Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a Meeting of the Planning and Regulatory Committee will be held on:-

DATE: **Tuesday, 10 October 2006** **TIME:** **9.30 am**

VENUE: **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

to consider the business as set out herein and to take any necessary action connected therewith.

4 October 2006

Audrey Chan
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8603

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	RP	Dallow, QPM, JP (Deputy Chairman)
	DQ	Battersby, JP
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	C	Harding, JP
	PA	Hulse
	JP	Lawley
	CA	Stone

Mayor, RA Harvey, QSO, JP (ex officio)

(Quorum 5 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

WAITAKERE CITY COUNCIL

Waitakere City Council
Te Taiao o Waitakere

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 10 OCTOBER 2006 COMMENCING AT 9.30 AM

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W A I T A K E R E   C I T Y   C O U N C I L

Waitakere City Council
Te Taiao o Waitakere

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 10 OCTOBER 2006 COMMENCING AT 9.30 AM

PART A - OPENING OF MEETING

1 APOLOGIES

2 URGENT BUSINESS

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

(i) the Committee by resolution so decides; and

(ii) the 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, 12 September 2006
Extraordinary Meeting Minutes - Tuesday, 26 September 2006

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 12 September 2006 and the Extraordinary Meeting held on Tuesday, 26 September 2006 including the Public Excluded minutes, as circulated, be taken as read and now be confirmed.

The public excluded minutes are attached to the Confidential Supplement.

PART B - PRESENTATION

4 SPEED LIMITS BYLAW; INPUT FROM LAND TRANSPORT SAFETY AUTHORITY

At the Planning and Regulatory Committee's meeting held on 12 September 2006, the Committee resolved as follows.

"1. That the Review of Speed Limits Bylaw 2005 report be received.

2. That Council expresses most strongly their concerns about the process for setting of speed limits, that the Planning and Regulatory Committee will not progress this process in any way until a meeting with Land Transport New Zealand, Members of Parliament and the Automobile Association has been held to express these concerns and to demand a change in the process of speed limit setting, and that the Planning and Regulatory Committee believes that an intelligent approach to community safety must take precedence over rigid parameters.

3. That a representative of the Land Transport Safety Authority be invited to address the Planning and Regulatory Committee at its next meeting regarding its concern about the process for setting speed limits."

1750/2006

Peter Kippenberger, Partnership Manager of the Land Transport Safety Authority, has thus been invited to address the Planning and Regulatory Committee regarding its concern about the process for setting speed limits

PART C - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 29 SEPTEMBER 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.

SUPREME COURT

(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. This 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 refer a further matter back to the Environment Court for further consideration.

It may be some time before we receive the court's decision.

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 has appealed this aspect of the decision. This appeal is likely to be heard by the Court of Appeal later in the year or early next 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 coming into force. This application has been set down for hearing on 9 October 2006.

(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 matter 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. Mr Mawhinney has not paid. A bankruptcy notice has been issued against Mr Mawhinney to recover this debt. We have endeavoured to serve Mr Mawhinney with the bankruptcy notice but he is avoiding service. An application for substituted service is currently being prepared.

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

The Judgment of Forgarty J in relation to Council's strike out application was released this month. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim has been struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions cased on common law duties against local authorities generally. We are in the process of drafting a substantial costs application in respect of the proceedings from 1999 to date. Mr Mawhinney has until 12 October 2006 to lodge an appeal against the decision.

ENVIRONMENT COURT

(Changed) **Ritchie's Transport Holdings Limited, A Ritchie, J Ritchie, E Ritchie and J Shaw v Waitakere City Council, and Rex Campbell, Section 274 Party (September 2006)**

This is an appeal against an abatement notice issued to the directors of Ritchie's Transport Holdings Limited ("Ritchies"). The appeal relates to the requirement of the abatement notice to reduce the buses parked on the boundary, reduce daily traffic movements, undertake mitigation measures in respect of noise and ensure the hours of operation are between 6.00am and 9.00pm. These requirements are those set out in the Ritchie's resource consent (RMA 991374). The appeal is on the grounds that the business enjoys existing use rights, that the resource consent does not limit the number of vehicles, the vehicle movements, noise levels and hours of operation. An application for stay was concurrently filed with the notice of appeal. Mr Rex Campbell, a neighbour on the Eastern boundary of the Ritchie's, has joined the proceedings as an interested party.

A judicial telephone conference was held between the parties to consider the application for stay on 27 September 2006. Mr Campbell, the Section 274 party joined the conference by consent. The Court granted the application for stay upon the agreement of all parties, including Mr Campbell, for a 3 week period to permit the parties to resolve the appeal. As a result the appeal has been put 'on hold'. The Council will file a progress report by 18 October 2006. Ritchie's have intimated that they intend to make an application for resource consent.

(Changed) **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 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals.

(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 at 382, 384 & 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. 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 Court has made timetabling orders and all parties are now preparing evidence, focussing on traffic matters in particular.

(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 being managed by the appellant. Cassels obtained a stay of the abatement notice so that it can continue to operate at current levels (taking into account some proposed and already implemented noise mitigation measures) Cassels agreed to obtain the necessary consents and undertake noise attenuation works (on a without prejudice basis) which it has now done. A resource consent application was lodged and has been publicly notified. Further information is required from the applicant. A hearing is likely to be scheduled for this matter.

The appeal on the abatement notice was set down for hearing in the week of 4 September 2006. In light of the additional noise works Cassels decided to withdraw their appeal because they concluded they were able to comply or almost comply with the District Plan noise levels. They will now await the processing of their application for consent which is likely to be heard within 5 - 8 weeks.

(Changed) **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.

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). Mr Mawhinney has applied this month to reactivate the proceedings, which Council has opposed. The Council has also indicated that if the Court determines to set a timetable for a hearing it is likely that Council will apply to strike out this appeal as unmeritorious. A decision on Mr Mawhinney's recent application is awaited.

(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 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). The parties are finalising consent documents and intend to file these with the Court shortly.

(Unchanged) **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 Britten's 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. Council sought final orders to require that the Britten's 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.

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 held on Thursday 20 July 2006.

The enforcement proceedings are now 'on hold', with a further report to the Court required by January 2007 to permit resolution through the mediation process.

(Unchanged) **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 retained consultants to assess the Farac proposal. As a consequence, the Council 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.

(Changed) **Auckland Regional Council v Waitakere City Council (May 2005)**
Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)
("the Duncan appeal")

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. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006 the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

Following an extra-ordinary meeting of the Planning and Regulatory Committee, the Council has decided to abide by the Court's decision and call no evidence.

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

This is an appeal by the applicants M & 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 Section 274 parties. These appeals were 'on hold' since September 2005 by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006 the Court directed that these appeals will be set down for hearing and has made timetabling orders for exchange of evidence. Council is required to file its evidence by 25 October 2006.

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

A further appeal in the High Court 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 Environment Court in December 2005 and Mr Mawhinney's application to rehear has also been dismissed by Judge Shepherd. Both decisions have been appealed to the High Court; the matter has not yet been set down. We are also following up on payment of cost awards made in the Environment Court.

(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) **Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads**

This prosecution relates to the removal of 6 houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The matter is set down for a first call on 1 December 2006.

(Changed) **Stil Investments Limited - 40 Stottholm Road, Titirangi (August 2006)**

Charges have been laid under the Building Act for re-cladding the exterior of the house, alterations to decks and safety barriers, connection of basement to the first floor and the conversion of a laundry into a bathroom. These works were done without building consent and they are not Building Code compliant. Stil Investments entered a guilty plea. The matter has been set down for a sentencing hearing on 18 January 2007 at 11.45 am.

(Changed) **S and F Lese, S Nuuola - 50 Kelman Road, Kelston (August 2006)**

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter has been set down for 1 December 2006.

(Changed) **J Bell, G Payne – 3175 Great North Road (August 2006)**

Charges have been laid under the Building Act for removal and replacement of pile foundations without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter has been set down for 1 December 2006.

(Changed) **Tomik Limited, Illingworth Plumbing Limited, S Wilson - 66 Paturoa Road, Titirangi (August 2006)**

Charges were laid under the Building Act for the conversion of a basement approximately $50m^2$ into a separate living area without building consent. The work comprised of a new floor, removal of existing support beams that support the second floor of the dwelling, replacement of the beams to a standard which is not Building Code complaint, alteration of and replacement of plumbing and drainage in the area. The defendants have intimated guilty pleas. The matter was called on 15 September 2006.

Tomik Limited entered a guilty plea and was sentenced on 15 September 2006. The company was convicted of doing building work without consent. It was fined $5,000, 90% of which will be given to the Council in accordance with the order of the Court. The company was given a considerable discount for the offending due to the early guilty plea and acknowledgement of responsibility. Court costs of $130 and solicitors costs of $226 were also imposed.

Illingworth Plumbing Limited and S Wilson have intimated guilty pleas. They will be called to enter their plea and be sentenced on 27 October 2006.

(Changed) **G and Q Potts - 88 Wiseley Road, West Harbour (August 2006)**

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The matter was called on 15 September 2006. Q Potts intimated a guilty plea but the matter was adjourned off for him to seek legal advice. It is set down to be called on 1 December 2006.

(Changed) **S Park and M Kye – 11 Abel Tasman Avenue, Henderson (August 2006)**

Charges have been laid under the Building Act and the Resource Management Act for unauthorised conversion of a dwelling into a commercial kitchen and minor household unit. The conversions are in contravention of Rule 10.1 of the Living Environment Rules of the Waitakere City Council District Plan and the building work was undertaken without consent. The defendants have applied for consent to remove the commercial kitchen and to rebuild the minor unit in accordance with consent. Consent was granted on 22 August 2006. The matter was called on 15 September 2006 where Mr Kye entered a guilty plea to the permitting building work without consent. The charges against Mrs Park were withdrawn as well as the charges against the Resource Management Act due to the immediate compliance with the District Plan following knowledge of the breach.

Mr Kye was sentenced and fined $2,500, 90% of which will be given to the Council in accordance with the order of the Court. Court costs of $130 and solicitors costs of $226 were also imposed. The Court gave Mr Kye a considerable discount for the offending due to the early guilty plea, the immediate compliance with the District Plan upon knowledge of the offending and the immediate application for building consent, the removal of the unauthorised work, and the fact that Mr Kye had relied upon the advice of others, particularly professionals.

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

Charges have been laid under the Resource Management Act and Building Act 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.

The matters are listed for mention in the Auckland District Court on 13 October 2006.

(Unchanged) **Rogers Earthmoving Limited, LM and KP Rogers, GP 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 was adjourned on 19 May 2006 to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 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. This matter was adjourned on 19 May 2006 to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

(Unchanged) **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 was adjourned on 19 May 2006 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 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 2006 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 Valley (February 2006)**

This matter relates to charges laid under the Building Act 2004 and the Resource Management Act 1991. The Building Act charges related to the unauthorised building work which included conversion and alteration of a building on the property, the erection of a double garage and new unit. The Resource Management Act charges related 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 was 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 that 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 received retrospective resource consent on 9 September 2006. His application for certificate of acceptance has also been considered and may be granted in part. Mr Heays is making an application for building consent to upgrade building work which is not building code compliant. As a result of this, the charges against the District Plan were withdrawn. On 11 September 2006, Mr Heays pleaded guilty to permitting building work without consent and was convicted and fined to 150 hours of community work, which is equivalent to a $4,000 fine. Court costs of $130 and solicitors costs of $450 were also awarded.

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

This matter relates to breaches of the Resource Management Act 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 was 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 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.

(Changed) **McGuigan Syme Chilcott Limited, G Pitts, D Owens Builders Limited, M Engel, - 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 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 was set down for McGuigan Syme Chilcott Limited, G Pitts and D Owens Builders Limited on 28 September 2006. The matter was heard but a decision was only given in respect of D Owens Builders Limited as the other two parties were seeking to be discharged without conviction. The court determined than it was not in a position to determine the application for discharge without the decision on the substantive hearing in respect of the property owner, Mr Engel. As a result, the matters of McGuigan Syme Chilcott Limited and G Pitts will not be determined until February 2007. This will permit for these matters to be resolved after a determination is made in respect of Mr Engel.

In respect of D Owens Builders Limited, the Court determined, irrespective of the lack of evidence presented to the Court and Council, that the company’s director Mr Owens had done everything in its power to stop works from continuing on the date that the stop work notice had been issued. The court based its decision on the sentencing submissions of Mr Owens’ solicitor, and gave a little weight to the fact that regardless of its actions, the Company continued in its contractual relations with the property owner and the subcontractors, and at no point distanced itself from the unauthorised works at the property. In fact, the company remained the head contractor whilst the unauthorised works were proceeding. Despite accepting that the fine sought by Council of $15,000 was appropriate given that the offender was a professional in the industry for over 30 years, the Court said that it was excessive in the circumstances. The Court convicted the company and imposed a fine of $3,500 plus solicitors costs of $450, and Court costs of $130; 90% of the fine will be remitted to the Council along with all the solicitor’s costs.

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.

(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 mänuka, 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. However, it is subject to the defendant undertaking the requisite planting.

The planting programme has been accepted by the Council, and planting was meant to have been completed by 30 September 2006. An investigation by the Council has revealed that the planting has not commenced.

The Council will be reporting to the Court this finding. Ms Mackinnon's discharge is dependent on the planting being completed to the Council's satisfaction by the end of September 2006. The matter is set down to be called for a progress report on 13 October 2006.

RECOMMENDATION

That the Legal Update (As at 29 September 2006) report be received.

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

PART D - ENVIRONMENTAL MANAGEMENT

6 GENETICALLY MODIFIED ORGANISMS UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to provide an update on the progress made by the Northern Councils in relation to the Genetically Modified Organisms (GMO) issue.

BACKGROUND

At its meeting on 16 November 2005, the Council considered options for the Council's on-going participation in the Northern Councils working group and opportunities for advocacy at central government level related to the issue of regulatory gaps in the Hazardous Substances and New Organisms Act 1996. The Council resolved:

"1. That the Genetically Modified Organisms - The Northland Approach report be received.

2. That the Council's GE free status be stated in the draft Long Term Council Community Plan 2006/2016 under the Strong Innovative Economy strategic platform.

3. That the Council supports Option 2 and works with the territorial authorities in the Northern Region in their joint consultation process.

4. That the Council continues to take every opportunity to lobby the Government to address the issue of regulatory gaps in the Hazardous Substances and New Organisms Act 1996 and Local Government involvement in Genetically Modified Organisms applications."

2236/2005

A1-A3 Further background information about the Council's response to this issue is attached at pages A1 to A3.

STRATEGIC CONTEXT

Waitakere City's GE-free status supports the Strong Innovative Economy Strategic Platform through supporting the locally based organics cluster's desire to provide organic and GE-free products. Following consideration of this matter during the 2006 review of the Council's Long Term Council Community Plan, the following expansion of the Council's 2001 policy was adopted.

Strong Innovative Economy

He tupuranga kaha ihi wana

The vision: Waitakere is a place of innovative economic activities, providing local, quality work and development options for its people. Environmentally responsible businesses are supported and flourishing.

Summary: This platform is about promoting local enterprise, jobs and economic growth in high quality town centres designed for the task. It includes promoting research and development; identification and development of business clusters (organics, film etc); working with businesses to improve the environment, **being GE free in field and food;** increasing the city's profile as a good place to do business; working with other councils to develop the regional economy; maintaining our environmental advantages; and providing the basis for sustainable economic growth.

ISSUES

Council Participation in Working Group

Far North District Council maintains a watching brief on the Working Group.

Northland Regional Council maintains a watching brief on the Working Group. It has previously decided to not pursue any further involvement in the issue on the basis that Northland Regional Council did not see Genetically Modified Organisms land use as a serious immediate threat.

Whangarei District, Rodney District, and Kaipara District and this Council are active in the Working Group, and have provided staff resource and financial allocation to the Group.

Auckland City has joined the Working Group (currently without any financial commitment), and North Shore City attended the most recent Working Group meeting as an observer.

Kaipara District Council Workshop, 19 June 2006

A4-A55 Kaipara District Council hosted a workshop to consider the management of Genetically Modified Organisms in the environment. The workshop heard from the Ministry for the Environment, the Environmental Risk Management Authority, Simon Terry (consultant), and Royden Sommerville (lawyer). Attendees included councillors and staff from Kaipara, Rodney, Whangarei, Far North District Councils, Far North Regional Council and Waitakere City Council. Approximately 50 members of the public attended. Notes from the meeting are attached at pages A4 to A55.

As a result of that Workshop, Kaipara District Council resolved to provide $10,000 towards collaborative council work. It indicated that further funding for the Working Group would be considered on a population percentage basis, given Kaipara District's limited rating base.

Correspondence from Mr Gardiner

Mr Richard Gardiner, Senior Policy Advisor for Federated Farmers of New Zealand, wrote to the Mayor on 17 July 2006. In his letter he indicated that none of the Councils involved in the Working Group have had the advantage of being presented with advice on the benefits of genetic modification. This Council has heard from Central Government agencies involved in policy and administration of Genetically Modified Organisms, and opponents of Genetically Modified Organisms, but not from supporters of Genetically Modified Organisms. It is considered appropriate that the Council invite Mr Gardiner (or his nominee) to speak to the Council, to ensure that decision making by the Council on this matter is fully informed.

Technical Group Meeting / Further Work

The Technical Group (staff) of the Working Group met on 1 September 2006 to identify the Technical Group's next steps. It was clear that four Councils (Whangarei, Kaipara, Rodney and Waitakere) have funding for further work associated with the development of District Plan Changes. The Technical Group has identified three streams of work. These are summarised below.

1. Continued advocacy at central government level, via further correspondence to the Ministry for the Environment (the agency responsible for Genetically Modified Organisms policy) seeking answers to various legal and policy matters that are not yet clear to the Working Group. The Technical Group within the Working Group also considered the possibility of a joint Mayoral or joint Chief Executive led delegation to the Minister for the Environment to discuss this matter, once the response from the Ministry for the Environment has been received.
2. The preparation of a survey and targeted consultation on the public's attitudes to potential district council regulation of Genetically Modified Organisms. The scope of this work has yet to be finally determined and costed.
3. The preparation of a generic Resource Management Act 1991 section 32 report that analyses a district plan change, should the advocacy identified in Item 1 above not lead to a change in the Government's views, and if the outcomes from the survey and targeted consultation indicate support for council based regulation of Genetically Modified Organisms.

It was made clear at the 1 September 2006 meeting that participation in all or any of these work streams did not commit any Council to initiating a change to its District Plan.

RESOURCES

Council has allocated $10,000 for joint consultation on District Plan options. Staff time is also being expended on this matter by attending and participating in the Working Group.

CONCLUSION

The Council has declared Waitakere City GE free in field and food and continues to participate in the Northern Councils' Joint Working Party. This Working Party continues to explore options for putting into practice the GE free stance.

RECOMMENDATIONS

1. That the Genetically Modified Organisms Update report be received.

2. That Mr Richard Gardiner, Senior Policy Advisor for Federated Farmers of New Zealand (or his nominee) be invited to attend a forthcoming meeting of the Planning and Regulatory Committee to present views on the benefits of genetically modified organisms.

3. That the Planning and Regulatory Committee note the on-going technical work, and the possibility of further advocacy related to genetically modified organisms at the Central Government level.

Report prepared by: Eryn Shields: Principal Planner.

7 THE HERALD ISLAND HALL AND THE DISTRICT PLAN NOISE LEVELS

PURPOSE OF THE REPORT

The purpose of this report is to provide the Planning and Regulatory Committee with information on the noise levels that are applicable to the community hall on Herald Island, at the request of the Planning and Regulatory Committee Chairman.

BACKGROUND

Activities conducted at the Herald Island Hall (the Hall) have on occasion resulted in noise complaints being lodged with Council. The Herald Island Residents and Ratepayers Association, who lease the Hall from Council, have expressed concerns over the potential for Council's noise control service to disrupt the use and/or hirage of the Hall.

The legislative controls for the management of noise in the environment are contained in the Resource Management Act 1991. The Resource Management Act 1991 notes two types of noise: excessive noise and unreasonable noise; that possess two separate enforcement mechanisms.

Excessive noise is defined in the Resource Management Act 1991 as "…any noise that is under human control and of such nature as to unreasonably interfere with the peace, comfort and convenience of any person…" Noise emitted by musical instruments, electrical appliances or a person or persons are specifically noted as falling within the definition of excessive noise.

The Resource Management Act 1991 dictates that the assessment of excessive noise is based solely on the subjective opinion of the investigating enforcement officer as to whether a noise is excessive. Sound level readings are not taken in the assessment of excessive noise.

To date, all noise complaints lodged against the Herald Island Hall have been investigated as excessive noise.

Unreasonable noise, which although not specifically defined in the Resource Management Act 1991, relates to Section 16 of the Resource Management Act 1991 which places a duty on occupiers of land to ensure noise levels are kept at a reasonable level by adopting the best practicable option. Territorial authorities assign noise levels to land or activities in their District Plan or a Resource Consent, which are deemed by Council to be a reasonable noise level for the purposes of Section 16. Consequently unreasonable noise is any noise that exceeds the permitted noise levels contained in a District Plan or Resource Consent. A series of sound level readings are required to assess unreasonable noise.

Where an activity is shown to comply with the 'reasonable noise levels' of a District Plan or a Resource Consent, the excessive noise provisions would not be applied to that activity.

Consequently, at the direct request of the Herald Island Residents and Ratepayers Association, Council undertook a sound level reading of their annual ball that was held on 16 September 2006.

STRATEGIC CONTEXT

Community Halls fall within Council's Strong Communities strategic platform as they help generate a strong sense of community.

ISSUES

The Herald Island Hall is situated on land zoned Open Space Environment and is completely surrounded by residential housing on land zoned Living Environment.

Accordingly the following noise performance standards apply to any noise generated from the Hall as measured from any site in the Living Environment:

7.00am-7.00pm Monday-Saturday	7.00pm-10.00pm Monday-Saturday	7.00am-10.00pm Sundays and Public Holidays	10.00pm-7.00am
50dBA L_{10}	45dBA L_{10}	50dBA L_{10}	40dBA L_{10}, 70dBA L_{max}

Council's sound level reading of the annual Herald Island Residents and Ratepayers ball on 16 September 2006 was obtained between 10.15pm and 10.30pm, and revealed that the ball was producing an L_{10} of 52dBA, and was therefore exceeding Council's District Plan noise controls.

As the noise from this function possessed special audible characteristics (which is indicative of bands and amplified music), clause 4.4 of NZS 6802:1991 Assessment of Environmental Sound is applicable, which means that the L_{10} level in Council's District Plan is reduced by 5dB to 35dBA.

For comparison purposes, a noise level of 50dBA is a level that you might expect to experience in a large office or in conversational speech, a level of 40dBA is a level that you might expect to experience in a quiet office, library or residential street late at night, while a noise level of 35dBA is a level you might expect to experience in a quiet bedroom.

It is hard to draw any firm conclusions from the result of one set of noise readings. It is normal practice to obtain at least three sets of sound level readings before contemplating enforcement action in terms of unreasonable noise. However, it may be reasonable to assume that any functions held at the Hall involving amplified music would produce the same level of noise as the ball and therefore that the District Plan noise controls would preclude the use of the Hall for any sort of social function involving amplified music between 7.00am and 7.00pm, Monday to Saturday and 7.00am to 10.00pm Sundays and public holidays (and indeed any other activity that generates noise).

Such a prohibition on the Hall could be predicted to severely restrict its use.

A way forward in terms of expanding the use of this Hall would be to either investigate the feasibility of acoustically insulating the Hall or the Hall owner (which is Council) obtaining a satisfactory resource consent that would allow for a set number of activities to be held at the Hall per annum with noise standards commensurate with those activities being included in the consent.

RESOURCES

No additional resources are required with respect to the enforcement of unreasonable noise.

CONCLUSION

The use of the Hall for functions involving the playing of amplified music is likely to breach Council's District Plan noise standards unless action is taken to acoustically insulate the building or a Resource Consent is obtained that would permitted the noise levels generated by these functions.

RECOMMENDATION

That the Herald Island Hall and the District Plan Noise Levels report be received.

Report prepared by: Alan Ahmu, Team Manager Environmental Compliance.

PART E - PUBLIC EXCLUDED MATTER

8 LAND VALUATION TRIBUNAL DECISION - JUDICIAL REVIEW

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, Land Valuation Tribunal Decision - Judicial Review.

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.
Land Valuation Tribunal Decision - Judicial Review.	The withholding of information is necessary in order to: • Maintain legal professional privilege.	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)(g) 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, will result in the loss of legal professional privilege.*