



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, 7 August 2007** **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.

1 August 2007

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

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, 7 AUGUST 2007 COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
4 CONFIRMATION OF MINUTES	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
5 LEGAL UPDATE (AS AT 30 JULY 2007)	2
<u>PART C - ENVIRONMENTAL MANAGEMENT</u>	11
6 MINISTRY OF TRANSPORT REVIEW OF THE TRANSPORT ACT 1962	11
7 DOG CONTROL ACT 1996, SECTION 10A - ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2006	14
8 SUBMISSION TO PROPOSED NATIONAL ENVIRONMENTAL STANDARDS FOR TELECOMMUNICATIONS INFRASTRUCTURE	15
9 TIMELINE FOR THE REVIEW OF THE BULK AND LOCATION RULES OF THE WAITAKERE CITY COUNCIL DISTRICT PLAN (LIVING ENVIRONMENT)	21

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 7 AUGUST 2007 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 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



4 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 10 July 2007

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 10 July 2007, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 JULY 2007)

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 minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes. References to Council's District Plan were not included in previous reports but will be included separately under the Environment Court heading in all future reports.

COURT OF APPEAL

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. He reported that the argument put forward to the Court of Appeal by Carter Holt seemed more compelling than that presented to the High Court and that the arguments received a sympathetic hearing from the court. The decision has been reserved. If the argument is successful Council will need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. Costs on both decisions are reserved pending the Court of Appeal decision.

HIGH COURT

***(Unchanged)* Waitakere City Council v C P Brunel and the Cove Limited (December 2006)**

Council sought to acquire land under the Public Works Act 1981 for a carpark at the Westpark Marina boat ramp. The owners objected and the High Court eventually declared that the Council could take the land. The property owners' application for leave to appeal was heard in the High Court on 19 March 2007. Leave was declined.

Negotiations to purchase the properties have been completed and the Council now owns the land, but with some minor compensation issues unresolved, including the costs issue. Hopefully the outstanding issues can be resolved with minimal disagreement.

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. This is being followed up with Counsel.

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

Council has 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. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 Public Works Act 1991. An application for leave to appeal has been filed with the High Court against that decision in order to preserve the Council's position. Advice on the prospects of that appeal is awaited from Matthew Casey QC who was overseas at the time the application had to be filed.

(Changed) West Auckland Enterprises Limited (May 2007)

Council has made a liquidation application to put West Auckland Enterprises Limited (formally Sunderland College Property Limited) into liquidation.

This company owes Council \$17,000 for unpaid resource consent hearing fees and has failed to comply with a statutory demand. West Auckland Enterprises Limited has not responded to correspondence regarding this debt. The matter was called in Court on 5 July 2007. West Auckland Enterprises Limited was put into liquidation and the directors of West Auckland Enterprises have subsequently presented a personal cheque to repay Council for \$17,000.

(Changed) All Seasons Properties Limited v Waitakere City Council (April 2007)

This is an appeal against the Environment Court's decision to grant consent to Ongoing Enterprises Limited. The Environment Court upheld the Council's original decision to grant consent for the establishment of a medical centre at 382-386 Te Atatu Road.

The appellant has withdrawn its appeal. The Environment Court's decision confirming consent and awarding costs to the applicant and Council stands.

(New) Lovelock v Waitakere City Council (July 2007)

This matter is in respect of an appeal of a rating valuation by Lovelock to the Land Valuation Tribunal ("LVT").

Notwithstanding Lovelock's appeal being dismissed by the LVT, Council's concerns are in relation to a number of incorrect statements made about Council's responsibilities in relation to ratings valuations. These statements may become a precedent for future ratings valuations. Accordingly, council has applied for a Judicial Review of the LVT's decision in relation to these statements. Judicial Review proceedings will clarify Council's responsibilities.

Substantive hearings involving Mr Mawhinney

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

The judgment of Fogarty J in relation to Council's strike out application was released on 14 September 2006. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim was struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions based on common law duties against local authorities generally.

A costs application in respect of the proceedings from 1999 to date was lodged with the Court. An interim Costs Judgment was released by the Court this month ruling on the applicable award under the High Court scale, on the basis of scale 2. This is a very low rate and a disappointing outcome. A revised calculation in light of the interim findings has been prepared and will be submitted. An uplift of 50% on the applicable scale award has been sought in light of the manner in which Mr Mawhinney has conducted the proceedings. Mawhinney has paid \$60,000 as security for costs. The current prognosis is that the final award is unlikely to exceed that amount.

(Unchanged) Mawhinney and Glorit Subdivision Limited v Waitakere City Council (February 2006)

This matter related to a further appeal in the High Court by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Environment Court in December 2005 and Mr Mawhinney's application to be reheard has also been dismissed by Judge Shepherd in the Environment Court.

Both decisions have been appealed to the High Court. The matter has been set down for hearing in the High Court on 7 December 2007. Mr Mawhinney has lodged security for costs of \$1,500. Subsequently Glorit Subdivision Limited, of which Mr Mawhinney was a sole director and shareholder, has been wound up, for non-payment of costs award in favour of the Council. The Court has now granted leave to allow the Official Assignee to withdraw from the proceedings. Mr Mawhinney has obtained a short adjournment to early December to allow time for decisions in related Environment Court decisions to be available.

Debt Recovery proceedings involving Mr Mawhinney

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

The Council issued a bankruptcy notice against Mr Mawhinney to recover payment of unpaid costs and disbursements awarded to Council in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney paid the debt and costs of \$3,475 in accordance with the bankruptcy notice. The Council sought indemnity costs against Mr Mawhinney due to additional costs incurred by Council for being forced to make an application for substituted service. This application was heard on 31 January 2007 before Associate Judge Doogue.

On 12 February 2007, Associate Judge Doogue delivered a judgment that awarded the Council full indemnity costs of \$2,598 against Mr Mawhinney, plus Council's disbursements of \$359.38. These costs have not been paid. A bankruptcy notice was issued and attempted service by a process server occurred on 24 May 2007 at Mr Mawhinney's place of residence where he refused to accept service of the bankruptcy notice. We have written to Mr Mawhinney giving him a final opportunity to accept service of the bankruptcy notice. An application for substituted service has been filed with the Court.

(Unchanged) Waitakere City Council v Glorit Subdivision Limited (March 2006)

Council has been seeking to recover the costs awarded to it in these proceedings.

Mr Mawhinney's barrister had advised that Mr Mawhinney has no liquid assets to pay this debt. Despite this, Mr Mawhinney paid the judgment debt of \$14,290.50 plus costs for the bankruptcy notice on 28 March 2007. Mr Mawhinney's barrister advised Mr Mawhinney would not be paying the other outstanding costs of \$1216.88 still owing to Council. We are awaiting further costs to be fixed by the Court for this matter and will pursue Mr Mawhinney for these debts.

(Unchanged) Waitakere City Council v P W Mawhinney (May 2007)

Mr Mawhinney (and Glorit Subdivision Limited (In Liquidation)) jointly and severally owes Council a cost award of \$2,000 for costs obtained in the Environment Court.

A bankruptcy notice was issued and attempted service by a process server occurred on 24 May 2007 at Mr Mawhinney's place of residence where he refused to accept service of the bankruptcy notice. We have written to Mr Mawhinney giving him a final opportunity to accept service of the bankruptcy notice. Mr Mawhinney did not accept service of the bankruptcy notice. We prepared and filed an application for substituted service with the Court.

ENVIRONMENT COURT

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

Councillors will recall that this matter has been to the Supreme Court, to resolve the attempts made by Estate Homes to argue that it should be fully compensated for the costs it incurred building Marinich Drive. The Supreme Court ruled that the only issue for determination was whether Estate should be compensated at a local or collector road standard and remitted the matter back to the Environment Court which heard argument on Monday 28 May and delivered its decision on 15 June 2007. No further evidence was called. The only evidence before the Court was that the appropriate standard was a collector road. Notwithstanding, the Court has held that a local road would suffice. Council has not been able to resolve the issue, and Matthew Casey QC has filed a further appeal seeking the Court's clarification of this matter, as Council believes that the correct standard is a local road.

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

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated 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 Auckland Regional Council and Waitakere Ranges Protection Society Incorporated oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006, the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision.

(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 Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Incorporated have lodged applications with the Court in support of the Council as Section 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing resumed on 23 May 2007 to hear the evidence of a witness for one of the Section 274 parties who was not available during the March hearing. The hearing has now been completed. The Court has reserved its decision.

(Unchanged) Waitakere City Council v R & G Britten - 19 Church Street, Swanson (October 2005)

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

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

Mr Britten has been granted resource consent to undertake the remedial works. The remedial work will not begin until the summer of 2007/2008. This has been communicated to the Environment Court and a new reporting date of 30 November 2007 has been set down. The Enforcement Order proceedings remain on hold.

(Unchanged) Ritchies Transport Holdings Limited, v Waitakere City Council, and Rex Campbell, Section 274 Party (September 2006)

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

A judicial telephone conference was held between the parties to consider the application for stay on 27 September 2006. Mr Campbell, the Section 274 party joined the conference by consent. The Court granted the application for stay upon the agreement of all parties, including Mr Campbell, for a three-week period to permit the parties to resolve the appeal. As a result, the appeal has been put 'on hold'. The Council met with the parties on 16 October to resolve the appeals. As a result, the parties agreed for the stay to continue and that Ritchies would lodge resource consent (lodged on 9 January 2007) to address the matters raised in the abatement notice. The Council reported back to the Court on 30 March 2007 that the consent application was being processed, and notification of the application is pending. The Council is still in the process of receiving expert reports in support of the application. The Council filed a progress report on 30 April 2007. That report outlined that the applicant, Ritchie's, sought an extension of time to submit further information as to acoustic issues. In accordance with Environment Court directions the Council will be reporting on the progress of this matter on 30 July 2007.

(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.

(Unchanged) Waitakere City Council v Rodney District Council ("RDC") (April 2007)

An appeal and s 274 notices were filed by WCC regarding decisions by RDC on the Rodney Proposed District Plan regarding future urban development issues. A pre-hearing conference occurred on 27 and 28 June 2007, at which time the Court directed a case management process going forward. This involves workshops and mediations from August 2007 with a hearing scheduled (if required) for 2008. The Court intends to resolve all outstanding appeals in respect of the Rodney Plan by the end of 2008.

(Changed) L Aalbers v Waitakere City Council (May 2007)

An appeal against two abatement notices which were issued by the Council to require cessation of a home occupation for the provision of sexual services from a rear site without resource consent. The Council contends that the activity is in breach of the District Plan Rules which require resource consent to operate as a home occupation because it is on a rear site as defined by the District Plan (Rule 11). The appellant disputes the need for consent and has therefore appealed the abatement notices. The appellant also sought an application for a stay to permit her to continue operating from the site. The applications have been filed out of time and the solicitors for the appellant have been required to file an application for waiver to file the appeals out of time and to file an affidavit in support of the application for a stay. The matter is set down for a judicial conference on 6 June 2007 at 9.30am. The Council opposed the application for stay and the appeals on the basis that they are out of time and the activity cannot continue without resource consent. The Court granted the application for stay which permits the activity to continue until such time that the appeal is resolved. In the interim three parties have joined the appeal as interested parties.

The parties agreed that prior to the matter proceeding to Court there should be mediation. As a result a one day mediation was held between all the parties and facilitated by an Environment Court Commissioner. The parties entered into a confidential agreement which permits the activity to continue. The parties are reviewing the matter again on 8 October 2007 after which a decision on the appeal will be made. If the appeal is to proceed, it has been set down for a back-up fixture in early December 2007.

(Changed) The Tree Council and the Sunnyvale Protection Society v Waitakere City Council (June 2007)

An appeal against Council's decision to grant subdivision and land use consent to Sunshine Boulevard Limited for a 56 unit medium density residential development at 25-27 Awaroa Road and 20 Sunnyside Road, Sunnyvale. A notice of reply has been filed. We await further directions from the Court.

Mawhinney Matters in the Environment Court

(Changed) Perceptus Limited and Swanson Heights Limited v Waitakere City Council, Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v Waitakere City Council.

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney filed his submissions in opposition on 30 January 2007. These appeals (with the next matter) have been listed as back-up fixtures in the week of 3 September 2007.

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

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

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). The proceedings have recently been reactivated and Council has filed a strike out application with the Court. Mr Mawhinney has filed a notice of opposition. Submissions in support of Council's strike out application have been filed and submissions in opposition received from Mr Mawhinney. The Court has notified us that it is likely the strike out application will be heard in the week of 3 September 2007.

Plan Change Hearings

(Unchanged) I and Z Farac v Waitakere City Council (March 2004) can you check to see if this has not changed

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. The appellants sought to rezone a greater part of the property as 'Living 2 Environment' (as opposed to "Living 4").

Subsequent to discussions and consultant input, the appellants and Council have agreed on the rezoning of part of the subject property from Living 4 to Living 2. Consent documentation is being prepared.

DISTRICT COURT

(Changed) J and P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)

Charges were laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. One of the defendants, Mr P Cottingham pleaded guilty to a charge of permitting building work without consent. The other charges of contraventions of the Resource Management Act and charges against Mrs J Cottingham were withdrawn by the leave of the Court. The Resource Management Act contraventions are being addressed by negotiation. The defendants have applied for a determination from the Department of Building and Housing ("DBH") in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH have appointed an investigator who is looking into this matter. The Council is making a submission to set out its reasoning for the decision to decline a certificate of acceptance and the matter is now set down for 12 November 2007.

(Changed) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads (August 2006) you will need to do a verbal update of this, so keep contact Brian Dickey at Merridith Connell next week

This prosecution relates to the removal of six houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The Council was fined \$4,800 plus costs (90% of the fine will be remitted back to the Council as prosecuting authority). The matter was set down for a first call on 1 December 2006. The Council entered a guilty plea. The other defendants entered guilty pleas on behalf of the company on 12 February 2007 and the charges against the directors personally were withdrawn. Sentencing went ahead on 27 July 2007. We are awaiting a report from Meredith Connell in relation to the outcome.

(Changed) S Iese, 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. All parties entered a guilty plea. The parties were sentenced on 5 July at 10.30 am. The Court convicted and fined each party \$2,000 plus \$130 Court costs and \$226 solicitor's costs. The Court considered that a fine of \$5,000 was appropriate in each case, but given the age and health of the parties (the builder was 60 and now retired with severe diabetes requiring continuous dialysis treatment and the owner is 65 with other health problems and relied on the builder), then a fine of \$2,000 would be imposed. The Court considered that the additional costs incurred by the parties to rectify the problem was a significant mitigating factor.

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

Charges were laid under the Building Act for converting the house into two separate households. No consent had been obtained for this work. The defendants were previously prosecuted and convicted for similar unauthorised work and breaches of the District Plan. As a result of discussions between the parties the house has been returned to one household unit and the defendants, who are the property owners, have sworn an affidavit that they will not re-erect the partitions and will not use the property as two household units. As a result, the council decided to withdraw the proceedings when the matter was called on 5 July 2007.

(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.

The Court has since issued a written decision which finds that the Building Act charges have been proved and dismisses the RMA charges (for reasons given in previous reports to this Committee). A sentencing hearing occurred on 3 July 2007. The Court entered convictions against Mrs Graham and imposed total fines of \$22,500 plus Court and prosecution costs.

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

This matter relates to breaches of the Resource Management Act and Building Act. When the matters were called on 31 March 2006 at the Waitakere District Court Mr Gordon has pleaded entered not guilty 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 is to proceed to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007 but due to administrative issues it did not. This matter is now set down for a jury trial on 18 February 2008 with the Building Act charges set to be heard by a judge alone in the week of 25 February 2008. Mr Gordon has been assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This is a result of Mr Gordon refusing to obtain legal representation. This should enable the matter to proceed without Mr Gordon seeking further time to consider the matter of legal representation.

(Changed) M and D Gladwin - 45 Kay Road, Swanson (April 2007)

Charges have been laid under the Resource Management Act 1991 for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200 m² were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without a resource consent. This matter was called on 23 July 2007 and transferred to the Auckland District Court without plea for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter.

(Changed) Hobsonville Residential Developments Limited and Treecare Services Limited - 18-28 Banning Way, Hobsonville (Limeburners Bay) (April 2007)

Charges have been laid under the Resource Management Act 1991 against the developer and contractors for doing earthworks of approximately 2.49 hectares, undertaking vegetation clearance, and doing work in scheduled archaeological site without resource consent in contravention of the General and Managed Natural Area and Heritage Rules of the District Plan. The matter was called on 23 July 2007 and transferred to the Auckland District Court without plea for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter. In the interim the Council has been working with the developer to properly assess the damage, particularly to the archaeological areas of the site in the preparation of their subdivision consent application.

(Changed) W L Garrett - 7 Saronia Avenue, Glen Eden (April 2007)

Charges have been laid under the Resource Management Act 1991 and the Building Act 2004. These charges relate to a breach of an abatement notice, undertaking earthworks (to excavate the basement of an existing house of approximately 256 m² and to build two retaining walls of 3-5 metres each) without resource consent and in contravention of the General Natural Area Rules. Charges under the Building Act relate to doing building work without building consent in contravention of section 40(1) non compliance with a notice to fix in contravention with Section 168(1) of the Building Act. The building work related to the building of the retaining walls, altering the foundations and the drainage system of the house, removal of structural walls, re-cladding the exterior of the house. The matter was called on 23 July 2007 and transferred to the Auckland District Court without plea for a call on 3 September 2007 where an Environment Warranted Judge will preside over the matter.

(Changed) R Brooky - 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act 2004 for non-compliance with a notice to fix for work undertaken to re-clad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter is set down for 20 August 2007 for the defendant to plead, otherwise the matter will proceed on a formal proof basis, where the Council will prove service and the Court will require the Council to prove its case to the Court.

(Changed) R Narayanaraja, P Ramasubramanian, S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 20 August 2007 for disclosure to be completed.

Leaky Building Claims

(Changed)

Claims statistics are as follows:

(a) Claims currently being handled are 29

High Court:	3
District Court	0
WHRS	25

(b) Number of claims for Waitakere City as at 30 July 2007, which may include some consent processed by building certifiers, was 335. This is a decrease of 6 since 30 May 2007.

(c) 227 (or over half of the WHRS claims) relate to 3 large multi-unit developments.

RECOMMENDATION

That the Legal Update (As at 30 July 2007) report be received.

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

6 MINISTRY OF TRANSPORT REVIEW OF THE TRANSPORT ACT 1962

PURPOSE OF THE REPORT

The purpose of this report is to outline to the Planning and Regulatory Committee the submission lodged by the Chief Executive Officer on the Ministry of Transport ("MOT") position paper on Local Authority Enforcement Activity and to seek its endorsement or alteration.

BACKGROUND

The discussion paper was initiated in response to the future of provisions in the Transport Act 1962 ("the Act"), particularly in regard to the powers of parking wardens under the Act. Most provisions of the Act have already been repealed and replaced by the Land Transport Act 1998 ("LTA") (and subsequent amendments), however provisions relating to the powers of parking wardens are still in force, but are due to be repealed and transferred to the LTA by July 2009.

The MOT released the discussion paper in May 2007 in relation to proposed revisions to the Act. The Chief Executive Officer ("CEO") has endorsed Council's submission in response to the MOT's discussion paper. Of particular interest to Council is the appointment and enforcement power of parking wardens.

The MOT discussion paper sought the views of local authorities on the transition of powers currently granted to parking wardens under the Act, to the LTA 98 by July 2009.

The Act is currently the empowering legislation relating to the appointment of, and enforcement powers of, parking wardens in relation to stationary vehicle offences only.

The following matters were identified in the discussion paper:

- The sections of the Act to be retained and transferred to other legislation;
- Identification of the most appropriate legislation to which these sections should be transferred;
- Proposed amendments after consideration of the views of interested parties.

The residual provisions affecting Council, relate to:

- The powers of local authorities to enforce traffic offences, and appoint parking wardens;
- The entitlement of local authorities to claim revenue from infringement fees; and
- Bylaw-making powers on the use of roads.

STRATEGIC CONTEXT

Council's transport strategy objectives include reducing congestion throughout the city by encouraging alternative modes of transport such as walking, cycling, passenger transport, and car pooling.

The flow of goods and services are vital to the community's economic wellbeing and Council's transport strategy represents a balanced approach to this by incorporating investment in roads, passenger transport and travel management to meet its objectives.

Parking enforcement is an integral part of Council's strategy in that it provides consistent enforcement of stationary vehicles by minimising unauthorised kerbside parking, and safeguarding special parking areas. These initiatives contribute to the efficient and equitable use of the roads throughout the city by improving traffic flow and controlling congestion. Consistent and appropriate enforcement of both stationary, and minor moving vehicle offences will become more necessary as vehicle use in the city continues to grow.

ISSUES

The key issues covered in the CEO's submission included:

- Existing and proposed offences enforceable by parking wardens;
- Enforcement of Special Vehicle Lanes;
- Infringement Fees as a means of encouraging compliance; and
- Bylaw powers as means to control the use of roads.

Of most relevance to Council are offences currently enforceable by parking wardens, the impact of increasing the scope of offences, and the setting of infringement fees.

Enlargement of Scope of Offences for Enforcement

The Chief Executive Officer's submission included the following offences to be added to the scope of offences to be enforced by local authority enforcement officers in the future:

- Red light camera offences;
- Speed (fixed and static) camera offences;
- Road user charges offences;
- Failure to stop at compulsory stop signs;
- Offences relating to pedestrian crossings;
- Overtaking on yellow lines;
- Failure to give way;
- Driving on footpaths and berms;

- Driving the wrong way on one way streets;
- School patrol offences;
- Seat belt offences;
- Child restraint offences;
- Flush median offences;
- Ordering unsafe vehicles off the road;
- Points duty and traffic direction;
- Sanctions where the operator of a vehicle refuses to give an enforcement officer a name and address, for identification, when requested.

The Chief Executive Officer's submission recommends that the additional offences should be enforced by Council, particularly red light camera offences, safety around schools and pedestrian crossings, and a number of minor moving vehicle offences, because they are both complimentary to Council's transport strategy directives, and are not currently being enforced by the New Zealand Police due to a lack resources available for enforcing lower level offences.

Category of Parking Warden

A further question posed by the discussion paper is whether there continues to be a need for a specific category of "parking warden", or whether a new category of enforcement officers is required to enable enforcement of a greater range of offences.

Parking wardens are currently granted "limited powers" for the enforcement of stationary vehicle offences only. The intent of the Act is that parking wardens are not "enforcement officers" as defined by the Act, but a second tier enforcement regime to deal with minor offences.

The proposed extra duties expand the scope of a parking warden to that of an "enforcement officer". The increased scope of duties would require suitably warranted officers agreed to by the Police Commissioner pursuant to s. 208 LTA, and sworn in under s. 113 LTA.

Such changes would require high-level policy directives, and a robust decision making process within Council.

Infringement Fees

The CEO's submission recommends that the rate of infringement fees is currently inadequate to deter road users from committing offences. In short, current rates do not encourage compliance with traffic rules and regulations. Additionally, the current 50:50 revenue sharing arrangement with the Ministry of Justice does not adequately compensate Council for the cost of enforcing traffic offences.

RESOURCES

No resources other than staff time are required.

CONCLUSION

While the review of the Transport Act 1962 is timely, there is an opportunity for Council to make submissions on the replacement legislation that would serve Council's future interests better in the area of enforcement.

The Team Manager Parking Services is one of the stakeholder members of the MOT sponsored review team.

RECOMMENDATIONS

A1-A4

1. That the Ministry of Transport Review of the Transport Act 1962 report be received.
2. That the Chief Executive Officer's submission attached at pages A1 to A4 of the Agenda be endorsed as Council's submission to the Ministry of Transport on the review of the Transport Act 1962.
3. That the Team Manager Parking Services continue to be a representative on the Ministry of Transport's stakeholders group into the repeal of the Transport Act 1962 be approved.

Report prepared by: Colin P Waite, Team Manager Parking Services, Field Services and Mary Davenport, Contract Solicitor, Legal Services.



7 DOG CONTROL ACT 1996, SECTION 10A - ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2006

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to forward the Dog Control Act 1996, Section 10A - Annual Report for year ended 30 June 2006 to the Department of Internal Affairs, and for public notice of same to be published in accordance with Section 10A(3) of that Act.

BACKGROUND

The Dog Control Act 1996 was amended in 2003 to require territorial authorities to report to the Department of Internal Affairs on the administration of Waitakere's Dog Control Policy and dog control practices.

STRATEGIC CONTEXT

A5-A12

Animal Welfare, and in particular implementation of Waitakere's Dog Control Policy and Control of Dogs Bylaw, contribute towards the Council's Safe City priority. The Annual Report, attached at pages A5 to A12, on the administration of Waitakere's Dog Control Policy and dog control practices meets the requirements of the Dog Control Act Amendment 2003.

ISSUES

This report is a requirement under the Dog Control Act 1996, as amended in 2003, and relates to the 2005/2006 year. This reporting has been delayed through oversight and the 2006/2007 year report is currently under preparation.

A particular point of interest, reported as at 30 June 2006, is that the number of registered dogs is 12,549. Current levels of registration as at 1 July 2007 are around 13,200. There is a comment in the report that it is estimated that between 45% and 50% of the dogs in the City are not known to Council and are therefore unregistered. This estimate is based on the current practice of random checking in streets to ascertain whether there are any unregistered dogs and, since this process has been in place through a dedicated staff member, the findings of unregistered dogs are significant.

Animal Welfare is implementing a significant change to the rostered hours and duties of animal welfare officers which will enable targeted inspections of problem street areas with the objective of identifying errant dog owners and taking enforcement steps to ensure their dogs are registered. This action will include education, warnings, infringement notices and, in extreme cases, impounding the dogs until they are registered. A trial using these objectives conducted over the past 3 months has located and registered a significant number of dogs that were hitherto unknown to Council.

RESOURCES

No additional resources are required other than staff time.

CONCLUSION

That the processes provided in Section 10A of the Dog Control Act 1996 be approved by the Planning and Regulatory Committee for forwarding to the Department of Internal Affairs.

RECOMMENDATIONS

1. That the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2006 report be received.
2. That the Annual Report for the year ended 30 June 2006, in relation to the Dog Control Act 1996, Section 10A, be approved and sent to the Department of Internal Affairs within one month following, the Planning and Regulatory Committee's decision.
3. That a public notice advising that the report has been adopted and is available for inspection at Animal Welfare, Libraries and the public counter at Waitakere Central be published in accordance with Section 10A(3) of the Dog Control Act 1996.

Report prepared by: Neil Wells, Manager: Animal Welfare.



8 SUBMISSION TO PROPOSED NATIONAL ENVIRONMENTAL STANDARDS FOR TELECOMMUNICATIONS INFRASTRUCTURE

PURPOSE OF THE REPORT

The purpose of this report is to provide the Planning and Regulatory Committee with background to the Ministry for the Environment's Proposed National Environmental Standards for Telecommunications Facilities, and to outline the recommended submission on these proposed standards, which has been prepared by a number of Council officers on behalf of Council.

BACKGROUND

National Environmental Standards

A National Environmental Standard (NES) is a legally enforceable regulation, developed under the Resource Management Act 1991, that supersedes any existing controls in a District or Regional Plan. It is made by the Governor-General, by Order in Council, on recommendation of the Minister for the Environment, after a public notification and submission period.

A rule or resource consent may be more stringent than a NES if the standard says it may be; but a rule or resource consent may not be more lenient than a NES. This does not apply to existing granted consents. It is also noted that a NES cannot allow an activity that has significant adverse effects on the environment, as a permitted activity.

The proposed standards have been notified and submissions close on 10 August 2007. The standards put out for submission have been developed by a Reference Group, including telecommunications companies, Local Government New Zealand, Ministry for the Environment, Ministry of Economic Development and the Ministry of Health.

The National Environmental Standards proposed specifically relate to “*radio-frequency fields and low impact telecommunications facilities in the road reserve*”.

A13-A53

The discussion document containing proposed standards and the Ministry for the Environment’s comments is attached at pages A13 to A53.

In essence, the proposed standards say that:

1. an activity (such as a mobile phone transmitter) that emits radio-frequency fields (irrespective of location) will be a permitted activity provided it complies with the existing New Zealand Standard for Radio-Frequency Emissions (NZS 2772.1 1999).
2. the installation of telecommunications equipment cabinets alongside roads or in the road reserve will be a permitted activity, subject to specified limitations on their size and location.
3. noise emitting from telecommunications equipment cabinets located alongside roads or in the road reserve will be a permitted activity, subject to specified noise limits.
4. the installation of masts and antennas alongside roads or in the road reserve will be a permitted activity, subject to specified limitations to height and size.

STRATEGIC CONTEXT

The development of telecommunication infrastructure (especially with advances in technology) proceeds at pace. Recent Government intervention with respect to ‘unbundling’ Telecom’s network monopoly on the local loop provides major opportunities for new and existing providers to improve services and facilitate economic growth.

Waitakere’s challenge is to provide an economic and social environment where infrastructure (or the lack thereof) is not an impediment to the sustainable development of the City.

The Council has developed a core strategic programme called the Waitakere Information Access Strategy (WIAS). This strategy includes a programme of actions to facilitate the rollout of a robust and sustainable telecommunications network across the City. The programmes involve working toward this vision by providing improvements to Information Communications Technology (ICT) infrastructure within the City to facilitate ongoing sustainable economic growth, and by enabling the people, business and communities in the City to take maximum advantage of communication technologies and access to information to improve their, and the City’s, levels of social and economic wellbeing. The WIAS has been developed in response to a strong push from the Waitakere community, particularly from those residents in rural areas, to improve ICT in the City.

This WIAS fits within the Council’s long term strategic platform for achieving *Integrated Transport and Communications*, and contributes to Council’s strategic goals for *Strong Communities* and a *Strong Innovative Economy*.

The Governments Digital Strategy (2005) also sets goals for developing New Zealand as a knowledge economy, which are complemented by the Council’s long term goals and strategic direction.

The Council is also aware of the importance of maintaining a high level of amenity in town centres, key transport corridors, and all urban and rural environments, such as envisioned by the Operative District Plan.

ISSUES

When considering the deployment of telecommunications infrastructure there are a number of statutes to consider, including:

Telecommunications Act 2001

Provides a right of tenure and access for infrastructure in roads, subject to a process being undertaken with the relevant road controlling authority, which can involve the imposition of a limited set of 'reasonable conditions': this process is well established in Waitakere, and links to the roading provisions provided by part XXI of the Local Government Act 1974, allowing imposition of the relevant requirements of the Code of Practice for City Infrastructure and Land Development (as reasonable conditions).

Local Government Act 1974 and 2002

Provides details of the statutory powers and rights relating to ownership and control of local roads, as set out in Part XXI of the Local Government Act 1974 which were carried over by the Local Government Act 2002. For purposes of allowing access to roads for utilities, it is control rather than ownership that is important, but issues relating to access to and operation of utilities in the road are typically dealt with under the relevant utilities legislation (e.g. the Telecommunications Act 2002).

Code of Practice for City Infrastructure and Land Development

Waitakere also have developed (as a national first) a chapter in the Code of Practice for City Infrastructure and Land Development (the CoP) that provides technical details for the installation of ICT infrastructure. This was developed via a wide consultation process with the industry, and has been taken by a number of other local authorities as a model for their practices. The provisions of the CoP are enforced via the Telecommunications Act 2002/Local Government Act 1974/2002 road opening notice process.

Building Act 2004

Introduced the term Network Utility Operator, which exempts NUO's from obtaining building consents, in certain specified circumstances (e.g. *section 9: Building: What it does not include*, and *Schedule 1, Exempt Building Work*). This means that there is also no requirement to obtain a PIM which would set out any resource consent requirements, amongst other matters.

Resource Management Act 1991

ICT are also covered by rules in the District Plan that have developed to control, from an effects based perspective, the adverse effects of such activities, mainly through the Infrastructure rules which are consistent across the City, with the exception of the Working and Community Environments which are more lenient. The road reserve falls under the Transport Environment which includes the general Infrastructure Rule.

The proposed National Environmental Standards would effectively replace or supersede some of the existing rules, particularly *Rule 5: Infrastructure* in the Transport Environment, and clarify existing Council and industry practice with respect to radio-frequency emissions in all zones.

Local Government New Zealand is also preparing a local government sector-wide submission, for which comments have been sought, and provided along the lines of the attached submission, as the closing date for comments (27 June) was prior to the date of this committee, to allow LGNZ to prepare their submission.

There are several issues that are raised by the proposed standards:

1. Balancing amenity concerns with efficient rollout of rapidly advancing infrastructure;
2. Consistency with current Council regulatory and non-regulatory strategies, policies and practices;
3. Clarification of drafting and intent.

A54-A69

These issues are addressed with respect to each of the four standards as appropriate, and are detailed further in the draft submission, attached at pages A54 to A69; however a summary of the main concerns with each of the standards is provided here:

1. Radio-Frequency Emissions: an activity (such as a mobile phone transmitter) that emits radio-frequency fields (irrespective of location) will be a permitted activity provided it complies with the existing New Zealand Standard for Radio-Frequency Emissions (NZS 2772.1 1999).

Positives

- Confirms existing Council and industry practice with respect to requiring compliance with NZS 2772.1: 1999 – compliance with the standard assures public safety, and confirms there is no known adverse effect from approving such devices.

Concerns

- Allows the erection and operation of equipment that is predicted to exceed the NZS 2772.1: 1999 by up to 25%, subject to post-operation certification;
 - There is no explanation of the process to be followed in the event that a device permitted to be erected and emitting is subsequently confirmed not to meet the standard;
 - Provides for local authorities to be provided notice and a requirement to review documents containing NZS predictions, but does not provide a cost recovery mechanism or a response timeframe, or details on what that response may contain;
 - Waitakere does not have the in-house expertise to review or comment on the NZS documentation and would outsource any review to the National Radiation Laboratory in the first instance (this links to timeframes and cost-recovery issues).
2. Road-side Cabinets: the installation of telecommunications equipment cabinets alongside roads or in the road reserve will be a permitted activity, subject to specified limitations on their size and location.

Positives

- relatively consistent with existing District Plan standards in terms of total bulk, with the exception of height, and relatively consistent with the Code of Practice (CoP) for City Infrastructure and Land Development Section 8: Information Technology Infrastructure with the exception of 'road lay' position.

Concerns

- the heights proposed (1.8m for residential and open space/2m for business/mixed use) are greater than human scale (existing District Plan limit is 1.5m height), potentially dominating the streetscape;
- the heights proposed are the larger sized cabinets, not the more common smaller units;
- Controls are appropriate on the number of units per property frontage;

- Controls are appropriate on road lay location for pedestrian and traffic safety as well as amenity concerns;
 - The CoP also requires a Network Utility Operator to remove redundant/obsolete ICT Infrastructure (at appropriate times). Requirement for removal of redundant/obsolete Infrastructure should be included in the NES.
 - The ability to require specified colours or ability to otherwise screen the units, graffiti control (or to have commissioned artists paint the units) is not addressed.
3. Equipment Noise: noise emitting from telecommunications equipment cabinets located alongside roads or in the road reserve will be a permitted activity, subject to specified noise limits.

Positives

- The District Plan does not currently impose noise limits on activities located in the Transport Environment.

Concerns

- The noise limits may be set too high for residential areas;
 - A further category may be necessary for mixed use/business areas;
 - Proposes a 3m inside boundary measurement point;
 - The relevant noise standards (1991 and 1999 versions) have been 'cherry picked', which results in an incorrect measurement level; (the District Plan utilises the 1991 version, which is generally more commonly used);
 - Uses the L_{eq} rather than the more common L_{10} measurement;
 - Does not distinguish between weekdays and weekends/Sundays or Public Holidays;
 - An update to the 1991 and 1999 NZS is currently being considered.
4. Masts and Antenna: the installation of masts and antennae onto existing utility structures alongside roads or in the road reserve will be a permitted activity, subject to specified limitations as to height and size.

Positives

- encourages co-location and re-use of existing consented sites;
- facilitates rollout of new infrastructure;
- still subject to road-controlling authority approval;
- District Plan applies in identified landscape areas or heritage precincts ;
- Imposes a maximum diameter for panel antennae.

Concerns

- allows a 3m (max) height addition to any utility structure;
- allows a 50% (max) increase in diameter of any existing utility structure;
- Does not specifically address cumulative potential (i.e. 3m/50% + 3m/50% etc);
- Does not define 'utility structures', 'heritage precinct' or 'Landscape importance';
- Does not impose a maximum height or diameter limit;
- Does not provide guidance for dish antennae;
- Provides for a largest panel antenna currently used by the industry to be installed as a permitted activity, when this is only necessary in difficult terrain or to cover large areas.

RESOURCES

Preparation of the submission to the Ministry for the Environment, and provision of comments to Local Government New Zealand will involve internal staff resources, and forms part of the budgeted general work programme of the Urban and Environmental Strategy Team.

CONCLUSION

The WIAS supports initiatives to facilitate efficient and sustainable future investment in ICT balanced with the requirement for high amenity and maintenance of health and safety.

The proposed standards relate to providing, as permitted activities;

- radio-frequency fields for all emitting devices irrespective of location, and clarifies that they must comply with the existing New Zealand Standard for Radio-Frequency Emissions;
- and provides, as a permitted activity, for a number of common and low impact telecommunications facilities in the road reserve.

thereby increasing the efficient and cost effective rollout of ICT, without compromising urban or rural amenity.

In summary, officers consider the *intent* of the proposals should be supported, as they will bring consistent approach to the way Territorial Authorities manage ICT infrastructure, and will provide a “level playing field” for all potential investors in Waitakere, that will support the City’s aims with respect to improving access to broadband such as outlined in the Waitakere Information Access Strategy (WIAS).

Additionally the standards proposed, cover activities that, while often requiring consent under the Waitakere City Council District Plan, are commonly approved on a non-notified basis. This confirms that the facilities covered by the proposed standards are ‘low impact’.

However, there are some improvements that could be made to improve drafting, and clarify some issues, and bring the proposed national standard in line with the Councils recently developed ICT section of the Code of Practice for City Infrastructure and Land Development.

To this end the Council should support the Proposed National Environmental Standards for Telecommunications Facilities, subject to the improvements suggested in the proposed submission, and the Planning and Regulatory Committee’s comment today.

RECOMMENDATIONS

1. That the Council Submission to Proposed National Environmental Standards for Telecommunications Facilities report be received.
2. That the Chief Executive Officer be given the delegated authority to approve the draft submission to Proposed National Environmental Standards for Telecommunications Facilities once it is finalised.
3. That the Chief Executive Officer also be given the delegated authority to approve any further submissions or appearances (with the exception of legal proceedings) in relation to progressing the content and intent of the finalised submission to the Proposed National Environmental Standards for Telecommunications Facilities.

Report prepared by: Kyle Balderston, Strategic Advisor: Sustainable Management.



9 **TIMELINE FOR THE REVIEW OF THE BULK AND LOCATION RULES OF THE WAITAKERE CITY COUNCIL DISTRICT PLAN (LIVING ENVIRONMENT)**

PURPOSE OF REPORT

The purpose of this report is to provide the Planning and Regulatory Committee with an approximate timeframe for the review of the bulk and location rules of the Waitakere City Council District Plan (“the Plan”) Living Environment and the preparation of a draft Plan Change.

BACKGROUND

A paper was presented to the 10 July 2007 meeting of the Planning and Regulatory Committee outlining a proposed review of the bulk and location requirements of the Living Environment. At this meeting the Committee resolved:

“That the framework, in particular the timeline, for the review be reported to the August 2007 meeting of the Planning and Regulatory Committee.”

3047/2007

The Planning and Regulatory Committee indicated that it would like to be given the opportunity to participate in further discussion around the matters raised in the Issues and Options Paper presented on 10 July 2007. A presentation will be prepared and presented at the meeting, following which an informal discussion will take place.

STRATEGIC CONTEXT

The working draft of the Council’s Growth Management Strategy aims to ensure that the city remains a great place to work, live and play well into the future. The Strategy provides a blueprint for how the city might best accommodate growth pressures.

These issues are also documented and influenced by the Auckland Regional Policy Statement (ARPS - updated 2005), the Auckland Regional Growth Strategy (ARGS 1999), the Northern and Western Sectors Agreement (NAWSA 2001) and the Local Government Auckland Amendment Act (LG(A)AA 2004).

All of these documents highlight the need to manage growth of the Auckland Region in an integrated manner with the aim of consolidating development into a sustainable compact urban form, with well-integrated land uses and transport network. With increased intensification of building development within the existing metropolitan urban limit, as set by the Auckland Regional Council, there is a need to maintain adequate amenity in residential neighbourhoods as this intensification occurs.

The bulk and location rules within the Plan are one of the main mechanisms which Council utilises to manage the effects of land use and to achieve a high standard of amenity in the urban areas. The Plan ties in with the Urban and Rural Villages section of the Long Term Council Community Plan which supports urban consolidation and sustainable development, and seeks to provide for a mix of housing styles.

The objectives under the Plan that are relevant to the bulk and location rules include Objectives 9, 10 and 11. These seek to protect the quality and significance of the City’s landscapes, and to maintain and enhance amenity values and neighbourhood character. The relevant policies under each objective outline in more detail what the rules are setting out to protect and achieve by assessing the effects of each activity.

The Resource Management Act 1991

The purpose of the Resource Management Act (the Act) as outlined in Part II is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

There are two sections of the Act that are relevant in terms of a proposed district plan rule change. Firstly, there is the purpose of the Act, which is found in Section 5, Part II where the Act promotes the sustainable management of natural and physical resources, and secondly, Section 7 of the Act, which talks about "Other Matters" that need to be considered in terms of achieving the purpose of the Act. Section 5 seeks to 'manage the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety.....Avoiding, remedying, or mitigating any adverse effects of activities on the environment'. Section 7 requires the relevant consenting authority to acknowledge other matters which in this case include the efficient use and development of natural and physical resources, the maintenance and enhancement of amenity values, and maintenance and enhancement of the quality of the environment.

Section 35 of the Act requires Council to monitor the efficiency and effectiveness of policies, rules, or other methods in its plan.

Auckland Regional Council

Section 75 of the Act requires that a district plan must give effect to a regional policy statement or plan. The Auckland Regional Policy Statement (ARPS) is now operative and the way in which the bulk and location rule relates to the ARPS is through the Policy in regard to Regional Development, which is part of the ARPS Strategic Direction, Policy 2.6.1 (vi) where it states 'maintain and enhance amenity values within the existing urban area, and achieve high standards of amenity...'. The proposed plan change would only involve minor changes to the wording under the Plan with the intention of improving amenity on site or providing clarification on the interpretation of a rule. The plan change would remain consistent with the Auckland Regional Policy Statement.

ISSUES

Since the Plan was notified in 1995, a number of matters have been identified where rules either appear to have been incorrectly drafted, are open to misinterpretation or are not achieving the desired outcomes on site. Poor drafting or misinterpretation leads to un-necessary time spent by staff and customers and can sometimes result in additional costs in processing Resource Consent applications. By providing clearer rules which are not open to interpretation the resource consent process can be simplified, costs minimised and customer satisfaction increased.

The purpose of this review would not be to overhaul the rules contained within the Plan, but to provide clearer interpretation of the rules, provide simplification of the rules where possible and ultimately to provide enhanced amenity within residential areas, without substantially changing the objectives of the Plan. The scope of the review would centre around the Living Human Environment Rules.

Given that there are limited opportunities to amend the Plan Change once it is notified, it is important that notification of a Plan Change does not proceed until a robust and thorough assessment of the issues has taken place.

The following is an approximate timeline for the processing of a Plan Change through to holding a hearing, following which the Plan Change would be adopted, subject to the receipt and resolution of any appeals.

Date	Milestone	Details
August 2007	Data gathering	Review of current rules, past Resource Consents.
August - October 2007	In house consultation #1	Consult with Councillors and officers to review existing rules and discuss/identify key issues within the bulk and location rules.
October - December 2007	In house consultation #2	Present issues / options to Councillors and to officers to review possible Plan Changes / ways to resolve issues.
December 2007 - February 2008	Draft Plan Change Prepared	Present draft to the Committee and seek approval for public notification.
February - March 2008	Notification of Plan Change	
March - May 2008	Submission and further submission period	Statutory submission period, followed by review of submissions received and statutory call for further submissions.
May - June 2008	Prepare for hearing	Review submissions, seek any additional information as necessary and prepare for hearing.
June - July 2008	Hold hearing	

CONCLUSION

As outlined above, since the notification of the Plan in 1995, a number of minor issues have been identified with the wording of the bulk and location rules of the Living Human Environment. These have resulted in either misinterpretation of the rule, frustration to applicants and staff and in some cases unnecessary additional costs to development. A review of the bulk and location rules, focused around the Living Environment would assist in providing clear interpretation of the rules, improved amenity within the residential area and streamline and reduce the cost of the resource consent process.

RECOMMENDATIONS

1. That the Timeline for the Review of the Bulk and Location Rules of the Waitakere City Council District Plan (Living Environment) report be received.
2. That the Planning and Regulatory meeting adjourn to allow an informal discussion of the Review of the Bulk and Location Rules of the Waitakere City Council District Plan Living Environment rules.

Report prepared by: Bronwyn Allerby, Senior Planner: Policy Implementation.

