



**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 MARCH 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 - 13 February 2007

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 13 February 2007, as circulated, be taken as read and now be confirmed.



**4 PRESENTATION**

With the concurrence of the Chairman, Sir William Birch and Carl Salmons (Birch Surveyors) and Gerald Williams (Anzac Developments Limited) will make a brief presentation in relation to the Mawhinney Appeal, introducing the new land owner and setting out their proposals.



## **PART B - REGULATORY / ENFORCEMENT**

### **5 LEGAL UPDATE (AS AT 1 MARCH 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.

#### **COURT OF APPEAL**

**(Changed)** **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 already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt Harvey to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt Harvey has appealed this aspect of the decision. Carter Holt Harvey have notified Council that they will be filing their case on appeal, although nothing has been filed to date.

#### **HIGH COURT**

**(Changed)** **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. However, the property owners have filed an application for leave to appeal. The application was served on Council out of time and will be opposed.

**(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.

Associate Judge Faire declined the applications in a decision delivered on Thursday 19 October 2006. An application to review the Associate Judge's decision was filed and has been set down for a one-day hearing on 26 February 2007.

Shortly before Christmas, the Council filed requests for further and better particulars in relation to all proceedings. The plaintiffs had until 16 February 2007 to respond to Council's request: they are now out of time.

### **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 substantial costs application in respect of the proceedings from 1999 to date has been lodged with the Court and Mr Mawhinney had until 31 January 2007 to reply. Mr Mawhinney has not filed a memorandum in reply. A memorandum was filed seeking that the application be determined. We are currently waiting for a decision as to costs from the Court.

**(Changed) Mawhinney and Glorit Subdivision Limited (February 2006)**

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 not yet been set down for hearing in the High Court. Mr Mawhinney has lodged security of costs of \$1,500.

### **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. The decision was reserved.

On 12 February 2007, Associate Judge Doogue delivered his judgment, awarding Council full indemnity costs of \$2,598 against Mr Mawhinney, plus Council's disbursements. Council is awaiting return of the sealed orders from the Court and will make demand on Mr Mawhinney through his barrister.

**(Changed) Waitakere City Council v Glorit Subdivision Limited (March 2006)**

Council has issued liquidation proceedings against Glorit Subdivision Limited ("Glorit") for the costs award granted to it earlier of \$14,290.50, plus interest. Glorit and Mr Mawhinney are jointly and severally liable to Council for this debt. The liquidation application is set down to be heard on 8 March 2007 and has been advertised.

**(Changed) Waitakere City Council v P W Mawhinney (March 2006)**

Council also issued a bankruptcy notice against Mr Mawhinney personally for the cost award in decision A116/06 of \$14,290.50.

Mr Mawhinney avoided personal service of the bankruptcy notice and a joint application for substituted service was prepared with another creditor (Boffa Miskell Limited). Mr Mawhinney was served with the bankruptcy notice by substituted service. Council and Boffa Miskell Limited have sought indemnity costs against Mr Mawhinney.

Mr Mawhinney has made an application to set aside the bankruptcy notice on the basis that he has a counterclaim against Council (which Council strongly denies). Mr Mawhinney's application did not comply with the Court rules, as he did not file an affidavit setting out the allegations against Council.

The application for substituted service was called on 14 February 2007 before Associate Judge Abbott, together with Mr Mawhinney's application to set aside Boffa Miskell's bankruptcy notice. Mr Mawhinney instructed counsel at the last minute, therefore an adjournment was granted to permit Mr Mawhinney's Counsel to prepare. Associate Judge Abbott set down timetable directions requiring Mr Mawhinney to file documents by 5 March 2007. The Council then has until 8 March 2007 to file its reply if necessary and the matter is set down for a call-over at the High Court on 14 March 2007, after which a hearing date will be allocated. Council was awarded costs of \$480 for the call-over.

**ENVIRONMENT 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 Homes' 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. The matter was scheduled for a review in the Environment Court chambers on 2 March 2007. The question is whether the compensation should be based on local/arterial road or collector/arterial road; Council has already paid compensation on a collector/arterial road basis. Estate Homes sought leave to call further evidence. The Council opposed the application on the basis that all relevant evidence had been called. The Court determined that a hearing would be required to determine the scope of the jurisdiction referred back to the Environment Court and therefore further evidence could be called. A date is yet to be set down.

**(Changed) Ritchies Transport Holdings Ltd, 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. 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 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 2007 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 30 March 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 was held on 7 February 2007 and 8 February 2007. The hearing will resume on 2 March 2007 to hear the applicant's planning evidence, which could not be heard earlier due to illness. It is expected that the Court will reserve its decision.

**(Changed) 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 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.

The enforcement proceedings are now 'on hold', with a further report to the Court required by 31 May 2007 to allow time for the proposed remedial earthworks (etc) to be completed.

**(Changed) 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 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 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 Incorporated 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.

**Mawhinney Matters**

**(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 & Greenwich General Trading Company Ltd 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. Council has filed submissions in reply.

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

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

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. The Court has notified us that it is likely the strike-out application will be heard in the week of 30 April 2007.

**(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**

**(Changed) Te Atatu Residents' and Ratepayers' Association Incorporated 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.

**(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 on Plan Change 2 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 has directed that we confer with counsel for TARRA and present a revised set of Rules to take account of the above matters by Friday, 30 March 2007.

**(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. 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. The matter was adjourned on 22 January 2007 with an 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 is set down for a further call over on 2 April 2007.

**(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 guilty pleas on behalf of the company on 12 February 2007 and the charges against the directors personally were withdrawn. The Council will be sentenced on 9 March 2007.

**(Changed) 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 was set down for sentencing on 18 January 2007 at 11.45 am. The Court convicted the company and imposed a penalty of \$2,000 and awarded Council costs of \$450.

**(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.

**(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. The defendants again did not come into Court, but the Court has given them one more month to enter an appearance before sentencing. The matter is set down for 30 April 2007.

**(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 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. The Court adjourned the matter off to 30 April 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 unauthorized 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 22 February 2007. Due to the complexity of the issues raised, including the inability of the Council to prove all three prongs of the test for "residential use" under the difficult District Plan definition, the Court has directed that counsel for the defendant file and serve written submissions by 5 March 2007, and counsel for the Council to file any submissions in reply by 16 March 2007. A decision will be given following the filing of further submissions. This case has raised issues about the unenforceability of certain Council definitions used in the District Plan.

**(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 matter was reviewed by the Council, as the defendant provided further engineering information in respect of the retaining wall and addressed Council concerns as to fire safety, disability access and sanitation facilitation, as the building had been converted from residential to commercial use. The case was withdrawn on 5 March 2007 with the leave of the Court.

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

Property Solutions Group Limited 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 has been reviewed by the Council and the charges were withdrawn on 5 March 2007 with leave of the Court, as the defendants have assisted the owners to obtain consent and remedied the unauthorised work.

**(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 area, including alteration and building of structural walls. The work is not building code compliant and no building consent was granted for the work. However a discovery was made that the Council's planning staff knew of the unauthorised conversion in 2002 when the defendants had applied for resource consent for another minor household unit (which was declined). This put the Council's knowledge back three years. As a result, the charges were withdrawn on 5 March 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 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 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 was unwell and was 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 March 2007.

**RECOMMENDATION**

That the Legal Update (as at 5 March 2007) report be received.

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



**PART C - DISTRICT PLAN / STRUCTURE PLAN**

**6 REGIONAL POLICY STATEMENT PLAN CHANGE 9 - HAURAKI GULF MARINE PARK ACT 2000**

**PURPOSE OF THE REPORT**

The purpose of this report is to update the Planning and Regulatory Committee on the Auckland Regional Council (ARC) decision on Plan Change 9 - Hauraki Gulf Marine Park Act 2000, and to seek their approval for the lodging of an appeal against the ARC decision.

**BACKGROUND**

The ARC notified proposed Plan Change 9 on 26 September 2005, pursuant to the provisions of the Hauraki Gulf Marine Park Act 2000 (HGMPA). Section 9(5) of the HGMPA requires that all local authorities with jurisdiction over the area covered by the HGMPA notify a plan change within five years of the commencement of the HGMPA, to give effect to Sections 7 (Recognition of national significance of Hauraki Gulf) and 8 (Management of Hauraki Gulf). The Waitakere City Council is also bound by this requirement, but it is considered sensible to wait until the provisions of the Regional Policy Statement are made operative.

The proposed plan change did little more than introduce reference to the HGMPA, and the Council lodged submissions and further submissions, seeking that greater discussion of the HGMPA and its requirements be included in the plan change.

Evidence in support of these submissions was presented to the ARC on 31 August 2006, along with an offer to help the ARC progress the required work. Councillors on the ARC's hearing panel were very receptive to the Council's submissions, and tended to agree with the Council that the proposed plan change was not adequate to address the requirements of the HGMPA.

On 19 February 2007, the ARC released its decisions in respect of this matter.

## **STRATEGIC CONTEXT**

The HGMPA applies to all of the land in the catchment of the Hauraki Gulf, and includes the eastern foothills of the Waitakere Ranges and most of the urban parts of the City. Thus, there is significant inter-relationship with the Waitakere Ranges and Foothills Protection Project, including the Waitakere Ranges Heritage Area Bill, as well as the management of catchments in the urban area generally. Section 8 of the HGMPA requires the Council to have particular regard to a range of matters traversing natural, cultural, social, historic and economic issues, including the relationship of tangata whenua to the resources of the Gulf. The Council must also 'give effect' to the requirements of both the HGMPA and the Regional Policy Statement (RPS), in its District Plan.

Thus, this matter has a direct impact on many of the Council's strategic areas of interest.

## **ISSUES**

The decision notice recognises that more comprehensive provisions are required "to further reinforce the HGMPA through the RPS, and other key ARC policy documents in order to reflect its (Sections 7 and 8 of the HGMPA) status as a National Policy Statement." However, instead of making changes to the RPS, the decision notice records the Committee's recommendation that "Officers determine a future project/work programme on the premise that further changes to relevant ARC Regional Plans (such as the *Regional Plan: Coastal*) will be developed, in order to address these fundamental issues raised by the submitters. In addition, these submitters tendered their assistance and expertise to progress these matters further and therefore a work programme around these changes, leading up to a full review of the RPS, will be developed."

While these acknowledgements, and a stated desire to progress the matters through future plan changes is excellent, they do not in themselves have any statutory weight. While it is agreed that there is logic in delaying a substantial review of the RPS in relation to this until the full review of that document, which is required to be undertaken in 2009 (when the Waitakere Ranges Heritage Act may also be in force), there is no reason why the RPS could not be amended now to indicate that amendments to regional plans should occur. For example, the "Methods" sections of Chapter 7 - Coastal Environment, and Chapter 8 - Water Quality could indicate that changes to the Regional Plan: Coastal, and the Regional Plan: Air Land and Water are required to give effect to the requirements of the HGMPA.

Council's strategy in relation to this issue could be to focus on possible resolution through consent notice. Any decision to progress the appeals to full hearings in the Environment Court could be made as and when required.

## **RESOURCES**

Only staff resources are required to progress this matter at this stage.

## **CONCLUSION**

The Council could help ensure better provisions in the RPS in relation to the HGMPA, through continuing to engage with the ARC and other parties. The lodgement of an appeal will enable the ARC to make these changes.

**RECOMMENDATIONS**

1. That the Regional Policy Statement Plan Change 9 - Hauraki Gulf Marine Park Act 2000 report be received.
2. That the Planning and Regulatory Committee approve an appeal to Regional Policy Statement Plan Change 9, seeking greater direction in the regional plan in relation to the provisions of the Hauraki Gulf Marine Park Act 2000.

Report prepared by: Jenny Fuller Senior Advisor: Sustainable Management.



**PART D - PUBLIC EXCLUDED MATTER**

**7 PLAN CHANGE 4 - RESOLUTION OF ENVIRONMENT COURT APPEAL**

**8 SWANSON STRUCTURE PLAN - RESOLUTION OF ENVIRONMENT COURT APPEALS**

**9 DISTRICT PLAN UPDATE - MAWHINNEY APPEAL**

These items will be considered in the Confidential Supplement of the agenda, and has been circulated to members separately with this agenda.

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following parts of the proceedings of this meeting, namely Plan Change 4 - Resolution of Environment Court Appeal, Swanson Structure Plan - Resolution of Environment Court Appeals; District Plan Update - Mawhinney Appeal.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of the matters, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of the matters to be considered.	Reason for passing this resolution in relation to the matters.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"> <li>Plan Change 4 - Resolution of Environment Court Appeal.</li> </ul>	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> <li>enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	<p>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<ul style="list-style-type: none"> <li>Swanson Structure Plan - Resolution of Environment Court Appeals.</li> </ul>	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> <li>enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	<p>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<ul style="list-style-type: none"> <li>District Plan Update - Mawhinney Appeal</li> </ul>	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> <li>enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	<p>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The reports contain information which if released could affect Council's negotiations.*

