

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 13 FEBRUARY 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

Hearing Minutes - Tuesday, 7 November 2006.

Meeting Minutes - Tuesday, 12 December 2006.

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee (Hearing on Plan Change 21) held on Tuesday, 7 November 2006, and the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 12 December 2006, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 18 JANUARY 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 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.

SUPREME COURT

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

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004 in Council's favour. The decision reversed the decision of the Environment Court. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued).

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

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

The appeal was argued on 11 and 12 July 2006. The decision was given on 19 December 2006. The Supreme Court set aside the judgement of the Court of Appeal and referred the matter back to the Environment Court to determine whether the appropriate basis for compensation for the additional width of Marinich Drive was the difference between local/arterial road, and collector/arterial road. Estate Homes originally sought consent on the former basis. Council approved the consent on a different basis. Estate Homes then argued that it should be compensated for the total cost of the road, but the Supreme Court held that this argument was not open to Estate Homes. Council has already paid compensation on a collector/arterial road basis. It is a pity that the Supreme Court felt obliged to refer the matter to the Environment Court. Attempts will be made to resolve the residual dispute by negotiation.

Estate Homes was ordered to pay Council costs in the sum of \$10,000 plus reasonable disbursements for the Supreme Court hearing.

COURT OF APPEAL

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

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and have already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt has appealed this aspect of the decision. This appeal is likely to be heard by the Court of Appeal later in the year or early next year. CHH have notified us that they will be filing their case on appeal. This means the matter is likely to proceed to hearing. This has been set down for hearing in June 2007.

HIGH COURT

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

This was an appeal from the Environment Court which arose from the Council serving notice on the respondents of its intention to take land under the Public Works Act 1991. The respondents filed an objection to this notice in the Environment Court. The Environment Court held that the Council could not take land. The decision in the High Court overturned the Environment Court decision and a declaration was made that the Council can now proceed with compulsory taking of the land.

The High Court noted that under the Local Government Act and Public Works Act, the Council, "[is] like the Minister in the case of Crown land, [it] has the primary public responsibility in relation to land acquisition." The Environment Court has not been given the power to select, or to make a decision as to what land is to be acquired by a territorial authority. Its powers extend only to a factual review of the appropriateness of the Council's decision as a means of giving effect to the Council's objectives.

The decision vindicates the stance taken by Council in this matter. A claim for costs for both hearings will be made.

(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 trigger an obligation under the Public Works Act occurred prior to the offer back obligation coming into force. This application was heard by Associate Judge Faire on 9 October 2006.

A striking out application is in the nature of interlocutory proceeding in respect of the claim. A striking out application confronts key issues which need to be dealt with as part of the proceedings in any event and it is helpful to try and deal with these issues before (if at all) the matter proceeds to a hearing.

His Honour declined the applications in a decision delivered on Thursday 19 October 2006. An application to review the Associate Judge's decision was filed. A judicial conference was held on 23 November 2006 where a timetable was set for the review of current proceedings and to advance the substantive proceeding. A hearing is set down in the week of 26 February 2007.

Shortly before Christmas, we filed requests for further and better particulars in relation to all proceedings. The plaintiffs have until 16 February 2007 to respond to our request and file a better particularised statement of claim in the High Court. The High Court will hear the matter in late February 2007.

(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 in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney has now paid costs of \$3,475 in accordance with the bankruptcy notice. The Council has 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 adjourned until 31 January 2007 and will be determined at that date.

(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 substantial costs application in respect of the proceedings from 1999 to date has been lodged with the Court and Mr Mawhinney has until 31 January 2007 to reply. No further appeals have been lodged in respect of this matter.

ENVIRONMENT COURT

(Changed) Ritchies Transport Holdings Ltd, A Ritchie, J Ritchie, E Ritchie and J Shaw v Waitakere City Council, and Rex Campbell, Section 274 of the Resource Management Act 1991 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. These 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 the 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 of the Resource Management Act 1991 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 is due to report back to the Court on 20 February 2007.

(Changed) **Perceptus Limited and Swanson Heights Limited v Waitakere City Council (June 2006)**
Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council (June 2006)
Glorit Subdivision Limited and London & Greenwich General Trading Company Ltd v Waitakere City Council (June 2006)

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney is yet to file his submissions in opposition which are due 22 January 2007.

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

These are appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 and 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. The activity is a non-complying activity. The appeals allege that the location of these premises in a residential area will adversely affect the integrity of the District Plan. The Court has made timetabling orders and all parties have exchanged evidence. A hearing has been scheduled for 7-9 February 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. Council has been notified by the Court that it is likely the strike out application will be heard in the week of 30 April 2007.

(Unchanged) **R and 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 Brittens undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

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

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

**(Unchanged) 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 Inc against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006 the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

Following an extraordinary meeting of the Planning and Regulatory Committee, the Council has decided to abide by the Court's decision and will call no evidence. This appeal is set down for the week of 12 March 2007, concurrently with the Ashton appeal.

(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 Inc have lodged applications with the Court in support of the Council as Section 274 parties. These appeals were on hold since September 2005 by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006, the Court directed that these appeals will be set down for hearing and has made timetabling orders for exchange of evidence. Council has filed its evidence. This appeal is set down for the week of 12 March 2007, concurrently with the Duncan appeal.

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

A further appeal in the High Court by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Environment Court in December 2005 and Mr Mawhinney's application to rehear has also been dismissed by Judge Shepherd. Both decisions have been appealed to the High Court; the matter has not yet been set down for hearing. A memorandum has been filed in the High Court seeking for the matter to be set down for a one-day hearing at the earliest available date. The Council has commenced liquidation proceedings in the High Court against Glorit Subdivision Limited, and a bankruptcy notice has been served upon Mr Mawhinney in respect of unpaid costs in the Environment Court.

(Unchanged) Abacus Developments Ltd and 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.

PLAN CHANGE HEARINGS

Te Atatu Residents' and Ratepayers' Association Inc v Waitakere City Council (March 2006)

These appeals relate to Council's decisions on Plan Change 12 which concerns the Open Space Environment. The appeals have been resolved following mediation and further discussions between the parties. The Court issued a Consent Order on 7 November 2006. Plan Change 12 is now going through the formal process of being made operative in accordance with the First Schedule to the RMA.

(Unchanged) Te Atatu Residents' and Ratepayers' Association Inc (TARRA) v Waitakere City Council (2004)

TARRA is appealing 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 opposes that identification and use for the land and seeks that the park be identified as distinct Special Area. The Court heard the appeal on 5 and 6 December 2005, however it issued an interim decision deferring a final determination until Plan Change 12 had been resolved. Council is now seeking that the Court makes a final determination on Plan Change 2.

(Changed) 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. It has sought to rezone all (or part) of the property as Living 2 Environment. The Council retained consultants to assess the Farac proposal. As a consequence, the Council requested further information from the appellant (outstanding matters relate to stormwater and geotechnical issues regarding development of the subject land). Council has not yet received a response from the Faracs. Due to these delays, the Court has now directed that this matter be set down for hearing during the fortnight commencing 23 April 2007. A proposed timetable has been submitted to the Court.

DISTRICT COURT

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

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. The matter was set down for a first call on 11 December 2006. It was adjourned to 22 January 2007 to permit further disclosure.

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

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 matter was set down for a first call on 1 December 2006. The Council intended to enter a guilty plea. The other defendants entered a tentative not guilty plea and requested another call over to finalise their plea; their matter will be called on 12 February 2007. The Council will be sentenced on 9 March 2007.

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

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

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

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was called on 1 December 2006, but was further adjourned to 5 March 2007, as the defendants had changed their Counsel and were not ready to enter a plea.

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

Charges have been laid under the Building Act for removal and replacement of pile foundations without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was called 1 December 2006; the defendants did not appear. The matter is set down to be formally proved on 5 March 2007 prior to sentencing taking place.

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

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The matter was called on 15 September 2006. Q Potts intimated a guilty plea but the matter was adjourned off for him to seek legal advice. This was called on 1 December 2006; the defendants were not ready to enter a plea. The matter has been set down for 5 March 2007 for a plea to be entered.

(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 defendant has entered not guilty pleas and the matter has been set down for a defended hearing on 22 February 2007.

(Changed) Rogers Earthmoving Limited - 312 Lincoln Road (April 2006)

Charges were laid under the Building Act for erection of a structural retaining wall that is not building code compliant and built without building consent, as well as a change of use from residential home to a business without building consent.

The Council was asked to review the file by the defendants as they believed they were not informed of the requirements to file a notice of change of use under the Building Act. They were of the opinion that the resource consent applied for and granted was sufficient. The defendants further allege that the retaining wall is building code compliant and in any case is exempt under schedule 1 of the Building Act as it is under 1.5 metres. The matter is now being reviewed, with the defendants providing further information to substantiate their views. The matter is on hold until 5 March 2007 to permit the defendants to present the relevant information to the Council.

(Changed) Property Solutions Group Limited, Pratt G, Power R - 77E Colwill Road, Massey (April 2006)

Property Solutions Group acted in an advisory capacity to the owners of the property. They advised the owners to complete the development undertaken underneath the house, even though no building consent had been granted. The company, its director and primary advisor have been charged under the Building Act. The matter is currently being reviewed by the Council. It will be called on 5 March 2007.

(Changed) J A and G R Drew - 42 Christian Road, Swanson (April 2006)

Charges laid under the Building Act for the conversion of the basement area of the house into a minor household unit. Building work was undertaken to create bedroom, bathroom, lounge areas, including alteration and building of structural walls. The work is not building code compliant and no building consent was granted for the work. The defendants have requested the Council to review this matter, as they are of the opinion the works undertaken are exempt from requiring building consent under schedule 1 of the Building Act. As a result, the matter was adjourned to 1 December 2006. The defendants were not ready to enter a plea on 1 December; subsequently they have written to the Council to state that they wish to defend the charges and will be entering a not guilty plea on 5 March 2007.

(Changed) W B and L A Henderson - 1/21 Arawa Street, New Lynn (April 2006)

Charges laid under the Building Act for significant alteration work undertaken at the property. This work extended the living area of the property. Structural walls were removed and replaced. None of the work meets the Building Code. No building consent was granted. The new owners of the property have removed the unauthorised works and replaced them with work in accordance with a building consent. The role of the defendants in undertaking the work is being reviewed. The matter was withdrawn on 1 December 2007.

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

This matter relates to breaches of the Resource Management Act and Building Act. Both matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter will proceed to a jury trial. The Resource Management Act matter was set down to be called on 26 April 2006 for pre-hearing issues to be considered. At the call-over on 26 April 2006, Mr Gordon entered not guilty pleas to all the charges. The matter was set down for depositions on 15 June 2006. In respect of the Building Act matters, a defended hearing was set down for 30 October 2006 to 1 November 2006. The matter was to be heard with other similar offences to which Mr Gordon has pleaded not guilty. However, Mr Gordon is unwell and will not be able to attend Court. The matter has been adjourned for a new date to be given by the Registrar for next year. The Resource Management Act charges have been set down for five days at the Auckland District Court before a jury in May 2007.

(Changed) McGuigan Syme Chilcott Ltd, G Pitts - 71 Riverlea Road, Whenuapai (August 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing, as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was called on 19 May 2006 where all but the owner of the site, Mr Engel, entered a guilty plea. As the engineering company McGuigan Syme Chilcott Limited entered a guilty plea, charges against the directors of the company were withdrawn. Sentencing was set down for McGuigan Syme Chilcott Limited, G Pitts, and D Owens Builders Limited on 28 September 2006. The matter was heard but a decision was only given in respect of D Owens Builders Limited as the other two parties were seeking to be discharged without conviction. The matters of McGuigan Syme Chilcott Limited and G Pitts will not be determined until 12 February 2007.

RECOMMENDATION

That the Legal Update (as at 29 November 2006) report be received.

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



PART C - DISTRICT PLAN / STRUCTURE PLAN

5 UPDATE ON HOBSONVILLE VILLAGE CONCEPT PLANNING

PURPOSE OF THE REPORT

The purpose of this report is to provide the Planning and Regulatory Committee with an information update on the work that has been undertaken to respond to public submissions to Proposed Plan Change 14 and the proposed Hobsonville Village Urban Concept Plan. This report also seeks a mandate from the Planning and Regulatory Committee for Council officers presenting evidence to the Local Government (Auckland) Amendment Act 2004 hearings, to amend the notified Concept Plan and to support new objectives, policies and rules, which will sit behind changes to this Concept Plan.

BACKGROUND

Six District Plan Changes (numbered 13 - 18) were publicly notified on 31 March 2005. These were required in order to adequately respond to the opportunities and obligations that arose under the Local Government (Auckland) Amendment Act 2004 LG(A)AA 2004, and the opportunity for the Council to develop a proposal to shift the Metropolitan Urban Limit (MUL).

These proposed Plan Changes introduced additional policies to guide intensification and integration of urban form and transportation in Waitakere, rules to manage development in future urban areas, and rules to manage further urban intensification (particularly in and around the New Lynn Town Centre).

The proposed Plan Change 14 relates specifically to the future development of Hobsonville Village. This proposed Plan Change focused on two areas of development. The first was to expand the current and future retail activities at the intersection of Clark and Hobsonville Roads, creating a village centre to serve the surrounding residential catchment. The second was to create new employment areas to the west of Hobsonville Village and to the south of the proposed State Highway 18 motorway alignment. This proposed motorway alignment has formed the northern boundary of the Council's proposal to shift the metropolitan urban limit.

A report to the City Development Committee on 12 September 2006 was received and the following resolutions were passed:

- “1. *That the Update On Hobsonville Village Concept Planning Report be received.*
2. *That Council adopt the revised Concept Plan for Hobsonville Village, Proposed Plan Change 14 as its position in response to submissions received on Proposed Plan Change 14, and confirm the approach being taken as set out in the Agenda report.*
3. *That a further report be taken to the Planning and Regulatory Committee to provide an update on Council's submission to the discharge consent for the Waiarohia Stream Catchment and to confirm actions to amend the policies and rules notified as proposed Plan Change 14.”*

1764/2006

Changes to the Notified Proposed Plan Change 14

The report to the City Development Committee outlined the process that the Council has followed to respond to public submissions to Plan Change 14. This report stated that submissions to the Plan change generally fell within the following themes:

- The need for more detailed planning around the village centre, particularly with respect to large format retail and supermarket activities;
- The introduction of rules requiring developers to prepare a comprehensive development plan demonstrating how they are able to achieve the Council's desired development outcome in this area (as identified in the Concept Plan);
- The need for improved modelling of how the proposed new areas of development will support the integration of land use, impact on the land transport system (including State Highways) and public transport networks;
- The need to provide better buffering of Hobsonville Primary School and the existing residential areas on the southern side of Hobsonville Road, where these activities will be immediately adjacent to the proposed industrial zones; and
- Increased pressure to include rules to provide for large format retail (including supermarkets) and car-dependent retail activities in the land area between the eastern side of Brigham Creek Road and Sinton Road, and within the village core.

This report advised the Council that an enquiry-by-design workshop was held in March 2006 to consider the Council's response to these submissions and that the result of the workshop and ongoing consultation with stakeholders was the development of a revised Concept Plan. The key changes between the notified Concept Plan and the revised Concept Plan that came out of the workshop were as follows:

- Rezoning the industrial land in the northern half of Precinct B to incorporate mixed uses (high density residential and retail), which are more appropriate uses within a village centre;

- Introduction of a village core zone at the centre of Hobsonville Village to demonstrate tighter land use controls in this area. This redesign work includes the identification of only one site that will be permitted to provide a large format retail activity (i.e. a supermarket). This change has been in response to the workshop's finding that the Village could only accommodate a small supermarket to serve the surrounding catchment, if it were to be an economically-feasible land use proposal;
- The suggested rezoning of much of the land to the west of Hobsonville Primary School, to provide for more industrial land to compensate for the removal of the industrial zoning within Precinct B, and to allow for a roading realignment around the school, to enable better connectivity and a physical separation between the school and adjoining industrial activities;
- The introduction of design criteria around the northern and eastern boundaries of the school and on the northern side of Hobsonville Road, where industrial activities will face the school and the existing residential land uses;
- The suggested rezoning of land parcel immediately to the west of Hobsonville Primary School as Open Space, potentially providing for leisure and community services to be located in this area;
- Recognition of the already modified residential area to the west of the Clark Road intersection as Village Periphery, and therefore suitable for accommodating a mix of uses at the edge of the village; and
- Providing further clarity on the plan outlining the proposed roading and public transport networks through the Village.

The report to the City Development Committee stated that Council's officers have considered whether the recommended changes to the notified Concept Plan for Plan Change 14 are supported by submissions and further submissions to the Plan Change. It also concluded that the Council officers are confident that these changes are an appropriate Council response to a number of key submissions.

The report stated that evidence to advocate for the proposed changes to the notified concept will be prepared for the hearings. The report summarised the evidence as being an analysis of the submissions to the plan change, an outline of the Council's actions in responding to these submissions through the enquiry by design process, and an explanation to support the preparation of a Concept Plan and rules to support growth and a change in land use in this area.

The Concept Plan presented to the City Development Committee has evolved since the report was heard, as the new plan has been tested against the transport requirements identified in the regional transport audit, stormwater management requirements, and any outstanding submissions to the Plan Change that the Council are required to respond to. New objectives, policies and rules have also been developed to support the revised plan, in order to assist the planning commissioners to make a robust and informed decision on Plan Change 14.

Other amendments to the Concept Plan presented to the City Development Committee include:

- A change in the village periphery notation to become mixed use under the new description of "Business". This change also includes a reduction of the mixed use area, shown on the earlier Concept Plan as village periphery, over the land to the west of Brigham Creek Road. The business area on the final (revised) Concept Plan extends to the eastern side of Brigham Creek Road. This change has been made because officers considered that the final outcome is supported by submissions from landowners in this area;

- The introduction of a Landscape Interface Control to the rear (north) of Hobsonville Primary School, a Road Design Control to the east of Hobsonville Primary School, and a Frontage Control along the extent of Hobsonville Road that faces existing residential activities on its southern side. Council officers found that Road Frontage Controls and setbacks, combined with additional footpath widths and a dedicated strip for street tree planting, were a more appropriate planning tool to achieve quality design outcomes along these sensitive edges;
- The extension of Precinct B into a marked up and identifiable area, in response to submissions to the plan change seeking a clear and coordinated planning approach to the village centre;
- The creation of a second Concept Plan providing a more precise level of detail about the Council's desired development outcome for the village centre. This additional plan is titled Hobsonville Village Centre Street Typology Plan, and shows the fixed location of the supermarket building, a Frontage Control on Hobsonville Road, the introduction of commercial and residential Street Typology controls, and Strategic Access Points. This additional plan will form an integral part of a rule requiring developers to prepare a comprehensive development plan that has regard for the Council's Concept Plan for the village; and
- The creation of a third Concept Plan titled Hobsonville Village Urban Concept Transport Plan. This plan shows public transport and pedestrian networks that will be included in the planning of the Hobsonville Village Special Area. These networks have been designed after consultation with the Auckland Regional Transport Authority (ARTA), Transit New Zealand (TNZ), and the Auckland Regional Council (ARC). Some features are shown as indicative, such as the location of bus routes, as the final location of these features or services will depend on the decisions of external stakeholders, such as the bus company.

A1-A3

The Hobsonville Village Urban Concept Plan, the Hobsonville Village Urban Concept Transport Plan, and the Hobsonville Village Centre Street Typology Concept Plan are attached at pages A1-A3.

Recommended rules for the District Plan have been developed to support the revised Hobsonville Village Urban Concept Plan. These are as follows:

- A definition of Mixed Use. This definition will also apply to development at Massey North / Westgate;
- A policy on the use of comprehensive development plans. This will include a clear explanation of what they are and where they could be applied, both in a general sense across the City, and in the village centre where the Council will recommend that prescriptive controls are introduced to determine the location of the supermarket. These controls will be imposed as assessment criteria for consideration of Concept Plan applications;
- Rules requiring that Frontage Controls are adhered to as part of new development, and cross sections describing these controls to be included in the District Plan;
- Rules requiring developers to install intersections in key locations. These rules are an alternative to designating the precise location of new roads, or the designation of roads and their intersections by the Council;
- Cross reference to City Wide Street Typology Rules, as referenced in the Hobsonville Village Centre Street Typology Concept Plan; and
- Rules requiring development on Hobsonville Road to address street amenity in creating a pedestrian and public transport-friendly corridor, and to manage access to Hobsonville Road in a manner that is acceptable to the Council and Transit New Zealand. Rules requiring roads to include footpaths and cycleway connections in key areas, and for developers to give effect to the Hobsonville Village Urban Concept Transport Plan in their master planning.

STRATEGIC CONTEXT

Waitakere City Council has long promoted the integration of urban form with transport corridors and intensification of development through its strategic direction, urban development strategy (now being updated as the Waitakere Growth Management Strategy) and Waitakere City's District Plan. The LG(A)AA 2004 process offers the opportunity to further advance the Council's strategic approach.

Key strategic platforms which relate to the proposals are:

- The Urban and Rural Villages platform, which seeks to deliver vibrant town centres;
- The Strong Innovative Economy platform, which seeks to provide quality local employment for Waitakere City residents;
- The Green Network platform, which seeks to retain and enhance the qualities of the natural environment within the areas that are proposed to be urbanised, whilst seeking the relief of development pressure on the non-urban areas such as the Waitakere Ranges and Foothills; and
- The Integrated Transport and Communication platform, which seeks to deliver sustainable urban form, integrated with passenger and other transport networks, in a way that reduces vehicle trips, reduces the dependence on private motor vehicles, and supports alternative transportation modes such as public transport, walking and cycling.

ISSUES

Approval of Changes to the Notified Proposed Plan Change 14

The changes to Plan Change 14 as it was notified on 31 March 2005, mean that the Council's position on the proposed Plan Change has shifted. The approval of the Planning and Regulatory Committee is now sought to support this revised position for the Council. This approval will give officers presenting evidence in support of this plan change, the mandate to present the revised concept and associated District Plan rules, at the LG (A) AA hearings.

The Integrated Catchment Management Plan (ICMP)

The September 2006 report to the City Development Committee advised the Committee that the Council's Network Discharge Consent (the technical term for the resource consent application) for the Waiarohia Stream catchment was notified on 1 August 2006.

- The report made it clear to the City Development Committee that this Discharge Consent application was based on modelling of the new development area identified in the Proposed Plan Change 14 as the Hobsonville Village Special Area.
- The report stated that the revised Concept Plan, which was developed through the workshop process, provided for a greater area of development than what was in the notified Plan Change. The City and Development Committee was also advised that if this additional area was to be included in a new Concept Plan, this would result in a shift of the MUL boundary to the west of the position shown in the notified version.
- The report stated that in order to address the resultant stormwater issues associated with the extended development area, the ICMP application would need to include modelling of the effects of bringing on this additional land at the same time.

This particular change to the notified Concept Plan was undertaken in response to a submission from Fulton Hogan Limited, seeking an inclusion of their land as an additional industrial area in the Hobsonville Village Special Area. The Council tested this idea through the workshop process and found that there was some merit in this further shift of the MUL, as it would create more employment land in an appropriate location, provide more certainty for the future roading pattern around the primary school, and create an MUL boundary based on the location of a stream.

A4-A10

In order to give effect to the Council's response to the Fulton Hogan submission to extend the MUL boundary further to the west, the Council submitted a submission to its own ICMP seeking an extension to the area being considered in the stormwater model. The report to the City Development Committee committed to a report being taken to the Planning and Regulatory Committee to seek a resolution approving the Council's submission to the ICMP to accommodate the amended growth area. At this time the Council's Legal Services Manager advised Council officers that the Chief Executive Officer had the delegated powers to submit to the Council's ICMP application and was asked to do so as the submission deadline was outside of the Planning and Regulatory Committee's agenda timelines. The submission was received by the Auckland Regional Council on 29 August 2006 and is attached at pages A4-A10.

After further meetings with officers at the ARC, Council officers agreed that in order to extend the Concept Plan area, the Council would need to undertake significant remodelling to determine whether stormwater could be managed in this extended catchment. Such a significant change would also require an alteration to the ICMP consent.

In the period of time since the report to the City Development Committee, Council officers have amended their earlier plan that was presented to the City Development Committee and have withdrawn the extension of the notified Concept Plan area. This is on the basis that a Network Discharge Consent for this extended area must be obtained before the Fulton Hogan land could be included in a final Concept Plan for the Hobsonville Village Special Area. In the event that the Hearings Panel will choose to support the Fulton Hogan Submission through the hearings process, Council officers have elected to investigate stormwater modelling in this extended catchment area as preparation for future growth.

RESOURCES

Strategic Projects are responsible for the preparation of evidence and coordination of the actions necessary to support Plan Change 14. Resources are therefore provided by the officers in this team.

There are no further resource implications other than staff time to implement this work programme.

CONCLUSION

The proposal to revise the notified Concept Plan for proposed Plan Change 14 will provide a more comprehensive planning approach to the future development of Hobsonville Village, addressing issues such as clear planning mechanisms to deliver the Council's desired outcomes in the Village core, a clearer understanding of impacts on the surrounding roading and public transport networks, a clear policy around the use of Comprehensive Development Plans, and methods to address the potential effects of industrial development on Hobsonville Primary School and existing residential land use activities in this area. This revised concept and the development of underlying policies and rules, will provide a robust approach to defend the Council's proposal to shift the Metropolitan Urban Limit.

RECOMMENDATIONS

1. That the Update on Hobsonville Village Concept Planning report be received.
2. That the Council adopt the revised Concept Plan for Hobsonville Village, Proposed Plan Change 14, as its position in response to submissions received on Proposed Plan Change 14, and confirm the approach being taken as set out in the Agenda report.

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