waste Minimisation (Solids) Bill as it will facilitate the Council to progress its own zero waste direction and will require waste minimisation and diversion from landfill in areas outside local government control.

RECOMMENDATIONS

1. That the report on a Draft Submission on the Waste Minimisation (Solids) Bill be received.
2. That the Planning and Regulatory Committee endorse the submissions on the Waste Minimisation (Solids) Bill attached at pages A1 to A7.

A1-A7

Report prepared by: Carol Bergquist, Senior Analyst Environmental Policy.



7 SUBMISSION TO THE DEPARTMENT OF BUILDING AND HOUSING ON “BUILDING FOR THE 21ST CENTURY - REVIEW OF THE BUILDING CODE” - DISCUSSION DOCUMENT

PURPOSE OF THE REPORT

The purpose of this report is to inform the Planning and Regulatory Committee of the intention to respond to an invitation to provide comments and opinions on the discussion document and questionnaire, “Building for the 21st Century - Review of the Building Code”, recently released by the Department of Building and Housing.

BACKGROUND

The Building Act 2004 which took effect from 30 November 2004 requires the current Building Code to be reviewed to ensure performance standards for buildings are clear and meet new purposes and principles set out by the Act.

From the time that the Government made the decision to review the Building Act 1991, Waitakere City Council has made submissions and has been involved in consultation at various stages through the process which led up to implementation of the new Building Act 2004 and subsequently, through the current process of reviewing of the Building Code. Some of the formal submissions and involvement in consultation processes to date have included:

- **Early 2003** – Waitakere City Council Submission on “Review of the Building Act 1991 – Discussion Document.”
- **October 2003** – Waitakere City Council Submission on the Building Bill.
- **June 2004** – Presentation by Department of Building and Housing to a meeting of local, regional and Central Government officers on the Urban Form, Design and Development Work Strand of the Auckland Sustainable Cities Programme followed by discussions on the possible scope, content and forms of consultation necessary for the Building Code Review process.
- **July 2004** – Urban Form, Design and Development Submission on “Sustainable Development Issues Needing Consideration in the Building Code Review.”
- **November 2004** – Department of Building and Housing Workshop (Wellington) “Societal Expectations of the New Building Code.”

A8-A9

- **July 2005** – Urban Form, Design and Development consider and discuss Department of Building and Housing draft of “Building Code Review – Workstreams Development Process” - paper.
- **September 2005** – Presentation by Department of Building and Housing to meeting of Urban Form, Design and Development on “Building Code Review – Buildings as Part of the Community” - background paper.
- **May 2006** - Presentation by Department of Building and Housing to meeting of Urban Form, Design and Development to explain the objectives, format and content of the “Building for the 21st Century – Review of the Building Code” discussion document, just prior to formal release for comment.
- **July 2006** – Auckland Regional Council initiated meeting of local authority officers from across the region involved in responding to the current Discussion Document. The purpose being to compare issues being considered and identify those which reflect a common regional response that could be included in a submission from the Auckland Regional Council (see meeting summary attached at pages A8 to A9).

Currently, Council officers from various units of Council are preparing a submission in response to the “Building for the 21st Century – Review of the Building Code” discussion document, which is required to be forwarded to Department of Building and Housing by 31 August 2006.

The Building Act 2004 includes the health and safety objectives that were in the previous Act and adds some new ones - specifically to:

- promote sustainable development;
- increase the wellbeing of building users.

Section 3 of the Act states under the heading “Purpose”:

The purpose of this Act is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that-

- (a) people who use buildings can do so safely and without endangering their health; and*
- (b) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
- (c) people who use a building can escape from the building if it is on fire; and*
- (d) buildings are designed, constructed, and able to be used in ways that promote sustainable development.*

The purpose of the current discussion document is to seek comments on proposals for the scope of a Building Code that is relevant to New Zealand in the 21st century. The document is concerned with the *scope, objectives and content* of the Code - that is, identifying the features of building work that the Code should be addressing in order to meet the requirements set out under the purpose and principles of the Building Act 2004. At this stage it is *not setting the performance requirements*. They will be developed in the next phase of this review. A second discussion document with proposed performance criteria will be published in 2007.

To achieve the purpose of the Act, the current discussion document proposes that the scope and content of the Code be structured under four key theme objectives which will cover an increasingly detailed range of building design and construction performance requirements, quality standards and mitigation requirements for potential risks. The following, outlines the first two levels of the proposed structure for the Building Code objectives and as can be seen, reflect Section 3 of the Building Act 2004 quoted above: Proposed Scope and Content structure for the NZ Building Code:

- SAFETY (SO)
 - Structural safety (SO1)
 - Fire and other emergency safety (SO2)
 - Safety in use (SO3)
- HEALTH (HO)
 - Sanitation (HO1)
 - Indoor conditions (HO2)
- WELLBEING (WO)
 - Accessibility (WO1)
 - Protection from noise (WO2)
 - Indoor environment (WO3)
 - Services (WO4)
 - Facilities (WO5)
- SUSTAINABLE DEVELOPMENT (SDO)
 - Durability (SDO1)
 - Energy (SDO2)
 - Water (SDO3)
 - Materials (SDO4)
 - Protection of property (SDO5)
 - (Buildings with cultural, historical or heritage value and traditional and cultural use of buildings) - To be finalised.

The Building Code review is scheduled for completion and presentation to the Minister for Building Issues by 30 November 2007. Implementation of changes to the Building Code, and to Compliance Documents that support the Building Code, will not take effect until 2008 at the earliest. However, some particular aspects of the existing Building Code will continue to be addressed, and may be proposed ahead of the changes following this full review.

STRATEGIC CONTEXT

1. Sustainable Design and Construction

In 1993, Waitakere City adopted the principles and objectives of Agenda 21, the Rio Declaration on Environment and Development and established its Eco City vision as a major strategic driver for the future development of the City. This vision has enabled the City to be at the leading edge of progress toward sustainable development initiatives both nationally and internationally.

As part of its commitment to this wider sustainable development vision, Waitakere City Council has prepared and published guideline documents that provide advice and guidance on the principles of sustainable building design, construction and use for homeowners, the building design professions and the various sectors of the construction industry:

- **Published 1998:** *“The Sustainable Home Guidelines”* provides a practical guide for good practice eco-building with up to date information about energy, water, materials, safety, waste and other eco-building issues.

- **Published 2000:** *"The Better Building Code"*, provides a comprehensive set of sustainable design and construction principles and guidelines which are addressed and where possible incorporated into the design and construction of all Council funded building projects. From the experience gained from a significant number of Council's public building projects designed with reference to the *"Better Building Code"*, it was decided in February 2004, at the request of the Director - Strategy and Development to compile a list of more prescriptive "must have" sustainable design features for future projects to ensure that these were incorporated into Council buildings as a minimum standard, with the intention of including other features from the extensive range covered in the *"Better Building Code"* if project budgets allowed. This intention has yet to be tested on a new Council funded project.

Council has also had significant input into the Auckland Sustainable Cities Programme which through the Urban Form, Development and Design Work Strand has been working "to encourage, promote and guide more sustainable urban form, design and development in the Auckland region, including building design, location and construction." One of the projects being progressed under this initiative is the promotion of a regional commitment to the sustainable design and construction of all public buildings by 2007.

With the Building Act 2004 requiring the new Building Code to provide a regulatory framework that promotes sustainable development as one of its principal objectives, it is to be hoped that, at the end of the current review process, a significant number of the sustainable design and construction methods and elements advocated in the *"Better Building Code"* will become standard practice nationally, and will include performance requirements appropriate for the full range of building types. Such an outcome will assist Council considerably in achieving its strategic objectives in the area of sustainable design and construction of buildings and related infrastructure.

2. High Density Urban Residential Development

With the current strategic focus of Auckland's local and regional authorities on growth management through compact and comprehensive development of urban centres and their integration with transport systems, there is a strong emphasis on the need for high standards of design of the urban built environment to ensure that the quality of new intensive urban living patterns become acceptable alternatives to the traditional New Zealand suburban lifestyle. Central Government has recognised that if urban growth management is to succeed by providing economically viable, socially vibrant and safe liveable regions, cities and town centres then, achieving high quality urban environments is imperative. To this end the Ministry of the Environment, in 2005, launched the New Zealand Urban Design Protocol, to which Waitakere City is a signatory.

In relation to intensification of the urban built environment, one area of concern, predominantly in Auckland, has been the rapid increase in the number of apartment buildings being constructed and the quality of residential accommodation they provide. To date, there have been very few regulatory controls or guidelines to ensure that the design and construction of apartment buildings provide for acceptable standards of space, amenity, accessibility, services and facilities to support the health and wellbeing of occupants.

Waitakere City Council considers that well designed apartment developments in identified urban areas of the City will assist in achieving the residential densities necessary to meet current projections for urban growth and will contribute to the qualities of urban form and development desired to support the strategic intentions of the Urban and Rural Villages, Sustainable Development, Strong Innovative Economy and Strong Communities platforms of the Long Term Council Community Plan. To this end Council has recently notified proposed changes to its District Plan which include rules and design/performance criteria intended to ensure that the quality of space, facilities and amenity provided in apartment developments meet acceptable standards of design and liveability. Council officers are also currently working in association with North Shore City Council to produce a comprehensive, design guidance document for apartment developments.

It is significant that a major new requirement of the Building Act 2004 is that, the Building Code includes objectives and regulations that ensure buildings are designed to standards that will “increase the wellbeing of building users.” The Building Code Review discussion document identifies some aspects of the design and construction of higher density residential buildings, such as apartments, as potentially relevant issues for regulation under the “Health” and “Wellbeing” objective headings in the proposed new Code. If, as a result of the Building Code Review process, DBH decides to include regulations related to these issues, then it will be important to ensure that the objectives and performance requirements covered in the new Building Code are not in conflict with the rules and design/performance criteria proposed in the Waitakere City District Plan changes.

ISSUES

The Review of the Building Code discussion document identifies a significant number of issues that will have to be addressed in subsequent stages of the review process to achieve the proposed objectives. Some of the issues included are:

- Accommodating community expectations of the Building Code.
- Ensuring that Code requirements are expressed in a way that describes the outcomes to be achieved, or the performance standard to be achieved, is the aim of a performance-based code. This is different from prescriptive codes that prescribe how it has to be done.
- Achieving acceptable performance across a wide range of criteria can involve complex interactions and interdependencies.
- Balancing quality, sustainability and affordability. Affordability is an issue for the Building Code. A balance is required between setting quality standards and keeping the costs of construction at a level that does not deter people from entering into home ownership. Keeping up-front capital costs down can however place costs on society (and the natural environment) many times in excess of the initial capital cost saving.
- While the Code is a national regulation, this does not mean that performance requirements will have to be the same throughout the country. The Building Act (section 400) states that the functional requirements and performance criteria in the Building Code may apply generally throughout NZ, or in particular regions of NZ only, or over a range of circumstances or in particular circumstances only.
- Creating a performance-based code that sets clear performance standards, which are supported by easily understood compliance documents and guidance material.
- Ensuring that the code will facilitate innovation without compromising confidence in the standard achieved.
- Ensuring that building standards are robust, evidence-based, and take into account the benefits and costs of such standards.
- Developing building standards that allow for different levels of performance in different environments, based on risk and consequences.
- Ensuring that users of the Compliance Documents and guidance material will be able to access the information they require in a simple and comprehensive manner, through a range of media.
- Ensuring the Building Code interfaces with other legislation and regulations clearly and without contradictions. The line between the various legislative documents needs to be well defined and there should be no confusion as to the objectives and requirements covered by each.
- Ensuring the Building Code aligns with other related Government policies and strategies.
- Developing a building code that is forward looking and takes into account future requirements. This will require a realistic understanding of the changes and trends that may affect the future building environment. Some of the issues that might affect how we shape a building code for the future include: population and dwelling trends; the environment; changing technology; economic growth and development.

- The introduction of the concept of durability and the possibility of maintenance scheduling, to ensure that a building will continue to meet standards throughout its intended life.
- Buildings with cultural, historical or heritage value and the traditional and cultural use of buildings.
- The possibility of introducing a concept of 'staircasing', where an intention to progressively move to higher standards is signalled in the regulations, with a timetable for the mandatory application of the higher standards. Certain types of building may be required to be on a higher 'step' than others, or be there sooner. This concept will be further developed in the next stage of the review when setting performance criteria, but is noted in the discussion document for comment.
- It may also be possible to promote a range of standards in the Acceptable Solutions for Code compliance with good, better and best methods of compliance. This concept would be especially useful for promoting the sustainable development purpose of the Act. These ideas will also be further developed in the next stage of the review when setting performance criteria.

A8-A9

Many of the issues identified in the discussion document and listed above were also identified in internal consultations with Waitakere City Council officers and at the Auckland Regional Council meeting with officers from the other Auckland Territorial Authorities. Other issues were also discussed at that meeting and can be read in the summary headed "*Key issues identified and common Auckland responses*" attached at pages A8 to A9.

An important comment that has been expressed by nearly all those consulted to date is that the proposed Objectives in the discussion document are perceived as being phrased in a negative sense which emphasises prevention of undesirable outcomes rather than promoting desirable ones. For example; the proposed Objective for sustainable development is: "*An objective of this building code is to limit the probability that the design, construction or use of the building will not promote sustainable development.*"

While it is acknowledged that the Building Code is a document that aims to mandate for minimum standards and avoidance of risk, it is considered that the high level objectives should be more visionary and be phrased in a way that encourages a positive outcome. So, for example the proposed Objective for sustainable development could, in the simplest form, be rephrased to state: "*An objective of this building code is to ensure that the design, construction or use of the building will promote sustainable development.*"

Comments on issues identified above and any others obtained in the coming weeks will be included in Council's submission to the Department of Building and Housing at the end of August.

RESOURCES

No resources, other than staff time, are required for responding to the Building Code Review

CONCLUSION

The Department of Building and Housing should be commended on the proposed structure and objectives for the new Building Code. The inclusion of a new emphasis on the Wellbeing of building occupants and the promotion of Sustainable Development principles in the design and construction of buildings of all types will have a beneficial effect on the quality of both the built and natural environment. Council officers have identified issues that need to be addressed as part of the next phase of development of the Building Code Review and will provide comments through the discussion document questionnaire and submission process.

RECOMMENDATIONS

1. That the Submission o The Department Of Building And Housing On “Building For The 21st Century - Review Of The Building Code” - Discussion Document report be received.
2. That the Chairman of the Planning and Regulatory Committee and the Chairman of the City Development Committee be authorised to sign off the final version of the Council’s submission on the “Building for the 21st Century - Review of the Building Code”.

Report prepared by: Peter Joyce, Project Manager: Urban Design.

