

**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, 11 JULY 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, 6 June 2006

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 6 June 2006, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 30 JUNE 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) 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 Harvey 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 Harvey has now appealed that aspect of the decision which is likely to be heard by the Court of Appeal later in the year.

(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 of 3 April 2006. Leave was granted on all grounds sought. A hearing has been scheduled for 11 and 12 July 2006.

HIGH COURT

(Unchanged) 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 1981 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 will be filing applications to strike out the various claims on the basis that the events which trigger an obligation under the Public Works Act 1981 occurred prior to the offer back obligation came into force.

(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 now 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, although a date has not yet been fixed by the Court. Mr Mawhinney is now 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 in favour of Council's application.

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

(New) 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 1991 declining subdivision consents and certificates of compliance. Notices of reply will be filed shortly.

(New) 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 2006 and replies to the appeals are currently being prepared. The appeals will follow the standard Environment Court track and it is anticipated that they may well be heard later in 2006, if not settled before.

(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. 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 Section 139 of the Resource Management Act 1991. 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 as well as the MUL and would create negative precedent effects. The matter had been put “on hold” following a request by the Auckland Regional Council. The matter is now on the standard track list of the Environment Court.

(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).

(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 2006.

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. However, the Council is yet to obtain consent to enter the property to undertake the further investigations required.

The Court has set a further reporting date of 30 June 2006.

Separately, the Council has contacted Mr Britten, to attempt to find an alternate resolution to expedite the matter. We understand that Mr Britten has submitted a proposal to the Council for consideration.

(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).

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

An appeal by the Auckland Regional Council (ARC) and Waitakere Ranges Protection Society Incorporated (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 the ARC and the WRPS 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 granting of an appeal has been opposed by the Council as the appeal was filed outside of the statutory timeframe. Mr Mawhinney has been directed to pay security for costs of \$1,500 before the appeal can proceed. The issue of leave sought by Mr Mawhinney in relation to the late appeal on the strike out application filed by the Council has been set down for 12 July 2006.

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 filed his submissions on 26 April 2006 and did not meet the Court imposed deadline. The Council lodged rebuttal submissions with the Court on 16 May 2006. The argument for leave to the High Court is set down to be heard on 10 July 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 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.

(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 (Resource Management Act 886/98) have been concluded.

DISTRICT COURT

(Changed) Waitakere City Council v Mr G Osborne and Mrs L Osborne – 48 Jaemont Crescent, Te Atatu

This is a prosecution by Council of Mr and Mrs Osborne for failing to fence their swimming pool as required by the Fencing of Swimming Pools Act 1987. On 3 February 2005 after a defended hearing Mr and Mrs Osborne were found guilty of breaching their fencing obligations in a number of respects. By the time the case had been resolved the Osborne's pool had been breaching the Act for 280 days. The maximum fine for the offence is \$500 but the Act also provides for a fine of \$50 per day for a continuing offence. Therefore the Court adjourned sentencing to allow Mr and Mrs Osborne to mitigate the offending by upgrading their fencing. This work was done 10 days later.

Sentencing took place on Thursday, 11 May 2006 at Waitakere District Court. It was emphasised that, notwithstanding the indications given by the Court that Mr Osborne should receive a reduction in fine if he rectified the non-compliance for the swimming pool fencing, he and his wife should still face a significant fine and meet a large portion of Council's costs of prosecution because of the nature and extent of non-compliance, the length of time which it occurred over, and the way that Mr Osborne conducted his case.

Mr Osborne sought an adjournment of sentencing to address some case-law that had been presented to the Court and the Court allowed him further time. The Court adjourned the matter giving Mr and Mrs Osborne 14 days to serve further written submissions on penalty and Council a further 7 days to provide any further rebuttal submissions.

The case was called again on the 9 June 2006 for the Court to deliver its written decision. The Court found that in light of the case-law, the starting point for the maximum fine was \$1,500 to be adjusted by any mitigating factors. The main mitigating factor was the rectification of the breach prior to sentencing. The Court therefore imposed a fine of \$1,000 for Mr Osborne and a fine of \$200 for Mrs Osborne due to her lack of involvement. Scale costs were awarded against Mr Osborne in the amount of \$1,356 plus disbursements of \$243.26. Mrs Osborne was ordered to pay a further contribution in the sum of \$150. Both defendants were ordered to pay court costs of \$130.

(Changed) J R and M J Corbett – 181 Hobsonville Road, Hobsonville (April 2006)

Charges laid under the Building Act 2004 for structural alterations made to the dwelling at the property without a building consent. The matter was adjourned on 19 May to permit service. In the interim the unauthorised works have been removed and re-built in accordance with a building consent by the new owners of the site. These proceedings were withdrawn against the Corbetts by leave of the Court on 23 June 2006 at the Waitakere District Court. The defendants have been informed.

(Changed) 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 2006 to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

(Changed) 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 2006 to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

(Changed) 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 2006 to permit service. The Court granted an adjournment on 23 June 2006 to 27 October 2006 for disclosure to be completed.

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

Charges were laid under the Resource Management Act 1991 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 was called on 11 May 2006 at the Auckland District Court. The defendants did not appear despite instructions from their solicitor. Warrants of arrest were issued by the Court. The defendants were given an opportunity to vacate the warrants by making a voluntary appearance in Court. The matter was adjourned to 9 June 2006 to allow Counsel for the defence and prosecution to meet to discuss the charges and to allow the defendants to make a voluntary appearance. In the interim, the defendants did not make a voluntary appearance to discharge the warrant of arrest. The defendants have sold the property and have returned to the Netherlands permanently. The Council will be filing a memorandum to inform the Court of their departure. When the matter was called on 9 June 2006 the Court issued a new warrant for the arrest of the defendants if and when they re-entered the Country.

(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 2004 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 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 a retrospective resource consent for the contraventions of the District Plan. The Court has given the parties until 11 September 2006 to resolve the granting of the certificate of acceptance and resource consent.

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

This matter relates to breaches of the Resource Management Act 1991 (RMA) and the 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 2006 to 1 November 2006. The matter will be heard with other similar offences to which Mr Gordon has pleaded not guilty.

(Changed) McGuigan Syme Chilcott Limited, G Pitts, D Owens Limited, M Engle, – 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 Engle, 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 2004. 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 Casey and Eurovision Building Removals Limited – 4 Bowers Road (June 2005)

Charges laid under the Building Act 2004 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 delivered its reserved decision on 12 May 2005. Mr Casey was discharged without a conviction, but was required to pay the Council \$4,000 towards costs of prosecution, solicitor's costs of \$450 and Court costs of \$130.

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 2006 and continued on 11 April 2006. The Court delivered its reserved decision on 12 May 2006. It found the defendant guilty. The Court held that the Council had proved beyond reasonable doubt that the defendant has undertaken the building of foundations and the relocation of the house without a consent being in existence. Sentencing took place on 2 June 2006. The Court convicted the defendant company and a fine of \$6,000 was imposed. An order was made under Section 389 for 90% of the fine to be directed to the Council. An award of costs was made in favour of Council. The defendant was ordered to pay Court costs of \$130, solicitor's costs of \$904, witness expenses of \$336, and to contribute to the cost of prosecution in the amount of \$2,000.

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

Charges were laid under the Building Act 2004 and the Resource Management Act 1991 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. Sentencing took place on 29 June 2006. The Court took into consideration Mr Kaprzak's financial circumstances, and he was convicted and ordered to undertake 150 hours of community work and pay legal costs of \$550 and Court costs of \$130. The defendant has agreed to remove the building, which is substandard in various respects.

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

Charges were laid under the Resource Management Act 1991 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 (but never executed by the police). Sentencing is now scheduled for 10 July 2006.

RECOMMENDATION

That the Legal Update (As At 30 June 2006) be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

5 DRAFT POLICY ON EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS 2006-2011

(NOTE: This item deferred from the last Planning and Regulatory meeting held on Tuesday, 6 June 2006)

PURPOSE OF THE REPORT

The purpose of this report is to consider submissions arising out of the Special Consultative Procedure on the draft Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011 (the draft Policy).

BACKGROUND

Section 131 of the Building Act 2004 (the Act) requires territorial authorities to adopt a policy on earthquake-prone, dangerous and insanitary buildings within their district by 31 May 2006.

The policy is required to state:

- The approach that the territorial authority will take in performing its functions in relation to those buildings;
- The priorities to be observed in performing those functions;
- How the policy will apply to heritage buildings.

At the Planning and Regulatory Committee meeting held on 11 October 2005, the draft Policy was adopted and it was resolved:

- “1. That the Draft Policy on Earthquake Prone, Dangerous and Insanitary Buildings report be received.
2. That the draft Earthquake Prone, Dangerous and Insanitary Buildings Policy 2006-2011, Summary of Information and Statement of Proposal attached to the Agenda at pages A1 to A32 be approved for consultation and that Council officers be authorised to implement the Special Consultative Procedure as set out in Section 83 of the Local Government Act 2002.
3. That the Planning and Regulatory Committee hear any submissions during November 2006 with a final report in relation to the draft Earthquake Prone, Dangerous and Insanitary Building Policy 2006/2011 to be brought back to Council for a final decision.”

1945/2005

STRATEGIC CONTEXT

The Act reflects Parliament's policy objective for New Zealand buildings. The provisions relating to earthquake-prone buildings seek to reduce the level of earthquake risk to the public over time and targets the most vulnerable buildings. Strengthening buildings to improve their ability to withstand earthquake shaking will involve costs to territorial authorities, building owners and the community generally. However, at this stage these costs cannot be quantified, but officers will aim to identify these costs within the first year of the policy coming into force.

Waitakere City Council is committed to ensuring that Waitakere City is a safe place to live and work. Earthquake-prone, dangerous and insanitary building issues are relevant to Council's strategic priorities for a Safe City and First Call for Children.

With respect to heritage buildings the Council recognises that the preservation of these buildings is a matter of national importance as recognised by section 6(f) of the Resource Management Act 1991. The draft Policy has taken this into account to strike a balance between human and property safety and the value of heritage.

CONSULTATION

Notice of the draft Policy was published in the New Zealand Herald and Western Leader on 14 October 2005 and the Aucklander on 19 October 2005. In accordance with Section 83 of the Local Government Act 2002 and Section 132 of the Building Act 2004, the notice advised how to obtain a copy of the consultation documents and confirmed that submissions could be made up to and including 14 November 2005. The consultation documents were also available at the Civic Centre counter and on Council's website for the four week period of consultation.

The consultation documents were posted to organisations that may have a special interest in the policy. The organisations were the Historic Places Trust, the Ministry of Education and the New Lynn Business Association.

An article on the draft Policy was also published in the front page of the Western Leader following the adoption of the draft Policy for consultation.

A1-A9 Over the four week period Council received one telephone inquiry, and three submissions attached at pages A1 to A9.

A10-A50 The salient points from submissions received have been set out in this report. The exact changes made to the draft Policy are set out as attached at pages A10 to A28 in a tracked-changed version, with the original draft Policy approved by the Committee set out at pages A29 to A50 for comparison purposes.

SUBMISSIONS ON THE DRAFT POLICY ON EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS

The issues raised in the three submissions related to the status of heritage buildings and, in particular, their treatment as earthquake-prone and the manner in which they would need to be upgraded. The issues are outlined below:

Heritage buildings and the provisions of the policy as it relates to earthquake-prone buildings

All three submitters are of the opinion that the draft Policy as it relates to earthquake-prone buildings does not adequately protect the status of heritage buildings. These concerns are summarised as follows:

- (a) The part of the policy pertaining to heritage building does not adequately assess the specific issues that heritage buildings give rise to.
- (b) The standard which currently requires that all earth-quake prone buildings meet the test of being 67% or two-thirds compliant with standards set for new buildings is too onerous on heritage buildings. It may lead to the loss of heritage value if no discretion was exercised in the way compliance was measured.
- (c) The owners of affected heritage buildings, including Council, will need to expend a considerable amount of money to bring affected heritage buildings in line with the policy.
- (d) The timeframe of 2 years provided to comply with the standard is impracticable therefore the timeframe should be extended.

Changes to the draft earthquake-prone buildings policy

In respect of heritage buildings, the existing draft Policy recognises that they are to be given special treatment although it does not require that such buildings be treated in a more flexible manner as to the level to which they are earthquake proofed. This part of the draft Policy has been amended to recognise that heritage buildings raise their own specific problems and to require them to be treated like other buildings may result in loss of heritage value. The change to the draft Policy has to require that unless the heritage building poses a Level 3 or 4 risk, then it will only be required to meet a test of being earthquake proofed to one third or 34% of today's standard. All other earthquake prone buildings that are less than Level 3 will also be required to meet this less onerous standard.

In recognition that the owners of heritage building may need to spend a considerable amount of time and money to bring heritage buildings up to the standard required by the draft Policy, a longer time frame of 25 years is to be given to allow for heritage buildings to be brought up to standard where they are less than Level 3 and 15 years where they are Level 3 or 4. In all respects, the Council will also work with owners of heritage buildings and consider waivers and dispensations to assist them to meet the Building Code as near as is reasonably practicable. Where necessary, Council will assess the structural requirements of heritage buildings on a case by case basis to avoid loss of heritage or demolition.

The draft Policy has also had a new clause added requiring seismic strengthening work to take into account the principles of the International Council on Monuments and Sites New Zealand Charter, advice from the Council's Heritage Adviser and the Historic Places Trust.

The submissions also sought that Council educate the public on meeting the policy's requirements and to set up a fund to assist owners of heritage buildings. It is recommended that a report go to the Long Term Council Community Plan to assess the feasibility of setting up a fund to assist heritage building owners. Council will undertake an education campaign to educate the owners of heritage buildings about compliance with the policy.

The changes to the draft Policy bring it into line with the policy of other local authorities in New Zealand that are in an area of low seismic activity.

Standard of earthquake proofing

Parliament has not imposed a "one size fits all" approach to the management of problems associated with earthquake prone buildings. The measures in the legislation recognise that local economic, social and environmental factors have an impact on the implementation of these provisions of the Act. The measures in the legislation also recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect both building owners and users.

Before a territorial authority adopts its policy in relation to earthquake-prone buildings, it should consider the way in which it wishes to implement its policy. There are three approaches that territorial authorities could adopt.

(a) An active approach

Under an active approach, Council would carry out an initial evaluation of buildings in its district to identify those likely to pose a high risk. In light of this, Council would establish priorities for further, more detailed evaluations and set timetables for action. Building owners would then be advised that their buildings are likely to be earthquake-prone and, if appropriate Council would seek from them a more detailed assessment of the building. If the detailed assessment confirmed that the building was earthquake-prone, Council would issue a notice to reduce or remove the danger to the level set out in its earthquake-prone building policy.

Adoption of this approach would provide Council with the best possible risk reduction programme as it is able to set and control the level of any work required to mitigate risk.

(b) A passive approach

If Council were to adopt a more reactive approach, the initial evaluation process and detailed assessment and any improvement of structural performance would only be triggered by an application under the Act for building alteration, change of use or extension of life or sub division.

This second approach has the significant disadvantage that it relies upon a somewhat haphazard order of remediation of earthquake-prone buildings in Waitakere City, based essentially on an owner's intentions for a building. This could leave some significant high risk buildings untouched for a long period of time.

(c) A mixture of active and passive

Council may wish to adopt an implementation regime that includes elements of both an active and passive approach that reflects the level of earthquake risk and priorities specific to Waitakere City. The draft Policy reflects this approach.

A29-A50

Under the draft Policy Council would take an active approach in dealing with buildings identified in NZS 1170.0 2002 table 3.2 attached at pages A29 to A50 as having importance levels three and four. Level three structures are structures that as a whole may contain people in crowds or contents of high value to the community or pose risks to people in crowds. Level 4 structures are structures with special post disaster functions (e.g. hospitals).

All buildings identified as heritage buildings would be subject to an active approach where they are a Level 3 or 4 as set out above, and otherwise a passive approach is to be taken where they are either excluded under s 122(2) of the Act or are less than Level 3. This is an important consideration given the importance of heritage buildings to the historical and cultural life of the nation and the local community.

A49

A passive approach would then be taken with buildings identified in NZ 1170.0 2002 table 3.2 attached at page A49 as having importance levels one and two. Level one structures being structures presenting a low degree of hazard to life and other property and Level 2 structures being structures not in other importance levels (e.g. car park buildings).

The policy does not apply to buildings that are used wholly or mainly for residential purposes unless the building comprises of two or more stories and contains three or more household units (s.122(2) of the Act).

DANGEROUS AND INSANITARY BUILDING POLICY

No submissions were received in relation to this policy. However part 3 of each part of the policy relating to insanitary and dangerous buildings has been amended to give special consideration to heritage issues that reflect the value heritage has in our society.

In essence similar to part 3 of the policy relating to earthquake prone buildings, the Council will work with owners of heritage buildings and consider waivers and dispensations to assist them to meet the Building Code as near as is reasonably practicable. Where necessary, Council will assess heritage buildings on a case by case basis to avoid loss of heritage or demolition.

The draft Policy has also had a new clause added requiring any upgrading work to take into account the principles of the International Council on Monuments and Sites New Zealand Charter, advice from the Council's Heritage Adviser, where the building is listed in the Heritage Appendix to the District Plan and the Historic Places Trust where the building is listed on this register.

These changes to the policy bring the Council policy into line with that of other local authorities.

RESOURCES

The desk top examination of buildings in Waitakere City has identified approximately 640 buildings that warrant a visual assessment to be made by a suitably qualified person to determine whether or not they are likely to be earthquake-prone buildings. Council does not possess the resources required to carry out this work and consequently it will need to be sourced from outside of Council.

Council has already approved \$125,000 in the 2005/2006 Long Term Council Community Plan for this exercise and application has been made to carry this funding forward into the 2006/2007 Long Term Council Community Plan. This ought to adequately address the necessary investigation in respect of earthquake-prone buildings. No such proactive assessment is feasible for dangerous and insanitary buildings as it would require sufficient additional resources to enable inspection of every building in the City. The draft Policy seeks to formalise the existing approach used to deal with dangerous and insanitary buildings. The current resource and level of funding is considered to be adequate to deal with dangerous and insanitary buildings given the relatively low numbers of confirmed dangerous and insanitary buildings encountered annually (approximately 50 dangerous buildings and 30 insanitary buildings per year).

CONCLUSION

Council is required by statute to adopt a policy on earthquake-prone, dangerous and insanitary buildings by 31 May 2006.

While Council may adopt a policy on earthquake-prone buildings that is either active or passive, it is considered that a mixture of both active and passive will provide a responsible approach to dealing with earthquake-prone buildings in Waitakere City.

In relation to dangerous and insanitary building policy the similarities between the Building Act 1991 and the Building Act 2004 enable Council to adopt a policy that formalises the current approach taken in dealing with dangerous and insanitary buildings in Waitakere City.

The measures in the legislation recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect both building owners and users. Council has updated the draft Policy to reflect the sentiment of the submissions it has received.

RECOMMENDATIONS

1. That the Draft Policy on Earthquake Prone, Dangerous and Insanitary Buildings 2006-2011 report be received.
2. That the Planning and Regulatory Committee recommend to the Council the adoption of the Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011.

3. That the Planning and Regulatory Committee recommend that a report on the Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006-2011 be presented to the Long Term Council Community Plan and Annual Plan Special Committee to assess the feasibility of setting up a fund to assist heritage building owners.

Report prepared by: Max Wilde, Manager: Field Services and Setareh Masoud-Ansari, Contract Solicitor.



6 ALTERATION OF TRANSIT DESIGNATION FOR SH18 RAMP TO TRIG ROAD

PURPOSE OF THE REPORT

The purpose of the report is to seek confirmation of the Planning and Regulatory Committee's agreement to an alteration of the current SH16/18 Motorway Designation. The alteration will extend the area designated in order to provide for a revised on-ramp alignment at the junction of Trig Road and State Highway 18.

BACKGROUND

A51-A79

Transit New Zealand ("Transit") intends to construct an on-ramp connecting Trig Road with State Highway 18. The existing alignment for this on-ramp is within the existing designation TSNZ4. The revised on-ramp alignment is outside the existing designation and is on land legally described as Section 2, Survey Office Plan 332263 and is land vested in Waitakere City Council for the purpose of a road (refer New Zealand Gazette notice 2005 p 2057). The alteration of the designation involves extending it 114 metres to the north of the current designation boundary. A full copy of Transit's application and maps are attached at pages A51 to A79.

Transit is a 'requiring authority' under the Resource Management Act 1991, which gives them the power to 'designate' land for public works. It is important to note that the Council does not have the power to grant or refuse consent to the designation alteration. Rather, it is the requiring authority who is also the decision making body in respect of a designation, and the Council only has the ability to make requests and recommendations to the requiring authority.

The existing designation TSNZ4 encompasses the entire realignment of State Highway 18 and State Highway 16 in the vicinity of Massey and Hobsonville. This designation was inserted into the district following a formal process which concluded in Consent orders made by the Environment Court. These consent orders set comprehensive conditions on the implementation of the designation. The full extent of the designation is expansive consistent with the extent of the highway realignment as proposed in the original preliminary design. The design of the highway realignment has been further refined since the designation came into effect. Consequently, minor alterations to the physical extent of the designation have been required as design work progresses. The current proposed alteration is the latest in a series of minor alterations.

STRATEGIC CONTEXT

The proposed SH18 realignment has become an important priority for future development in the northern area of the City.

The establishment of the proposed motorway is provided for in the Regional Land Transport Strategy. In addition, the land between the proposed motorway and the existing alignment of Hobsonville Road has been identified in the Regional Growth Strategy and Northern and Western Sectors Agreement as an area of future urban expansion.

The designation alteration proposal is of particular relevance for the Massey-Westgate area. The realignment of the on-ramp to coincide with the intersection of Trig Road and a future "Northside Drive" (to be constructed by Waitakere City Council), will facilitate access to the proposed future Massey North Employment Special Area. This special area is part of Council's Proposed Plan Change 15, and is part of the Council's Growth and Transport Integration Programme. The proposal for a revised on-ramp alignment contributes to the Council's Integrated Transport strategic platform. This proposal will facilitate future development around SH18 and the Massey-Westgate area, contributing to the Strong Innovative Economy strategic platform.

ISSUES

Proposed Alteration

Transit proposes to alter its designation for SH16/18 Upper Harbour Corridor to accommodate a realignment of the proposed on-ramp from Trig Road. The on-ramp leads traffic onto the motorway in the direction of Greenhithe/Albany. The realignment will improve safety for road users through improved visibility for southbound vehicles on Trig Road and those queuing in the central median to turn right into the on-ramp. The realignment will also have strategic benefits described above.

The revised on-ramp alignment is 10 metres longer than the current on-ramp design and involves an additional 70m² of paved area and approximately 1,100m³ of additional fill. Both the existing and proposed on-ramp alignments broadly follow the existing surface terrain. The land is currently used for pastoral purposes but is vested in Waitakere City Council for roading purposes.

Statutory Process

Once a designation is in place, the Resource Management Act 1991 (the Act) provides a relatively simple procedure for making minor alterations. Section 181(3) of the Act states as follows:

- "181(3) *A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if—*
- (a) *The alteration—*
 - (i) *Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
 - (ii) *Involves only minor changes or adjustments to the boundaries of the designation or requirement; and*
 - (b) *Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*
 - (c) *Both the territorial authority and the requiring authority agree with the alteration— and sections 168 to 179 shall not apply to any such alteration."*

Provided that the proposed alteration complies with the matters set out in Section 181(3) (a), (b) and (c), the designation in the District Plan can be amended without further formality.

The information provided by Transit in support of the designation alteration proposal is thorough, and addresses all the relevant issues. Council staff are satisfied that the correct procedure has been followed in relation to the proposal.

The alteration is minor in terms of its environmental effects and of its extent, taking into account that the land is held as road reserve. All affected land owners, including Waitakere City Council, have given their written approval agreeing with the alteration. There is no reason to suggest that the Council would hold a different view in its role as territorial authority. The proposed alteration therefore complies with all three matters set out in Section 181(3) (a), (b) and (c) of the Act.

Resources

No resources are required other than staff time involved in amending the map sheet of the plan and distributing copies to District Plan holders.

CONCLUSION

Transit proposes to alter the existing SH18 designation to provide for a realignment of the Trig Road on-ramp. The alteration is relatively minor and has safety benefits for road users. It will also assist the future development of the proposed Massey North Special Employment Area. Overall, it is considered that the alteration offers significant benefits to all the affected parties.

RECOMMENDATIONS

1. That the Alteration of Transit Designation for SH18 Ramp to Trig Road report be received.
2. That the Council advise Transit New Zealand that it agrees with the alteration to designation TSNZ4.
3. That designation TSNZ4 within the District Plan be amended, in accordance with 'Appendix C Proposed Alignment and Designation Plan' contained in the Transit report 'State Highway 18 Upper Harbour Corridor: Hobsonville Section Trigg Road On-ramp: Alteration to Designation'.

Report prepared by Christopher Turbott, Senior Planner: Policy Implementation



7 AUCKLAND REGIONAL POLICY STATEMENT PLAN CHANGES, 8, 9 AND 10 – FURTHER SUBMISSIONS

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to lodge further submissions to Auckland Regional Policy Statement (ARPS) Plan Changes 8, 9 and 10 and delegate to the Chairman authority to approve the final submission.

BACKGROUND

The three ARPS Plan Changes are:

1. Plan Change 8 – Volcanic Features and Landscape
2. Plan Change 9 – Include reference to the Hauraki Gulf Marine Park Act 2000
3. Plan Change 10 – Chapter 11 – Natural Hazards

At the end of October 2005 the Council lodged submissions to the above three Plan Changes, as reported to the 11 October 2005 meeting of this Committee.

Submissions lodged have now been summarised by the Auckland Regional Council, and notified for further submissions, due by Friday, 28 July 2006.

STRATEGIC CONTEXT

Plan Change 8 amended the ARPS approach to the management of landscapes and volcanic features. Most of those parts of Waitakere affected by this chapter are within the proposed Waitakere Ranges Heritage Area, and accordingly this Plan Change is of particular interest to the Council.

Plan Change 9 amended the ARPS to give effect to requirements of the Hauraki Gulf Marine Park Act 2000 (HGMPA), which applies to all of the land in the catchment of the Gulf. The eastern foothills of the Waitakere Ranges and most of the urban part of Waitakere drain (ultimately) to the Hauraki Gulf. Thus, there is significant inter-relationship with the Waitakere Ranges and Foothills Protection Project, as well as the management of catchments in the urban area generally. Additionally, Section 8 of the HGMPA 2000 requires the Council to have particular regard to a range of matters traversing natural, cultural, social, historic and economic issues, including the relationship of tangata whenua to the resources of the Gulf. Thus, the HGMPA 2000 has a direct impact on most of the Council's strategic areas of interest. There are also portions of the HGMPA 2000 that are given the status of a National Policy Statement and a New Zealand Coastal Policy Statement, and the Council is required to amend its District Plan to give effect to these provisions. (It is recommended that this takes place once the amendments to the Regional Policy Statement proposed in Plan Change 9 become operative).

Plan Change 10 relates directly to the Three Waters strategic platform, as it includes provisions which impact on the management of flooding and streams. This Plan Change also relates to the Strong Communities strategic platform, as community confidence around the management of natural hazards and civil defence emergency management is a component of the level of safety felt by the community.

ISSUES

Primary Submissions Lodged By The Council

The Council lodged primary submissions which addressed a range of issues, and it is recommended that any further submissions lodged should focus on those areas of the Plan Changes that were not covered by these primary submissions. A summary of the issues covered by the primary submissions of Waitakere City Council follows:

Plan Change 8 – Volcanic Features and Landscapes: Primary submissions lodged to this Plan Change were generally supportive of the Plan Change, reflecting the good working relationship between officers of the Auckland Regional Council and the Waitakere City Council. In particular, submissions supported the requirement to recognise and manage landscapes other than those identified as being landscapes of outstanding natural value under Section 6(b) of the Act - Highly Valued Landscapes; the recognition of the Waitakere Ranges as making a particular contribution to the Auckland Region; the recognition of the potential for adverse effects on landscape from land use and other activities and the inclusion of provisions intended to ensure the avoidance of these effects; and requirements relating to the restoration of degraded landscapes. Submissions also sought better and more appropriate recognition of the values and issues of the Waitakere Ranges, and of the Titirangi/Laingholm area in general and greater clarification and elaboration of provisions. Additionally, some minor amendments to the map of areas considered to have landscapes of outstanding natural value were sought.

Plan Change 9 – Include Reference to the Hauraki Gulf Marine Park Act 2000: This Plan Change was essentially limited to the introduction of reference to the Hauraki Gulf Marine Park Act 2000, rather than substantive discussion of the matters raised by that the Act. Primary submissions to this Plan Change from the Council sought that more detail be included as to how the provisions of the Auckland Regional Policy Statement are consistent with the requirements of the Hauraki Gulf Marine Park Act 2000.

Plan Change 10 – Natural Hazards: This Plan Change was promulgated in response to changes in the legislative framework addressing the management of natural hazards, and in general was considered to be appropriate. However, there were concerns regarding the level of resourcing required of the Council to fulfil the proposed provisions around data gathering and dissemination, and also about the level of liability that the Council was being exposed to by the provisions. Primary submissions were lodged relating to these concerns. The Council also sought a better explanation of the complicated statutory and regulatory context surrounding natural hazard management.

Possible Further Submissions

It is recommended that the Council lodge further submissions for or against submissions lodged by other parties which raise substantive issues or which address submissions to parts of the Plan Changes, that are not addressed by the Council's primary submissions and in which the Council may have an interest. This is so that the Council can present evidence in relation to these matters, and to assure the Council's option to participate in any further processes that might take place (for example in the Environment Court). At the time of preparing this report, a summary of submissions lodged had only just been received, and accordingly a detailed analysis of the issues raised through the first round of submissions had not been undertaken. Additionally, Plan Change 10 in particular raises issues requiring expert stormwater and legal advice.

Accordingly, it is recommended that the Chairman of the Committee be given delegated authority to approve any further submissions of the Council.

A brief analysis of some of the issues raised is presented here. A more comprehensive assessment of the issues raised can be presented to the Committee meeting.

Plan Change 8 – Volcanic Features and Landscapes

Additional issues raised in submission to this Plan Change to which it is recommended that further submissions in opposition be lodged include:

Those from Federated Farmers and others which seek that what they perceive to be significant restrictions on farming activities be removed or significantly reduced and compensation paid for the impact of the proposed provisions. Such an approach would be retrograde.

- Several submitters consider the provisions should be made less stringent generally in relation to a range of activities including locating infrastructure and subdivisions. This would not be appropriate.
- Some submitters seek that reference to any but outstanding natural landscapes be removed from the ARPS. Provisions relating to other landscapes – Highly Valued Landscapes – require the consideration of landscapes that may not be of a predominantly natural character, but which are nevertheless considered to make important contributions to the landscape and amenity values of a District. These provisions were included in large part to address the issues of the eastern foothills of the Waitakere Ranges, and those parts of the coastal villages that are not identified as ‘outstanding natural landscapes’.
- Other submissions seek that the ARPS should reflect the narrow decisions of the Environment Court relating to landscape definitions. This is an incorrect representation of the respective roles of the Environment Court and the ARPS with, in general, the Court interpreting the provisions of statutory plans and not the other way around, although the Court can direct the amendment of statutory plans to give effect to the requirements of the Resource Management Act 1991. The Environment Court will no doubt have an opportunity to reflect upon the discussion of landscape as contained in the Plan Change, and that is the appropriate way to import any decisions of the Court.
- Some submissions consider that there should be identification of nationally assessed outstanding natural landscapes only, while at the other end of the spectrum others consider that this should be left entirely up to the Territorial Local Authorities. It is recommended that the Auckland Regional Council is an appropriate ‘level’ to assess such matters, being in a position to assess these at the regional level, and the ability to apply regional consistency as required. The provisions for Highly Valued Landscapes, discussed above, allow for local authorities to assess all landscapes in their jurisdictional areas.

Submissions to which it is recommended that further submissions in support be lodged include:

- The Structure Plan Advocates Network and others seek incentives for the protection and enhancement of outstanding natural landscapes. While a degree of regulation is required to achieve this (which is not necessarily accepted by these submitters), non-regulatory support would also be desirable, particularly if the Auckland Regional Council took a more proactive role in this matter.
- Auckland City Council has lodged several submissions which seek that the value of urban streams to urban landscape quality be acknowledged. This is particularly true in Waitakere.
- The Environmental Defence Society seek that several additional areas be identified as Outstanding Natural Landscapes, including parts of the Waitakere (Bethells) Valley, Karekare and the Kaipara Harbour. As part of the background research undertaken by Waitakere City Council prior to lodging its primary submission, an expert review was conducted of the landscape identifications proposed in the Plan Change, which generally confirmed the proposed landscape identification in the Waitakere Valley and Karekare. Nevertheless, the Council could support a further review of these two areas, even if only to help clarify the issues affecting those landscapes. It is recommended that these submissions be supported in part.
- Watercare Services Limited seek that the dams and related infrastructure are recognised as being part of the landscape of the Waitakere Ranges. This is undoubtedly true, and the function of the Waitakere Ranges for potable water catchment has been given explicit recognition in the Waitakere Ranges Heritage Area Bill. There may also, however, be landscape issues associated with upgrading or expansion of existing facilities which are appropriately addressed by the Regional Policy Statement. It is recommended that this submission be supported in part.

Plan Change 9 – Include Reference to the Hauraki Gulf Marine Park Act 2000

As stated above, Waitakere City Council's primary submission to this Plan Change was limited to seeking clarification of how the ARPS is consistent with the requirements of this Act. In general, the other ten submitters to this Plan Change either supported or opposed the Plan Change in its entirety, with few amendments proposed. The notable exception to this is Auckland City Council, who consider that the proposed amendment is inadequate and in particular does not give adequate recognition to those parts of the Act given the status of a NZ Coastal Policy Statement, and have sought that greater consideration be given to a more comprehensive review. It is recommended that Waitakere City Council further submit in support of this submission to ensure we are automatically involved in any discussions around this matter.

Plan Change 10 – Natural Hazards

This Plan Change is perhaps the most technical of the three, and quite specific matters have been raised in the submissions that have been lodged. These include the relationship of the Plan Change to the Act and the Building Act 2004 and questions around how the Plan Change addresses coastal inundation. Many of the issues raised by the other Territorial Local Authorities are similar to those raised by this Council, and a brief analysis suggests there are likely to be only a few significant new issues raised beyond what is already covered by the Council's quite detailed primary submission. However, greater analysis is required before a final decision on further submissions can be made, and in particular discussions with staff across Council needs to occur.

RESOURCES

This matter requires staff time and is adequately resourced.

CONCLUSION

The Waitakere City Council has the opportunity to lodge further submissions to the Auckland Regional Policy Statement Plan Changes 8, 9 and 10, and it is recommended that this opportunity be taken up. Due to time constraints, a detailed analysis of the primary submissions lodged by other parties to these Plan Changes has not taken place, and would be required before a final decision on further submissions could be made. A brief analysis only of issues raised in primary submissions is presented here. Approval is sought for delegation of the final sign-off on further submissions to the Chairman of the Planning and Regulatory Committee.

RECOMMENDATIONS

1. That the Auckland Regional Policy Statement Plan Changes 8, 9 and 10 – Further Submissions report be received.
2. That approval be given for Council to make further submissions on the Auckland Regional Policy Statement Plan Changes 8, 9 and 10 as considered necessary by the Group Manager: Planning and Community, and that authority to approve the further submission be delegated to the Chairman of the Planning and Regulatory Committee.

Report prepared by: Jenny Fuller, Senior Adviser: Sustainability

