



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, 12 September 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.

6 September 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.)

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 12 SEPTEMBER 2006 COMMENCING AT 9.30 AM

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AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 12 SEPTEMBER 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, 8 August 2006

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 8 August 2006, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 5 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 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. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued).

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

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

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

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

COURT OF APPEAL

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

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and have already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt 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 came into force. This application has been set down for hearing in mid September 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 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 has been issued against Mr Mawhinney to recover this debt. We have endeavored to serve Mr Mawhinney with the bankruptcy notice; however, 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)

Fogarty J in the High Court heard Council's strike out application of Peter Mawhinney's claim this month. During a two-day hearing, it was argued that the claim was untenable or otherwise an abuse of process in light of previous extensive litigation. We are awaiting a decision from the Court. The Judge indicated that it would be a number of weeks' before the Judgment is available. We anticipate that it is likely that the Court will strike out parts of the claim relating to Council's previous Section 91 Resource Management Act deferral decisions, which have been the subject of the Judgments in the Environment Court and High Court.

ENVIRONMENT COURT

(New) A Ritchie, J Ritchie, E Ritchie and J Shaw v Waitakere City Council (September 2006)

This is an appeal against an abatement notice issued to the directors of Ritchie's Transport Holdings Limited. 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 6.00 am and 9.00 pm. 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. The Council will be filing a notice of reply within the week. A judicial telephone conference will be held to progress the matter on 11 September 2006.

(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 Ltd 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. Notices of reply have been filed and, more recently, a memorandum for the Council seeking timetabling orders for Council's intended application to strike out all or part of the appeals. The Court has issued timetabling orders. Council is to file its initial strikeout application by 4 September 2006 and submissions within 3 weeks.

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

These are appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 & 386 Te Atatu Road and 9 Karamu Street, 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 appeals were filed in late May and it is anticipated that the appeals may be heard late 2006 or early 2007 if not settled before. The parties have sought timetabling orders from the Court.

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

These proceedings concern the noise levels generated by the operation of "Cassels" function centre in Scenic Drive 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.

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

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The Application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

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

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

An appeal by the Auckland Regional Council against a decision of this Council to grant consent to a proposed private high school and associated facilities known as Sunderland College. The Auckland Regional Council opposed the consent application alleging that granting consent to a new school outside of the Metropolitan Urban Limits would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limit and would create negative precedent effects. Recently the applicant has confirmed that it has found an alternative location for its school, (Council's old premises at Waipareira Avenue, Lincoln North). Consequently, it will not be advancing its case regarding the Brigham Creek Road site.

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

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

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

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.

(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 has retained consultants to assess the Farac proposal; as a consequence, the Council has requested further information from the appellant (outstanding matters relate to stormwater and geotechnical issues regarding development of the subject land). Council has not yet received a response from the Faracs.

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

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. A judicial conference was held on 5 September 2005 to consider issues including whether these appeals should be heard following resolution of the appeals on the Swanson Structure Plan. The Court has directed that these appeals should be put "on hold" to await the resolution of the structure plan appeals. The applicants have since requested that the matters proceed to hearing. This matter will be dealt with at a Judicial Conference on 13 September 2006.

(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 filed an application for costs and was awarded costs plus interest of \$12,500 which is an above scale award on the original hearing and costs of \$2,500 on the rehearing application.

However, Mr Mawhinney filed an appeal against both the strike out and rehearing decisions in the High Court. The appeal in relation to the original strike out was out of time and there was a hearing this month to determine whether leave should be given. After hearing submissions, the High Court determined to grant leave to the late appeal, but awarded costs of \$3,805.00 to the Council. A statutory demand was issued against Glorit for these costs and Mr Mawhinney has now paid these costs.

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

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under 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. Although the Swanson Structure Plan hearings have been completed, no final decision has been made by the Court. Therefore this appeal remains on hold until the Court releases its final decision. The applicants have requested that the matters proceed to a hearing. This matter will be dealt with at a Judicial Conference on 13 September 2006.

(Unchanged) Abacus Developments Ltd & 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

(New) 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 have intimated a guilty plea. The matter is set down to be called on 15 September 2006.

(New) 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 is set down to be called on 15 September 2006.

(New) 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 is set down to be called on 15 September 2006.

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

Charges have been laid under the Building Act for the conversion of a basement approximately 50m² 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 is set down for 15 September 2006.

(New) 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 is set down for 15 September 2006.

(New) 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 is set down for 15 September 2006.

(Changed) 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 unauthorised minor household units on the site. There are also fire safety and insanitary (drainage facilities) issues at the site due to the buildings being used for residential purposes.

These matters are listed for 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.

(Unchanged) 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 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 retrospective resource consent for the contraventions of the District Plan. Mr Heays has made his applications; the Council is processing these applications. The Court has given the parties until 11 September 2006 to resolve the granting of the certificate of acceptance and resource consent.

(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 has been set down for depositions on 15 June 2006. In respect of the Building Act matters, a defended hearing is set down for 30 October to 1 November 2006. The matter will be heard with other similar offences to which Mr Gordon has pleaded not guilty. The Resource Management Act charges have been set down for 5 days at the Auckland District Court before a jury in May 2007.

(Unchanged) McGuigan Syme Chilcott Ltd, G Pitts, D Owens Ltd, 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 is set down for McGuigan Syme Chilcott Limited, G Pitts and D Owens Limited on 28 September 2006.

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

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

Charges were laid under the Resource Management Act 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 2006 of at least 100 trees. The Council will report back to the Court on 13 October 2006.

RECOMMENDATION

That the Legal Update (As At 5 September 2006) report be received.

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



PART C - ENVIRONMENTAL MANAGEMENT

5 REVIEW OF SPEED LIMITS BYLAW 2005

PURPOSE OF THE REPORT

The purpose of this report is to inform the Planning and Regulatory Committee of progress towards compliance with Land Transport Rule: Setting of Speed Limits 2003 and the review of Council's Speed Limits Bylaw 2005.

BACKGROUND

In April 2004 the Land Transport Rule: Setting of Speed Limits 2003 came into force requiring Councils and other road controlling authorities with power to make bylaws concerning the use of roads (Section 684(13) Local Government Act 1974, and Section 145 Local Government Act 2002 apply), to take over many of the Land Transport Safety Authority's responsibilities for setting speed limits. The rule does not provide Councils with discretion to determine speed limits based upon local preference or public submissions; it simply changes the administration of speed limits. With the aim of ensuring consistency between districts, speed limits must be set and reviewed in accordance with a rigid points system based largely upon the level of development in a particular area.

The new rule does enable Council to undertake a review of speed limits rather than wait for the Land Transport Safety Authority to do so (but only within an existing prescribed framework). The financial implication, however, is that Council must now bear the cost of reviewing and administering speed limits.

Under the rule, all Councils were required to validate existing speed limits by means of a bylaw before 1 July 2005. This was done at Council's meeting on 29 June 2005 (resolution 1152/2005 refers). The rule also requires Councils to review all existing speed limits in accordance with the prescribed procedure. Transport Assets have completed the first part of this process as outlined below. The rule requires specific consultation to take place before a speed limit is set and Section 156 Local Government Act 2002 requires that before making a bylaw, Councils must follow the Special Consultative Procedure as contained within that Act.

STRATEGIC CONTEXT

Council's 'Integrated Transport and Communication' platform provides the strategic context for this report. The vision is for public transport systems that provide fast, effective services and for city travel facilitated by integrated, environmentally responsible and innovative design, with a focus on meeting the essential needs of all, for access, communication and safety. Safe and appropriate speed limits play an essential role in ensuring safety on Waitakere roads.

ISSUES

Process for Determining Speed Limits

The rule requires speed limits to be calculated from the following information:

- The existing speed limit;
- The character of the surrounding land environment (rural, fringe of city);
- The function of a road (arterial, collector, local);
- Detailed roadside development data (number of houses, shops schools)
- Number and nature of side roads;

- Carriageway characteristics (lane width, number of lanes, street lighting, footpaths, road geometry);
- Vehicle, cycle and pedestrian activity;
- Crash data; and
- Speed survey data.

Surveys

Two surveys of the road are required;

- A survey of general road information taking into account the number of pedestrians, cyclists, traffic lanes, drivers ability to see approaching traffic, road width and geometric features, number of parked vehicles and traffic control devices present.
- A survey of roadside development (the rating survey). This survey measures the level of development in properties adjacent to a road. All properties with a vehicle access onto a road are included in this survey.

In each survey the road is divided into 100-metre long sections and a certain number of points assigned to each section based on the roadway and development features present. Roads in more developed areas or with adverse roadway features are assigned more points.

Average Rating Values

When setting a speed limit in any section of road the rating point values from each section are combined and averaged over the length under consideration. The average value determines the speed limit in that section.

Average Section Rating	Speed Limit (km/h)	Comment
0 to 3	100	Rural Areas
3 to 6	80	Areas of Intermediate Development
6 to 11	70	Areas of Intermediate Development
More than 11	50	Fully Urban Area

When combining the ratings for a section of road, the rule requires that the number of points from the roadway survey may not exceed the number of points from the development rating survey. This means that roadside development is the dominant factor in determining the speed limit. Regardless of other factors, if there is no development in an area the speed limit must be set at 100km/h.

Section lengths are required to be of a minimum length. Sections with a 100km/h limit must be 2 kilometres or longer, sections with an 80, 70 or 50km/h speed limit must have a minimum length of between 500 and 1,000 metres depending on the limit and situation. Where a road is too short to meet the minimum section length requirement, it is appropriate to set a speed limit based on the limit in adjoining roads.

Consultation

The rule requires that Councils must consult the following parties in writing before setting a new speed limit:

- The Land Transport Safety Authority;

- The Police;
- The Automobile Association;
- The Road Transport Forum;
- Any other road controlling or territorial authority affected by the change;
- Any local community that the Council considers will be affected by the speed limit; and
- Any other organisation or road user group that the Council considers will be affected by the speed limit.

Councils are obliged to take into account submissions received during consultation before setting speed limits. This does not, however, relieve Councils of the requirement to set limits according to the rigid procedure laid down in the rule, even if the local community is opposed to some of those recommendations. The emphasis is on national consistency.

Progress to Date

A1-A6 Roadway and development rating surveys have been completed for all sealed roads in Waitakere with a speed limit of more than 50km/h. The results have been analysed using the prescribed method and a set of recommended changes produced. These changes have been sorted by ward and are attached at pages A1 to A6. The entire Henderson Ward is urbanised so there are no roads with a speed limit of more than 50km/h.

The analysis that generated these recommendations has been carried out strictly in terms of the rule. A number of speed limit increases are therefore proposed, which may not meet with community expectations. There is little room for exceptions to the rule; however, at clause 1.3 the rule states;

“There will be some rare situations when, because of special features or activities along a road or route, Speed Limits New Zealand cannot be used or will not produce a sound result. Speed Limits New Zealand must always be used with reference to speed limits policy, and in conjunction with sound engineering judgement, to determine the appropriate and safe speed limit.”

Where the speed limit generated by the analysis is considered to be grossly inappropriate, there is a possibility that an exception to the rule will be permitted but this would require consultation with Land Transport New Zealand.

It should be noted, however, that the rule states that in situations where the actual safe operating speed in rural areas is below 100 km/h (due to road geometry or other limitations), drivers should be made aware of the need to reduce speed by means of warning signs and delineation, not by imposing a lower speed limit. In other words, it may be impossible to drive safely on a road at the posted speed limit, but if there is not sufficient development to justify a speed limit reduction then Council is not permitted to reduce the limit.

CONCLUSION

A1 to A6 Given the limitations of this review process, the legal requirements for extensive consultation and the anticipated community interest in this bylaw, it is proposed to undertake initial consultation with the Police and other relevant organisations before drafting the bylaw. The Transport Engineer will therefore take the proposals attached at pages A1 to A6 to the Community Boards in October 2006 and explain the process of determining the appropriate limit. Initial consultation may identify some stretches of road which could be defined as ‘exceptions’ to the rule, requiring further consultation with the Land Transport Safety Authority.

The aim is to bring a report summarising feedback received during this period of initial consultation, together with a draft bylaw to the Planning and Regulatory Committee meeting in December 2006. If the Committee considers the draft bylaw to be the most appropriate form of bylaw and that there are no implications under the New Zealand Bill of Rights Act 1990 (s.155 (2) (a) and (b)) and the Local Government Act 2002, then the draft bylaw may be referred to Council for approval, for the purposes of public consultation only. The Special Consultative Procedure will then take place and public submissions can be made. Given the strict process involved in the review process, it will be important to ensure the Statement of Proposal and Summary of Information clearly outlines those limitations.

RECOMMENDATION

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

Report prepared by: Yvonne Donaldson, Team Leader: Legal Services and Paul Schischka, Transport Engineer.



6 PROPOSED PLAN CHANGE 12: THE OPEN SPACE ENVIRONMENT AND NATURAL AREA PROVISIONS IN THE DISTRICT PLAN

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee the outcomes from mediation on the appeals against Proposed Plan Change 12. This Plan Change amends the rules of the District Plan Open Space Environment and makes consequential amendments to the Natural Areas of the District Plan. The Plan Change seeks to better facilitate development and general maintenance within parks and reserves in the City. This report seeks approval to resolve the appeals against the Proposed Plan Change by Environment Court consent order.

BACKGROUND

At its meeting of 9 December 2003, the then Environmental Management Committee resolved:

- “2. *That the District Plan provisions relating to the rules of the Open Space Environment and Natural Areas be amended to allow a greater range of parks facilities (furniture), parks infrastructure (footpaths) and parks maintenance to be included as permitted activities.*
3. *That a proposed plan change introducing new definitions for parks facilities, infrastructure and maintenance, amending rules of the Open Space Environment and Natural Areas to provide for the above, amending the explanation and including any consequential changes to the policies, be brought back to this Committee for consideration prior to public notification.”*

4363/2003

The Open Space Environment comprises areas of publicly owned space ranging from large park areas in the Waitakere Ranges to small local reserves within the urban Human Environments.

The land identified as Open Space Environment in the District Plan overlaps with the entire range of District Plan Natural Areas. The previous Open Space Environment policy and rule framework made no provision for permitted activities on a park or reserve without an Operative Reserve Management Plan. The lack of reserve management plans for many of the City's parks and reserves and the lack of detail for future development within existing reserve management plans necessitated a large number of resource consents. The number and cost of obtaining resource consents to undertake work in parks and reserves have been a significant annual cost for Council.

The rules for the Natural Areas in the District Plan control vegetation alteration and earthworks. Without an Operative Reserve Management Plan there is limited ability for general maintenance to be undertaken in parks without resource consents being required.

The reliance on the District Plan Open Space rules was only ever considered an interim measure. The District Plan Review Decision Notice stated

"In the interim until the (Reserve Management) Plans are operative the District Plan bulk and location rules for the Open Space Environment apply to all reserves. These rules will be reviewed as the Reserve Management Plans are implemented."

Proposed Plan Change 12 sought to ensure that the provisions for the development and management of open space in the City are appropriate and effective in achieving Council's strategic objectives. The revised District Plan Policy and Rule framework will enable routine works to be carried out in a more cost effective manner while ensuring the natural and physical resource within parks and reserves are sustainably managed.

Proposed Plan Change

Proposed Plan Change 12 takes an effects based approach to the provision of a range of activities and/or development that occurs in parks. The Open Space Environment rules control the effects of activities and/or development on adjoining environments such as residential neighbourhoods. The Proposed Plan Change also manages the effects of development on the natural environment via the Natural Area rules. The Proposed Plan Change also provides a robust policy and rule framework for activities and development on parks that do not have an Operative Reserve Management Plan.

The usual activities and development that occur in the Open Space Environment have been developed into an activity list. Those activities that are unlikely to generate any adverse effects on the environment are provided for as Permitted Activities. Those activities with potential to create minor adverse effects are provided as Limited Discretionary or Discretionary Activities. The new activities are described in the Definitions Section of the City Wide Rules. There are consequential amendments to existing definitions, and to other rules where required.

STATUTORY PROCESS FOR PROPOSED PLAN CHANGE 12

Council's (then) Environmental Management Committee approved Plan Change 12 for notification on 10 August 2004. Subsequently the Plan Change was publicly notified on 1 December 2004, and eight submissions were received. A summary of submissions was notified on 18 February 2005 and nine further submissions were received, which were all from the original submitters.

The submissions ranged from minor amendments to the wording of new definitions and the assessment criteria associated with the Natural Area Rules, to proposals for new Policies and new Rules for Harbourview-Orangihina Park to the abandonment of the Plan Change in its entirety.

The submissions received that were generally in support of the Plan Change, subject to various amendments, were from statutory bodies - Auckland Regional Council and the Department of Conservation. The network utility operator Watercare Services Limited opposed one part of the Plan Change. The Te Atatu Residents and Ratepayers Group and Ms Anne Grace opposed the entire Plan Change.

A7-A32

The Planning and Regulatory Committee heard submissions on Plan Change 12 on 26 September 2005, and issued its decision. Subsequent to that, two Environment Court appeals were received. One appeal was from the Te Atatu Residents and Ratepayers Association (the Association), and one was from Ms Anne Grace. The Association's appeal is numbered ENV-2006-WLG-000486 and Ms Grace's appeal is numbered ENV-2006-AKL-752. A copy of these two appeals are attached at pages A7 to A32.

The Association's appeal sought the withdrawal of Proposed Plan Change 12, or, failing that, specific changes to parts of the decisions made in relation to the Open Space Environment. It included all of the matters it had presented in its Environment Court appeal against Council's Proposed Plan Change 2 (relating to Harbourview-Orangihina park and a Marae Special Area). The Council, in its reply to the Association's appeal, indicated that the matters related to Harbourview Orangihina Park and the Marae Special Area were outside of the scope of Plan Change 12.

Ms Grace sought specific amendments to the Council's decision on Proposed Plan Change 12 to correct errors related to references to threatened and endangered plants, and consequential changes to various District Plan assessment criteria.

An Environment Court facilitated mediation occurred on 18 July 2006 between the Council and the Association. At that mediation the Association indicated that it would not be pursuing the matters in its appeal related to Harbourview-Orangihina Park. The Association also narrowed the scope of the remainder of its appeal against the Open Space provisions to nine specific matters. Through the course of the mediation and subsequent meetings, all of those matters were resolved, leading to amendments to aspects of the Open Space Environment and the Natural Area Rules. The Association's approach was constructive, and the amendments have improved the clarity and certainty of the Rules that apply in the Open Space Environment.

Mediation also occurred with Ms Grace on 24 July 2006. This resulted in agreement between the Council and Ms Grace on the correct references to documents outside the Plan that list Threatened and Uncommon Plants, and consequential amendments to the relevant assessment criteria for such plants.

A33-A35

A schedule of the specific changes associated with each appeal is attached at pages A33 to A35.

A36-A93

The complete Plan Change including amendments arising from the mediations is attached at pages A36 to A93.

CONCLUSION

The purpose of this report is to present to the Planning and Regulatory Committee the agreements reached via mediation with the two parties that have lodged Environment Court appeals against Proposed Plan Change 12. The mediations were constructive and have helped to provide clarity and certainty to the implementation of the District plan in the Open Space Environment.

The agreements reached have resulted in there being no further matters remaining between the Council and the two appellants, and a consent order on these agreements will enable the Environment Court Judge to make Plan Change 12 operative. The Environment Court Judge has indicated that the resolution of Plan Change 12 will facilitate the issuing of a decision on the Association's appeal against Proposed Plan Change 2.

RECOMMENDATIONS

1. That the Proposed Plan Change 12: The Open Space Environment and Natural Area Provisions in the District Plan report be received.
2. That the Planning and Regulatory Committee note that an Environment Court appeal was received against Proposed Plan Change 12 from the Te Atatu Residents and Ratepayers Association, numbered ENV-2006-WLG-000486.
3. That the Planning and Regulatory Committee note that an Environment Court appeal was received against Proposed Plan Change 12 from Ms Grace, numbered ENV-2006-AKL-752.
- A33-A34 4. That the Planning and Regulatory Committee approve the agreements reached in mediation on the appeal against Proposed Plan Change 12 from the Te Atatu Residents and Ratepayers Association, numbered ENV-2006-WLG-000486 as set out at pages A33 to A34 to the Agenda.
- A35 5. That the Planning and Regulatory Committee approve the agreements reached in mediation on the appeal against Proposed Plan Change 12 from Ms Grace, numbered ENV-2006-AKL-752 as set out at page A35 to the Agenda.

Report prepared by: Eryn Shields, Principal Planner.



7 DETERMINATION REPORT - OVERVIEW OF BYLAWS NO.18 1990 CEMETERIES AND CREMATORIA AND NO.28 URUPA (MAORI BURIAL SITE) 1996

PURPOSE OF THE REPORT

The purpose of this report is to commence the review of bylaws No.18 1990 Cemeteries and Crematoria, and No.28 Urupa (Maori Burial Site) 1996, and determine whether a bylaw is the most appropriate way of addressing the problem, in accordance with the ongoing Bylaw Review Programme under Section 158 Local Government Act 2002.

BACKGROUND

A94-A113 The current bylaws are attached at pages A94 to A113. Pursuant to Section 158 of the Local Government Act 2002, all bylaws that were in existence before the Act came into force, must be reviewed before 30 June 2008.

The Cemeteries and Crematoria bylaw was made pursuant to the Burial and Cremations Act 1964 and Local Government Act 1974. The 1964 Act which is still in force empowers local authorities to make bylaws concerning the administration of cemeteries and crematoria within their district, but specifically excluded Maori Burial Sites from the ambit of that power. Therefore Council adopted a separate bylaw, Bylaw No.28 Urupa (Maori Burial Site) 1996, to emphasise the distinctions relating to decision making between the cemeteries generally, and Waikumete Urupa specifically. The Urupa bylaw mirrors the provisions of the Cemeteries and Crematoria bylaw except that it confirms that it is the Urupa Management Trustees (rather than Council, or the Cemetery Manager) that makes certain decisions relating to the area of Waikumete known as the Waikumete Urupa.

Section 684 (10) Local Government Act 1974, also gave powers to local authorities to make bylaws to 'regulate the use of any cemetery or crematorium'. The 1974 provision was repealed by the Local Government Act 2002. Section 146 Local Government Act 2002 now provides a specific power to make a bylaw for '(b) (v) managing, regulating against, or protecting from damage, misuse, or loss, or for preventing the use of the land, structures or infrastructure associated with cemeteries'.

All local authorities have duties and powers under the Burial and Cremation Act 1964 regarding the provision of cemeteries and crematoria, together with associated responsibilities for their management and regulation. This report concludes that:

- Council has specific legal powers to make a bylaw to manage and regulate cemeteries and crematoria pursuant to s.146 (b) (v) Local Government Act 2002 and s.16 Burial and Cremation Act 1964.
- A bylaw is the most appropriate mechanism to regulate and manage those facilities and services.

STRATEGIC CONTEXT

One of Council's strategic priorities is "Sustainable Development" aimed at ensuring all major Council programmes demonstrate ongoing social, economic, environmental and cultural benefit for current and future communities. The "Strong Communities" platform also emphasises support for the health and wellbeing of the City's residents. The bylaw review process and the preparation of an updated bylaw to better manage and regulate cemeteries and crematoria within the City, are consistent with Council's Long Term Council Community Plan and strategic priorities. In addition, Council has a statutory duty to review its current bylaw before 1 July 2008.

ISSUES

Section 77 of the Local Government Act 2002 requires local authorities in the course of the decision-making process to seek to identify all reasonably practicable options and to assess those options by considering the benefits and costs, community outcome, statutory responsibilities and any other relevant matters.

Whilst formal consultation is not required at this initial stage in the bylaw making process, Section 78 Local Government Act 2002 requires local authorities to give consideration to the views and preferences of persons likely to be affected by, or have an interest in the subject matter at every stage of the process. An initial meeting involving stonemasons, cemetery workers and Friends of Waikumete has already taken place to discuss the current bylaw and how it could be improved. Consultation has also commenced with Council's Maori Issues officer, Senior Analyst Maori Policy, and the Urupa Management Trustees.

Problem Identification

In Waitakere City there is the cemetery and crematorium at Waikumete and a cemetery in O'Neil's Road in Swanson which are Council controlled. Established in 1886, Waikumete cemetery provides for a wide range of denominational and cultural groups, and aims to offer a large number of alternative services to the bereaved. Waikumete is one of the largest cemeteries in the Southern Hemisphere and the final resting place for over 70,000 people. The Manager: Waikumete Cemetery and Crematorium, advises that based upon previous burial numbers it is estimated that there are approximately 7-10 years left at Swanson, and between 10-15 years at Waikumete. A review is currently underway to establish what options are available to extend Waikumete.

Cemetery personnel, stone masons, and Friends of Waikumete have identified a number of issues that could benefit from attention during this bylaw review process.

The main concerns relate to grave monuments and adornments. The existing bylaw defines certain areas of the cemeteries where decoration is restricted. Over the years the bylaw has not been universally adhered to and nor have the restrictions been enforced. This has led to a situation where in certain parts of the cemetery there are more graves in breach of the bylaw than actually complying with it. Complaints have been received regarding the appearance of graves particularly from neighbouring plot owners in lawn and berm areas of the cemetery. In addition where kerbs, walls, or fences have been erected around graves in breach of the bylaw, health and safety is a concern for cemetery workers and visitors.

It is timely to consider whether the ornamental restrictions in their current form remain relevant and appropriate. Stone masons confirm that the rules in the existing bylaw are clear enough the problem is simply that over many years, they have not been enforced. If restrictions in some form relating to ornamentation are to be retained (in an updated form), then there needs to be a strong commitment to enforce those restrictions and an acceptance that there will be a resource implication involved in doing so. The intention is to strike the right balance between the differing opinions and needs of local residents in order to provide the best service possible for the City.

The purpose of imposing regulatory controls over certain parts of the cemetery is to offer residents an element of choice. When purchasing an exclusive right of burial, some residents seek a neat, lawn area where large monuments are not permitted. Others wish to entirely enclose their plot and cover it in decorative memorials. If the Committee considers that some ornamental restrictions should be retained, then an issue arises regarding how to address existing non-complying plots.

One option would be to simply draw a line, in effect grant an amnesty for existing non-compliant structures coupled with a strong message that in the future, restrictions relating to ornamentation will be rigorously enforced, including removal and cost recovery. That approach would certainly prevent the non compliance situation deteriorating further, but will not assist those aggrieved families who have purchased plots in lawn or berm areas and are now surrounded by mausoleums, fences, encroaching monuments and brick walls.

In Waikumete as a whole ornamental non-compliance is estimated by the Cemetery Manager to be approximately 10%. However, in certain parts of the cemetery, the presence of illegal structures is much higher. For example in the West Berm it is approaching 40% and in the new East Berm and Lawn area it is estimated to be over 60%.

A report entitled Decorations of Graves at Waikumete Cemetery was presented to the Finance and Operational Performance Committee on 12 December 2005. The report sought the Finance and Operational Performance Committee's approval to commence a programme to enforce "Grave Decoration guidelines", developed in 1997 following consultation between Council and community representatives. The report noted that the guidelines were developed in the interests of all users, but had not been adequately monitored. The Finance and Operational Performance Committee agreed that a process outlined in the report to enforce the guidelines (developed through public consultation) be approved. The Manager, Waikumete Cemetery and Crematorium will address the meeting in more detail regarding attempts made to rectify the situation. Public notices have been published and signs placed on individual graves. It is understood, however, that no illegal structures have been removed to date.

This is understandably a highly emotive and sensitive subject. There can be varying cultural attitudes and practices regarding this issue. If the Planning and Regulatory Committee were minded to pursue the removal of all non-compliant structures, (some of which have been in place for many years), arguments relating to Council's implied acceptance of these offending monuments due to past inactivity, and difficulties identifying the whereabouts of surviving family members may arise. The Manager, Waikumete Cemetery and Crematorium considers that a removal programme could, however, be devised and handled sensitively. He will address the Planning and Regulatory Committee further on that subject.

As indicated above, Council currently has two bylaws in force one covering Waikumete Urupa and one covering Cemeteries and Crematoria generally. They are largely repetitious and it is appropriate now to consider whether these two bylaws should be combined into one document which may be more easily understood, and which would clearly outline rules that apply to all areas of the cemetery and crematorium and which decisions rest with the Urupa Management Trustees. The preliminary thoughts of the Trustees on this proposal are being sought, and the Planning and Regulatory Committee will be updated accordingly at the meeting.

Other matters that have been identified as requiring a review by cemetery staff and interested parties include unqualified persons erecting monuments, working after hours, dogs, vehicles and late bookings. With regard to cremations, issues include a need to ensure all caskets and furniture are made of combustible material, that no combustible fluid is placed on caskets prior to cremation, and that no substances are burned during the service without prior permission. Matters relating to scattering and burial of ashes also require clarification. Given that cemeteries are public places, some of these matters may be more appropriately dealt with in the public places or dog control bylaw. Specific operational details may be best placed within a Cemeteries and Crematoria policy document, setting out the rules in force from time to time.

Council has a legal duty to provide these facilities and must ensure that they are appropriately planned for, managed and maintained so as to provide an acceptable level of service which meets the needs of people within the City. The outcome sought is the effective management and operation of cemeteries and crematoria in Waitakere City.

Option Analysis

The options are as follows:

Retain the current bylaws

There would be no change to the existing rules and no increase in costs. However, the Cemeteries and Crematoria bylaw is over 15 years old; the Urupa Bylaw is 10 years old. They both could benefit from a review to ensure continued relevance and to better meet the needs of local residents. Some of the clauses are not enforced currently and a decision needs to be made as to whether or not certain restrictions should remain. There is also a statutory requirement to review these bylaws or they will expire; in the case of Urupa on 1 July 2008, and with regard to the Cemeteries and Crematoria bylaw, two years later (if the bylaw relies entirely on the powers contained within the Burial and Cremations Act 1964 s.16 and not the redundant provisions of the Local Government Act 1974).

Update the current bylaws

This option allows Council to consider what provisions ought to be made for the better management and regulation of the cemeteries and crematorium and is consistent with Council's 'Strategic Priority of "Sustainable Development" and the "Strong Communities" Strategic Platform. Operational issues that have been identified by interested groups and staff can also be addressed. If restrictions on ornamentation are to remain because they are appropriate and relevant, then there is likely to be a resource implication because those restrictions should be enforced. This option provides an opportunity to consider whether the Urupa and general cemeteries bylaw, would be more easily accessed and understood if both were contained within the same bylaw.

A review and update of the current bylaws also ensures that Council has complied with its statutory duty under the Local Government Act 2002.

Revoke bylaws and rely on other methods for management and regulation

If the current bylaw was revoked, Council would need to rely on trespass orders in response to complaints regarding behaviour, and service delivery contracts relating to matters such as graves, burials and decorations. The Trespass Act has limitations, and contracts are not binding on third parties. In order to ensure cemeteries are areas where people feel safe and able to comfortably visit, there needs to be an ability to prevent certain activities occurring, times of access and types of memorial which only a bylaw can achieve.

Council requires an effective method of regulating and managing these facilities. It is therefore recommended that Council continue to manage and regulate cemeteries and the crematorium by means of an updated bylaw. There are specific legal powers contained within the Local Government Act 2002 and the Burial and Cremations Act 1964 to make a bylaw for this purpose. Bylaws are generally well understood by the public. Enforcement is relatively easy and effective compared with other regulatory options. Given the issues that have been identified, the required outcome sought (effective management and regulation of these facilities) and the above option analysis, it is submitted that an updated bylaw, finalised after full public consultation, is the most appropriate option. There are no other realistic options to effectively achieve the desired outcome.

RESOURCES

If Council eventually approves an amended bylaw containing prohibitions and restrictions particularly relating to ornamentation, then a commitment to enforcement is required. That is likely to have a resource implication. The Manager, Waikumete Cemetery and Crematorium will address the Committee further on that point.

Conclusion

If the Planning and Regulatory Committee is comfortable with the recommendation that a bylaw is the most appropriate method of addressing the perceived problem, then the next stage of the bylaw review process can commence.

Officers in consultation with interested parties will prepare a draft updated bylaw together with a draft Statement of Proposal and Summary of Information for discussion at the next Planning and Regulatory Committee meeting. It would be of considerable assistance in preparing that draft bylaw to receive an indication now as to whether or not the Committee:

- favours restrictions on grave ornamentation;
- would like to see one document covering cemeteries and the Waikumete Urupa, (subject to any views expressed by the Urupa Management Trustees to the contrary);
- has any other issues that it would like to see specifically addressed.

At the next meeting it will be necessary to consider whether the proposed bylaw is the most appropriate form of bylaw and whether there are any implications under the New Zealand Bill of Rights Act 1990.

Once satisfied that the bylaw is 'the most appropriate form' and that there are no Bill of Rights implications, the bylaw is referred to the next Council meeting with a recommendation that it be approved for the purposes of public consultation in accordance with the Special Consultative Procedure. For that purpose, Council is also required to adopt a Statement of Proposal, and Summary of Information. Submissions received as a result of the consultation process will be heard by the Planning and Regulatory Committee. A final report in relation to the proposed bylaw will be returned to the following Council meeting, with amendments as appropriate arising from the consultation process.

RECOMMENDATIONS

1. That the Determination Report - Review Of Bylaws No.18 1990 Cemeteries And Crematoria And No.28 Urupa (Maori Burial Site) 1996 report be received.
2. That a bylaw is the most appropriate way of addressing the perceived problem, namely, the better management and regulation of Cemeteries and Crematoria within Waitakere.
3. That Council officers prepare a draft bylaw, Statement of Proposal and Summary of Information, for consideration and discussion at the next Planning and Regulatory Committee Meeting.

Report prepared by: Denis Sheard, Manager: Legal Services and Yvonne Donaldson, Team Leader: Legal Services.

