



**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 JUNE 2007, 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 JUNE 2007, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

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

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

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

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



**3 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 8 May 2007

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 8 May 2007, as circulated, be taken as read and now be confirmed.



**PART B - REGULATORY / ENFORCEMENT**

**4 LEGAL UPDATE (AS AT 5 JUNE 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)**

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and they have been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt Harvey to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt Harvey has appealed this aspect of the decision and is proceeding with the appeal. The matter is set down in the Court of Appeal for 14 June 2007 at 10.00 am. The decision on costs from the High Court has been reserved until the matter is heard before the Court of Appeal.

### HIGH COURT

**(Changed) 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.

Council has claimed costs for both hearings and a decision on this is still awaited.

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.

**(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.

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 its decision upholding the decision of the Associate Judge Faire in the interpretation of Section 40 of the Public Works Act. Consideration is currently being given to seeking leave to appeal. Matthew Casey QC is advising Council and is presently overseas. The last day for lodging an application for leave to appeal is 20 June 2007.

**(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 will be called in Court on 5 July 2007.

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

This is a matter involving 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 initial case management conference occurred on 15 May 2007. The Court has issued a Minute confirming a timetable for filing submissions and has allocated a half-day hearing on 3 October 2007. However it is possible that a stand-by fixture may be allocated any time after 29 June 2007.

**Substantive hearings involving Mr Mawhinney**

**(Unchanged) 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 substantial costs application in respect of the proceedings from 1999 to date has been lodged with the Court. Further submissions have been filed by the parties in respect of recent case-law as to higher costs awards. We have not yet had a decision from the Court on this matter.

**(Changed) 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 5 October 2007. Mr Mawhinney has lodged security for costs of \$1,500. Subsequently, Glorit Subdivision Limited has been wound up, which Mr Mawhinney was a sole director and shareholder of. The Official Assignee has indicated that wishes to withdraw from the proceedings from this point forth.

**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. If Mr Mawhinney does not accept service of the bankruptcy notice we will prepare a further application for substituted service.

**(Changed) 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 \$1,216.88 still owing to Council. Debt recovery proceedings for this outstanding amount have been initiated.

**(New) Waitakere City Council v P W Mawhinney (May 2007)**

Mr Mawhinney (and Glorit Subdivision Limited (In Liquidation)) jointly and severally owe 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. If Mr Mawhinney does not accept service of the bankruptcy notice we will prepare a further application for substituted service (along with the above matter).

**ENVIRONMENT 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 Home'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). Subsequently the Council appealed the Court of Appeal decision to the Supreme Court successfully.

The Supreme Court remitted the matter of compensation back to the Environment Court. Initially Estate submitted that it needed to put further evidence to the Court, however, after an exchange of Memoranda with the Environment Court and Council, Estate did not put forward any further evidence, so the matter was left to be determined on the evidence already before the Court from the original hearing in 2003. The matter was set down and heard on 28 May 2007. There were some issues relating to Estate attempting to put new evidence in Court from the Bar, however this was objected to and did not proceed further. The panel that heard the matter included two new commissioners and the same judge as previously, Judge Thompson. The Court has reserved its decision.

**(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 will call no evidence.

This appeal was heard on 12 and 13 March 2007. The Court has reserved its decision.

**(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 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 not issued its decision.

**(Changed) 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.

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

These were appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 and 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. The activity is a non-complying activity. The appeals alleged that the location of these premises in a residential area would adversely affect the integrity of the District Plan. A hearing was held on 7 and 8 February 2007 and 2 March 2007. The Court has upheld Council's decision to grant consent, subject to a new condition for additional on-site car parking being provided and agreed upon by the applicant and Council.

An application for costs was filed on behalf of Council seeking costs against All Seasons Properties Limited and D Leakey. Costs of \$8,500 were awarded.

All Seasons Properties Limited have filed an appeal in the High Court against the decision of the Environment Court. Enforcement of the costs award will await the outcome of the High Court proceedings.

**(Changed) 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. The Court has set down a new reporting time of 30 July 2007 for another progress report to be filed.

**(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.

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

An appeal and Section 274 notices filed by WCC regarding decisions by RDC on the Rodney Proposed District Plan regarding future urban development issues. We await initial case management directions from the Environment Court.

**(New) L Aalbers v Waitakere City Council (May 2007)**

An appeal against two abatement notices 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 has 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 9.30 am. The Council will be opposing the application for stay and the appeals on the basis that they are well out of time and the activity cannot continue without resource consent.

### **Mawhinney Matters in the Environment Court**

**(Unchanged) 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. The Court has placed these matters on hold.

**(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. 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**

**(Changed) Te Atatu Residents' and Ratepayers' Association Incorporated (TARRA) v Waitakere City Council (2004)**

TARRA appealed the Council's decision on the proposed Plan Change 2. This Plan Change concerns the identification and use of the Harbour View Orangihina park land. The Plan Change identifies the majority of the land as Open Space Environment and a 2.5ha area at the southern end of the park as Marae Special Area. TARRA opposed that identification and use of the land and seeks that the park be identified as distinct Special Area. The Court's decision was released on 1 March 2007. The Court has dismissed TARRA's appeal and confirmed Council's decision, subject to amendments being made to the assessment criteria (as suggested by Sarah Flynn at the hearing) to address ecological concerns, and other matters raised by the Court in its decision in respect of Rule 21.2(a). The Court had directed the Council to confer with TARRA and present revised text for the relevant policy and rule to take account of the above matters by Friday, 27 April 2007 (this timeframe had been set by the Court). The Council provided the Court with the revised text. The Court issued its decision on 29 May 2007 which confirms the further amendments to Policy 11.52 and Rule 31, as agreed between Council and TARRA.

**(Unchanged) I and Z Farac v Waitakere City Council (March 2004)**

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 and will be filed shortly.

## 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 set down for a first call on 11 December 2006. The matter was adjourned on 22 January 2007 with intimation that guilty pleas may be entered to some of the charges. The adjournment was also requested to permit the defendants to seek expert advice on use of their property and to meet with Council to consider what consent applications were necessary. 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 wish to seek 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. An incomplete application for a determination has been filed with the DBH. The Council has not been supplied with the application yet, but once it does submissions will be made. Sentencing is tentatively scheduled for 2 July 2007 at 2.15 pm.

### **(Changed) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads (August 2006)**

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. The companies were to be sentenced in May but due to the Court not setting the matter down, sentencing has been moved to 27 July 2007.

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

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was called on 5 March 2007, but was adjourned to 30 April 2007 as the defendants had changed their Counsel and were not ready to enter a plea. All parties have entered a guilty plea. Sentencing is set down for 14 June 2007 at 10.30 am.

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

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The matter was called on 15 September 2006. Q Potts intimated a guilty plea but the matter was adjourned for him to seek legal advice. This was called on 5 March 2007. As a result of questions arising from the disclosure of the Council file, the Council and the Potts are going to go through the issues and then the Potts will decide how they wish to plead. Mr and Mrs Potts entered not guilty pleas on 30 April 2007. The matter is set down for a status hearing on 5 July at 2.15 pm.

**(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.

A defended hearing was held on 22 February 2007. Leave was given for the parties to file further written submissions. On 3 May 2007, the Court issued a written decision convicting Ms Graham on the three charges laid under the Building Act 2004 (unauthorised building work, unsafe building and insanitary building) and confirmed that it had dismissed the charges laid under the RMA (breach of district plan rule for unauthorised minor household units) due to an inability to prove that the alleged use was a residential activity in accordance with the district plan definition. The Court's reasoning regarding the dismissal of the RMA charges was that the definition in the District Plan as to the definition of "residential activity" was impractical, and accordingly difficult to enforce. The Court said that "*there is a high degree of nonsense*" in the definition as it requires a three part test that had to be met. The definition requires:

- The use of land or buildings by people for living accommodation, and
- That those people must voluntarily live at the site for a period of one month or more, and
- That those people will *generally* refer to the site as their home and permanent address.

It was considered by the Court that to prove the first test, the Court could rely on the evidence of Council officers and photographic evidence. However, the last two elements were more difficult to prove. The Council would have to have direct evidence from the tenants to attest to the fact that they have lived there for more than one month and consider the residence to be their home and permanent address. The Court expressed surprise that the level of activity at the site did not constitute an offence under the District Plan given that the property was being used for residential purposes.

In respect of the building work at the property, evidence was presented that Ms Graham admitted to altering the pig sheds to allow them to be used as flats. This was not refuted by Ms Graham in the trial. Ms Graham relied on at least some of the work being exempt which was not accepted by the Court as the statutory tests could not be met. The Court noted that contrary to the Court's findings, Ms Graham was of the view that the buildings were sanitary because the drainage system was designed for a large number of pigs therefore it would be adequate for a small number of humans occupying the units. The buildings were found to be dangerous (lack of fire protection) and insanitary (inadequate sanitary facilities for human habitation).

The Court considered that the Council's actions in obtaining a search warrant were justified and reasonable to gather evidence for the purposes of the prosecution given the history of this matter. In any case a search warrant is not an abuse of process where a view had been formed that an offence was being committed and the purpose of the visit would be to obtain evidence for or in support of a prosecution. An alternative of requiring permission of the owner/occupier is not necessarily appropriate as enforcement officers may not be given access, may only be given restrictive access, and may have evidence destroyed or covered up prior to enforcement officers entering the site.

The Court pointed out that Council officers conducted the investigation in 2006 thoroughly and with due consideration for the health and safety of those using the buildings on site. The officers had the relevant expertise to make a finding of fact of whether a building is dangerous and insanitary and the Council does not need to seek outside expertise where it employs staff with extensive experience.

The Court also noted that *“the evidence does show that Ms Graham dealt with the Council in what can at best be described as a duplicitous fashion”* in the period between February 2004 and February 2006. On the one hand to appear as though she was complying with District Plan requirements whilst on the other hand she was continuing to undertake building work to complete the flats. Sentencing is scheduled for 3 July 2007 at 10.00 am.

**(Changed) 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 2007 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 Resource Management Act charges were set down for a call over on 31 May 2007. However, there were Court administrative issues which lead to the matter not being called. It has now been set down for 15 June 2007. The Building Act matters will be considered once the Resource Management Act matters have been resolved as the facts are dependent on one another.

**(New) 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 6,000 m<sup>2</sup> (approximately 200 m<sup>2</sup> 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. The Council has not yet had the information back from the Court, and therefore service of the charges has not yet occurred. It is likely that this matter will be set down for a first call sometime in July.

**(New) 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 Council has not yet had the information back from the Court, and therefore service of the charges has not yet occurred. It is likely that this matter will be set down for a first call sometime in July 2007. 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.

**(New) 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 m<sup>2</sup> 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) 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 Council has not yet had the information back from the Court, and therefore service of the charges has not yet occurred. It is likely that this matter will be set down for a first call sometime in July 2007.

**(New) 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. The Council has not yet had the information back from the Court, and therefore service of the charges has not yet occurred. It is likely that this matter will be set down for a first call sometime in July 2007.

**(New) 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. The Council has not yet had the information back from the Court, and therefore service of the charges has not yet occurred. It is likely that this matter will be set down for a first call sometime in July 2007.

**(New) Leaky Building Claims**

Claims statistics are as follows:

(a) Claims currently being handled are 29:

- High Court: 3
- District Court: 1
- WHRS: 25

(b) Number of claims for Waitakere City as at 30 May 2007, which may include some consent processed by building certifiers, was 341. This is an increase of three over the month of May 2007.

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

**RECOMMENDATION**

That the Legal Update (As At 5 June 2007) report be received.

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



**PART C - ENVIRONMENTAL MANAGEMENT**

**5 THE LITTER AMENDMENT ACT 2006**

**PURPOSE OF THE REPORT**

The purpose of this report is to advise the Planning and Regulatory Committee that the Public Notice required under Section 13(2A) of the Litter Act 1979 has been made.

## **BACKGROUND**

On 28 June 2006, the Litter Amendment Act 2006 came into force amending the Litter Act 1979.

The 10 April 2007, meeting of the Planning and Regulatory Committee requested a report to be brought back at least 14 days after public notice of Council's intention to increase the litter infringement fee had been given (Minute No. 583/2007). Public Notices were inserted in both the Western Leader and in the New Zealand Herald on 13 April 2007.

## **ISSUES**

The requirement for Council to adopt the changes as a Special Order was removed as a result of the Litter Amendment Act 2006.

## **RESOURCES**

No additional resources are required.

## **RECOMMENDATIONS**

That the Litter Amendment Act 2006 report be received.

Report prepared by: Robert Menzies: Waste Minimisation Officer.

