

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON TUESDAY, 9 MAY 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 Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

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

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



3 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 11 April 2006

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 11 April 2005, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 28 APRIL 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 Committee if it wishes.

COURT OF APPEAL

***(Unchanged)* 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. An application for leave to appeal to the Supreme Court was heard in the week on 3 April 2006. Leave was granted on all grounds sought. A hearing has been scheduled for 11 and 12 July 2006.

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. The matter has been set down for an initial telephone conference on 23 May 2006. Council will shortly file a statement of defence in response to the seven claims.

***(Changed)* 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)

This claim was on hold pending the payment of security for Waitakere City Council's costs of \$60,000 ordered by Associated Judge Sargisson on 2 May 2005. After a defended hearing about an appropriate form of security, at which his proposal of a mortgage in favour of the Registrar had been rejected by the Court; Mr Mawhinney has paid the required security into Court. The Court awarded indemnity costs in relation to Council's application to strike out, because Mr Mawhinney's delay in providing security and leaving it to the last minute.

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 now been reviewed. An application to strike out appeal is being prepared for filing by 7 May 2006.

ENVIRONMENT COURT

(Changed) 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. These include: limits on the number of nights per week on which functions may be held, functions to conclude by midnight, restrictions on use of outdoor areas (music, hours, etc) and other conditions. Weddings Etc has agreed to obtain the necessary consents and undertake noise attenuation works during July 2006.

A hearing of the appeal on the abatement notice will be set down as a priority fixture some time after 3 August 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 Section 139 of the 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 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 would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limits and would create negative precedent effects. The matter has now been put "on hold" following a request by the Auckland Regional Council. The parties are to provide a progress report by 1 May 2006.

(Changed) 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 appellants request.

(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.

The application and supporting evidence has been filed and served. At the last judicial conference in November 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, 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. A further reporting date has yet to be set down. The Court will then set a date for a judicial conference to determine how the matter should proceed.

Separately, the Council has contacted Mr Britten, to find an alternate resolution to expedite the matter.

(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'. Discussions are to take place on the relief being sought. We await a response from Council's engineers as to whether any further information is required.

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

Structure Plan. 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 has lodged an appeal in the High Court alleging various errors of law. The filing of the appeal is late and has been opposed. Leave is also to be sought to have a costs judgment entered against Mr Mawhinney in the Environment Court despite the High Court appeal. Mr Mawhinney was required to file all submissions in opposition to Council's costs applications by 21 April 2006. Mr Mawhinney has not met this deadline. A hearing will be allocated by the Environment Court after 22 May 2006.

(Unchanged) 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 s 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 s 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.

(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) J R and M J Corbett - 181 Hobsonville Road, Whenuapai (April 2006)

Charges laid under the Building Act for structural alterations made to the dwelling at the property without a building consent. The matter is set down for a first call on 19 May 2006 at the Waitakere District Court.

(New) Rogers Earthmoving Limited, L M and K P Rogers, G P Fitzpatrick - 312 Lincoln Road (April 2006)

Charges laid under the Building Act 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 is set down for a first call on 19 May 2006 at the Waitakere District Court.

(New) 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. This matter is set down for a first call on 19 May 2006 at the Waitakere District Court.

(New) J A and G R Drew - 42 Christian Road, Swanson (April 2006)

Charges laid under the Building Act 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 is set down for a first call on 19 May 2006 at the Waitakere District Court.

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

Charges laid under the Building Act 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 is set down for a first call on 19 May 2006 at the Waitakere District Court.

(New) T S Narain and T J G H Ubachs - 102A Huia Road, Titirangi (March 2006)

Charges were laid under the Resource Management Act for the clearance of at least 37 native trees in a Managed Natural Area in contravention of Rule 2 of the Managed Natural Area rules of the District Plan. The clearance was undertaken without resource consent and resulted in the defendants expanding the ocean view from the property. The defendants had earlier been issued with an infringement notice for clearing three native trees from the property in contravention of the District Plan. The matter is set down for a call over on 11 May 2006 at the Auckland District Court.

(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 7 April 2006 and adjourned to 11 May for the defendant to enter a plea.

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

This matter relates to breaches of the Resource Management Act ("RMA") and Building Act. 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 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 matters, a defended hearing is set down for 30 October to 1 November. The matter will be heard with other similar offences to which Mr Gordon has pleaded not guilty.

(Unchanged) G M and B K Wheeler - 21 Kirby Street, Glendene (October 2005)

Charges laid under the Building Act for unauthorised building work undertaken to remove an existing deck from the second storey of the house and replace it with a new 2.4 metre high one. The new deck does not meet the standards of the building code and is considered to be unsafe. The defendants have sought building consent to remove and re-erect the deck. The matter has been adjourned until 19 May 2006.

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

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was adjourned on 17 March 2006 to 19 May 2006 for the parties to enter pleas.

(Changed) A Casey and Eurovision Building Removals Limited - 4 Bowers Road (June 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct pile foundations to support a relocated house which was relocated onto the foundations. No building consent was obtained for the construction of the foundation or the relocation. Mr Casey was the head contractor in charge of obtaining consent. Mr Casey initially entered a plea of not guilty. A defended hearing was set down for 4 April 2006. Mr Casey changed his plea to 'guilty' on the day of the hearing. The Court reserved its decision to 12 May 2005.

Eurovision Building Removal's Limited built the foundations and relocated the house. It entered a plea of not guilty through its directors. A defended hearing was set down for 4 April 2006. The matter was part heard on 4 April and continued on 11 April. The Court reserved its decision to 12 May 2005.

(Changed) A Mackinnon - 5 Armour Road, Parau (June 2005)

Charges were laid under the Resource Management Act for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. The 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.

(Unchanged) A Hafeez - 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance and earthworks. The defendant pleaded guilty to three charges of undertaking unauthorised building work, earthworks and vegetation clearance. All alternate charges against Hafeez were withdrawn. The matter was partially heard on 13 March 2006. The Court has deferred sentencing to give the Council an opportunity inspect the site one more time so as to seek an appropriate sentence, and to best inform the defendant as to what his options are in relation to the outstanding applications for building and resource consent. The matter has been set down for 17 May 2006.

(Unchanged) S Mohammad - 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance and earthworks. The defendant has not appeared before the Court as he is now residing in Pakistan. The Court has issued a warrant for his arrest to be executed upon his entry into New Zealand.

(Changed) D Thomson - 10 Pohutukawa Road, Whenuapai (March 2005)

Charges laid under the Building Act for unauthorised building work undertaken to create two residential units within an existing warehouse building, and under the Resource Management Act for the use of those units in breach of the residential rules of the District Plan. Mr Thomson has now been served. Mr Thomson has agreed to meet with the Council and this matter is listed for pleas to be entered in the Auckland District Court on 11 May 2006.

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

Charges were laid under the Building Act and Resource Management Act in respect of a second minor household unit constructed without the requisite building and resource consents. Mr Kasprzak entered not guilty pleas and the matter was set down for a defended hearing on 12 December 2005. Following receipt of the Council's evidence, Mr Kasprzak changed his plea. The Judge directed that he liaise with Council regarding the standard of the building work done and remedy any substandard work, if possible, at Council's direction. A sentencing date is to be allocated shortly.

(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 was scheduled for 7 June 2005 but Mr Stanic failed to appear and an arrest warrant was issued. A new date is yet to be set as the Police have misplaced the warrant.

RECOMMENDATION

That the Legal Update (As at 28 April 2006) report be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



PART C - PUBLIC EXCLUDED MATTER

5 WAITAKERE CITY DISTRICT PLAN DRAFT PLAN CHANGE: WHENUAPAI AIRPORT SPECIAL AREA

This item will be considered in the Confidential Supplement of the agenda, and has been circulated to members separately with this agenda.

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting namely, Waitakere City District Plan Draft Plan Change: Whenuapai Airport Special Area.

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

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none">Waitakere City District Plan Draft Plan Change: Whenuapai Airport Special Area	The withholding of information is necessary in order to: <ul style="list-style-type: none">Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- The report contains information, which if released, could affect Council's future negotiations.

