

**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 MAY 2008, 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 CONFLICTS OF INTEREST

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



4 CONFIRMATION OF MINUTES

Meeting Minutes – Tuesday, 8 April 2008

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 8 April 2008, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 APRIL 2008)

GLOSSARY

Ritchies Transport Holdings Limited	(Ritchies)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weatheright Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Notice to Fix	(NTF)
Building Act 2004	(the Building Act)

EXECUTIVE SUMMARY

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.

RECOMMENDATION

It is recommended that the Planning and Regulatory Committee resolve to:

Receive the Legal Update (As at 30 April 2008) report.

COURT OF APPEAL

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. The decision has recently been released in favour of Carter Holt. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter left is resolution of costs. Council is waiting on final orders from the Court.

Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process Council has submissions on the supplementary order paper to the Waste Minimisation. The Bill now has a new definition of waste in line with that sought by Council. Carter Holt has now directly contacted the Mayors Office to discuss among other things; costs of the High Court, and appeal hearings. The Mayor advised he did not wish to discuss legal matters and no further action has been taken. Accordingly costs are still outstanding to Carter Holt and need resolution.

HIGH COURT

(New) **J E Burgess v WCC and Auckland Regional Council (ARC)**

This is a judicial review of the Council's decision (as well as the ARC's) to grant consent to a 15 lot subdivision and residential development on a non-notified basis at a site situated on 25 Kashmir Road and 47A Withers Road, Glen Eden. The applicant, Ms Burgess, contends that in respect of the Waitakere City decision there were adverse effects on her and the environment and therefore the consent ought to have been notified to permit her an opportunity to make submissions. The Council refutes that there were any adverse effects on Mr Burgess or the environment and that it correctly reached a decision not to notify the application. The property is situated in the Living Environment with no protection afforded to the vegetation on the property. Once the development is complete it will blend into the surrounding area with minimum lot sized of 452m². The property has been a vacant site nominated for development for some 15 years. The parties have filed their statements of evidence but are continuing to pursue settlement discussions.

In the interim the property has been sold and the consent holder is seeking not to be involved in the review. It has given effect to that part of the consent relating to vegetation clearance. The matter has been allocated to the standard track proceedings and set down for a 2 day hearing in the week of 11 May 2009.

(Changed) **WCC v C P Brunel and the Cove Limited (December 2006)**

Council sought to acquire land under the Public Works Act for a car park 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 head in the High Court on 19 March 2007. Leave was declined.

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

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. A decision anticipated at the end of April 2008 has still not been secured.

(Changed) **C W Williams and others v WCC (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 Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 of the Public Works Act. A Court of Appeal hearing was held this month to hear Council's appeal against the High Court decision. A Judgment of the Court is awaited.

Substantive hearings involving Mr Mawhinney

(Changed) **Mawhinney and Glorit Subdivision Limited v WCC (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.

Mr Mawhinney's appeal was heard in the High Court before Venning J on 7 December 2007. Judgment was received just before Christmas and the appeal was dismissed on all grounds.

We have received a costs Judgment this month awarding Council above scale costs of \$12,120 plus disbursements. The cost judgment records that a number of unmeritorious points were taken and that uplift from a normal award of cost is appropriate. We made demand for payment which was not received. A bankruptcy notice was issued. Upon learning of the bankruptcy notice Mr Mawhinney paid the full cost award plus costs of the bankruptcy notice.

Debt Recovery proceedings involving Mr Mawhinney

(Changed) WCC v P W Mawhinney (February 2006)

An indemnity cost application was made as Council was required to obtain substituted service of a bankruptcy notice on Mr Mawhinney last year. Council was awarded indemnity costs. The full costs sought of \$2491.00 were fixed on 15 February 2008. Demand has been made on Mawhinney for payment; however, Mr Mawhinney has failed to pay the award. A bankruptcy notice has been issued and our process server has attempted to serve Mr Mawhinney with the notice. Kensington Swan has also written to Mr Mawhinney, and Mr Mawhinney's barrister, inviting Mr Mawhinney to accept service of the bankruptcy notice. Despite our attempts Mr Mawhinney has not been formally served with the bankruptcy notice. If Mr Mawhinney is not served at an upcoming meeting an application for substituted service will be prepared.

(Changed) WCC v Glorit Subdivision Limited and Mawhinney (March 2006)

On 6 November 2007, Associate Judge Abbott awarded costs to Council and consolidated a previous cost award. Council is owed \$5,042.37 by Mr Mawhinney. Demand has been made for payment but Mr Mawhinney has not paid the award. A bankruptcy notice has been issued and our process server has attempted to serve Mr Mawhinney with the notice. Kensington Swan has also written to Mr Mawhinney and Mr Mawhinney's barrister inviting Mr Mawhinney to accept service of the bankruptcy notice. Despite our attempts Mr Mawhinney has not been formally served with the bankruptcy notice. If Mr Mawhinney is not served at an upcoming meeting an application for substituted service will be prepared.

ENVIRONMENT COURT

(New) Ritchies Transport Holding Limited (Ritchies) v WCC

Ritchies appealed the Council's decision to grant consent on 23 April 2008. The appeal relates to the period of time for which consent has been granted to run bus depot operations at 619 Swanson Road (the site). The decision of the Council through Commissioners was to permit Ritchies to continue operating from the site for 2 years with a higher level of activity. The appeal seeks to increase this time period to 3 years.

At the same time Ritchies have applied to push the commencement date of the consent forward, instead of waiting for the appeal to be resolved.

The appeal is likely to be referred to mediation in the first instance. We are working to ensure that the mediation can be held as soon as possible. The matter has been placed on the Environment Court's standard track list.

(New) **J Hsu v WCC**
 Weddings ETC Limited v WCC

Both these appeals relate to the grant of consent for the site known as Cassels to extend its hours of operation as a wedding and function centre.

Mr Hsu appeals the Council's decision to grant consent. Weddings ETC Limited (the applicant) appeals the conditions of consent, seeking clarification around certain conditions.

Both appeals are likely to be referred to mediation in the first instance. The matter has been placed on the Environment Court's standard track list.

(Changed) **Protect Piha Heritage Society Incorporated v WCC and ARC**
 Preserve Piha Limited v WCC

The appellant Protect Piha Heritage Society Incorporated (the appellant) has appealed the joint decision of WCC and the ARC to grant consent for the establishment of a café at Piha in a residential environment at 20 Seaview Road, Piha. The appellant was a submitter against the application when it was notified and presented submissions in opposition to the grant of the application at the resource consent hearing in November 2007. In the first instance the appellant would like to see the joint decision of the Councils cancelled and resource consent refused. In the alternative the appellant would like to see the consent lapse in 2012, and if unexercised, the consents to lapse in 2009; for an archaeological report to be commissioned on the heritage status of the old post office that occupies the site; compliance conditions to be included to ensure noise conditions are able to be complied with; that the café only operate 10.00 am to 5.00 pm, and be closed on Sundays and public holidays; that only 35 persons shall be provided for and that there be no seating outside; that no liquor is consumed on site; that no takeaways are to be sold; that there be no music played outside; that no odour is emitted from the property at any time.

In the second instance, Preserve Piha Limited, (the applicant) who was the applicant for the consent, appeals the conditions imposed on the consent by WCC. Specifically the applicant opposes condition 11: food preparation being limited to reheating of pre-prepared food, and condition 41: all activities on site are to comply with the noise standards approved.

There have also been seven Section 274 parties who have registered their interest in these appeals. Both Section 274 parties support the applicant and the decision to grant consent.

The matters have been joined together by the Environment Court and standard track directions have been issued. Notices of reply are being drafted. It is likely that the matter will next be referred to mediation in the first instance. We are currently working with the Court and the other parties to determine an appropriate date. There is a possibility of having a one day mediation in late May 2008.

(Unchanged) **Hall v WCC (November 2007)**

This is an appeal against the Council decision to grant resource consent to subdivide a property at 587 West Coast Road into two lots. The property is within the Oratia Structure Plan. The appellant was the applicant for consent and would like the removal of three conditions from the consent. These conditions relate to financial contributions, undergrounding of power and telecom services, and removal of certain buildings within 6 months of grant of consent. The appellant would like these conditions removed from the consent.

The Environment Court has issued standard track directions and it has been directed to mediation. A notice of reply has been filed. The appellants have also lodged an objection to the conditions under Section 357 of the Resource Management Act 1991 (RMA). The Council is of the view that the matter is best resolved through the objection process and has communicated this to the appellant and the Court. The matter is currently 'on hold' until the outcome of the objection process has been finalised.

(Unchanged) WCC v Estate Homes Limited (28 March 2002) (Ranui Station Road)

This matter relates to the powers of Council to require developers to construct roading that ensures connectivity between individual subdivisions and the broader roading network. It involves important legal questions relating to the costs of infrastructure, and the extent to which developers should be required to meet those costs, in reciprocation for the benefits arising from the right to subdivide, and connect into the pre-existing infrastructure, constructed and owned by Council.

Council ultimately succeeded on an appeal to the Supreme Court, resulting in a referral back to the Environment Court on the question of whether the developer should pay for a collector rather than local road. The Environment Court determined that the developer should only pay for a local road, on the basis that this was proportionate to the demand that would be placed on the roading system by its development. Council has appealed this ruling, alleging that the Environment Court has committed the same error that led to the Supreme Court intervening. A hearing took place before Priestley J on 27 February 2008 and the decision is expected before June 2008.

**(Unchanged) ARC v WCC (May 2005)
Waitakere Ranges Protection Society Incorporated (WRPS Inc.) v WCC (May 2005)
(the Duncan appeal)**

An appeal by the ARC and WRPS 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 the ARC and WRPS 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.

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

(Unchanged) M and C Brickell, W Ashton and L Schwab v WCC (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the RMA against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. WRPS Inc. 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 in order that the Court could hear the evidence of a witness for a Section 274 party that was not available during the March hearing.

The hearing has now been completed. The Court has reserved its decision. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

(Unchanged) WCC v 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. 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 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 contract is to commence on Monday, 3 March 2008. The remedial works include: concrete fill, buttressing, and reinstatement of vegetation. The works on the property have commenced. Approximate timing on completion is two weeks.

The Court has directed that the matter is to remain on hold with a further report due 2 May 2008.

(Unchanged) Ritchies v WCC, and Rex Campbell, Section 274 Party (September 2006)

This is an appeal against an abatement notice issued to 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, joined the proceedings as an interested party.

The application for stay was granted in 13 October 2006 following a judicial conference. In the interim, Ritchies lodged an application for resource consent to extend the scope of their activities. As a result of the consent process taking longer than anticipated, Mr Campbell found that he was no longer satisfied that the stay could continue without conditions. The matter was called into Court on 31 January 2008 by Mr Campbell to determine the appropriateness of the stay continuing whilst the resource consent was being determined. Mr Campbell took issue with the level of noise, traffic and fumes emanating from the Ritchies depot. Mr Campbell agreed for the stay to continue whilst the Council processes the resource consent to address the matters raised in the abatement notice subject to two conditions. Firstly, that Ritchies cease using the workshop between 9.00 pm and 6.00 am, and secondly, that no buses are parked within 10 metres of the eastern boundary on the Ritchie's property where those buses are going to be used between 9.00 pm and 6.00 am. Ritchies agreed to these conditions and the Council will abide by the Court's decision.

The Council granted Ritchies consent through commissioners to extend their operations. However, the stay will remain in place pending the outcome of the appeal referred to in the "new" Ritchies matter discussed later in this report.

(Unchanged) WCC v RDC (April 2007)

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

WCC's appeal has been resolved by consent order. The appeal concerned a decision by RDC which addressed WCC's concerns but which had not been properly worded in changes to the Rodney District Plan text.

WCC's officers have attended workshops and mediations on matters regarding which WCC has a Section 274 interest.

(Unchanged) The Tree Council and the Sunnyvale Protection Society v WCC (June 2007)

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

A Court assisted mediation occurred on 19 September 2007, at which agreement in principle was reached. The parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under Section 116 of the RMA to allow the partial commencement of the consent (removal of some vegetation and initial earthworks). A further consent order will be sought once the applicant has revised its development plans in accordance with the mediated agreement.

(Changed) WCC v ARC, IMF v ARC and NZ Steel v ARC

This is an appeal regarding ARC's decision to grant resource consents to WCC for the discharge of stormwater and wastewater for the Hobsonville Peninsula, Waiarohia Stream, Totara Creek and New Lynn East catchments. The appeals seek changes to some of the consent conditions. It is expected that WCC's issues can be resolved through mediation/negotiation. An initial mediation to address all appeals occurred on 16 October 2007. Since then there have been some discussions between the various parties, including caucusing between experts on technical matters. A further mediation date is likely to be scheduled some time mid 2008, to allow internal discussions and a caucusing of experts to take place. It is hoped that these matters can be resolved by mediation/negotiation. There have been meetings this month between Council officers to advance matters.

(Changed) Action Against Theme Park v WCC and R Karpuk v WCC (August 2007)

An appeal opposing the Council's decisions to grant resource consent to A and S Nogueira to establish and operate a theme park (including entertainment rides and a private zoo) at 74-80 Candia Road, Swanson.

The parties attended mediation on 5 March 2008. A settlement was reached within the scope of the appeal. The parties have finalised the details of the draft consent and have filed these with the Court.

Mawhinney Matters in the Environment Court

(New) Perceptus Limited v WCC

This is a new proceeding lodged in the Environment Court by Mr Mawhinney on 21 January 2008. The Council was not served until 13 February 2008. The proceedings involve Mr Mawhinney seeking an enforcement order under Section 314 of the RMA directing the Council to give public notice on the Council's decision to reserve control over

“roads” under the subdivision rules. The Council amended the subdivision rules in 2001. Council is opposing the application on substantive and procedural grounds. Evidence from the Applicant is awaited.

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

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 RMA declining subdivision consents and certificates of compliance. Council filed an application to strike out the appeals. The Court has reserved the decision pending the outcome of the High Court appeal by Mr Mawhinney against striking out on a similar matter. A decision was released this month striking out this appeal and granting costs to the Council. A costs application is currently being drafted.

(Changed) **Waitakere Resource Consents Limited v WCC (December 2005)**

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the RMA. 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.

Council's strike out application was heard before Judge Whiting and Commissioner McConally on 6-7 September 2007. Various aspects of Mr Mawhinney's appeal were abandoned during the hearing. A decision striking out all aspects of this appeal was released this month by the Environment Court. Council has also been granted costs. An application seeking costs is currently been prepared.

(Unchanged) **Abacus Developments Limited and Mawhinney v WCC (February 2000)**

This case has been placed in the ‘on hold’ list by the Environment Court, until the Dilworth Structure Plan proceedings (RMA 886/98) have been concluded. Mr Mawhinney has recently applied to reactivate this matter on the basis that it should be determined in advance of the completion of the structure plan proceedings (which are part heard). A Joint Memorandum has been filed with the Court opposing this application.

Plan Change Hearings

Local Government (Auckland) Amendment Act Plan Change Appeals

(Changed)
A1-A3 This is a summary of appeals against Plan Changes 13 to 18. The appeals will be set out in a summary format as to who the appellants are and which plan changes have been appealed. There are currently 27 appeals. Further reports will be provided as time goes by. These appeals are set out as Annexure 1 to this report at pages A1 to A3.

In addition to appeals on Council's Plan Changes 13-18, Council has filed an appeal regarding some decisions on ARC Change 6 to the Auckland Regional Policy Statement. Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with Council's appeal. Progress reports will be included in further legal updates in due course.

On 7 March 2008 the Auckland territorial local authorities agreed and filed a memorandum with the Environment Court setting out that each Council has summarised the points of relief arising out of each appeal and that the appellants and all Section 274 parties would be invited to comment on those summaries. As a result on the same day

the Council wrote to all appellants and Section 274 parties who had appealed the WCC plan changes seeking that they review the manner in which the appeals had been summarised and provide feedback to the Council by 18 April 2008. The appellants and Section 274 parties were informed that the Auckland territorial local authorities would then make any relevant amendments and report to the Court by or soon after 2 May 2008.

The period for seeking changes to summary tables has now closed. Some late submissions were made which are being considered. A judicial conference is being held on 23 May 2008 where all parties are expected to be present to set out their strategy to the Court. This Council has already communicated its position to the parties. It has informed the other territorial local authorities and the appellants that it will seek priority hearings in relation to the Metropolitan Urban Limit shift and Plan Change 15 as well as all other plan changes if there is no immediate resolution once the matters are referred to mediation.

DISTRICT COURT

(New) Cullen and Ko – 4 Kauri Point Road, Laingholm (April 2008)

The defendants have allegedly carried out unauthorised building work on the property including: internal alterations, the construction of two lean-to additions to form a bathroom and living room, a timber deck, the demolition of a garage, and construction of a utility shed. All work was undertaken without building consent. Informations have been laid with the Court.

(New) M and S Naicker – 12 Cushla Place, Massey (April 2008)

This matter relates to unauthorised building works undertaken by the defendants that included: the enclosure of a basement under a conservatory to form a two bedroom unit and bathroom for use by the defendants' extended family. One bedroom has no natural light or ventilation.

The building works did not comply with the building code, and no building consent was lodged or granted for the work undertaken. Council has laid informations with the Court.

(Changed) HQH Limited and Others – 193 McLeod Road, Henderson (Riverglade Parkways) (March 2008)

Riverglade Parkways is a subdivision on McLeod Road, Henderson where Council discovered the construction of 14 concrete slabs, and 9 houses framed, all without building consent.

Informations have been laid against all of the parties involved. The matter has been adjourned to 15 July 2008 for lawyers to seek further instructions. One party has pleaded guilty to 11 charges. A sentencing date will be allocated once all pleas have been entered.

(Unchanged) AHC Reuben-Shepherd – 137 Simpson Road, Henderson Valley (January 2008)

This matter is in relation to an abatement notice issued under the RMA by Council in August 2007. The abatement notice required the defendants to remove significant numbers of disused vehicles, machinery, and miscellaneous metal and other objects from the property by the date specified in the abatement notice.

The use of the property by the defendants contravenes Council's district plan amenities rules. The defendant did not comply with the abatement notice, namely they did not remove any of the specified articles and vehicles from the property in accordance with the abatement notice.

The defendant has pleaded guilty. Sentencing has been set down for 16 June 2008.

(Changed) JS Choi – 163 Brighams Creek Road, Whenuapai (January 2008)

This matter relates to a breach of the district plan in that the defendant undertook earthworks on his property in excess of what is permitted under the General Natural Area Rules.

Retrospective resource consent has been lodged for the earthworks. The defendant has pleaded guilty and sentencing has been set down for 16 June 2008.

(Changed) RJ Dyas – 211 Laingholm Drive, Laingholm (January 2008)

This matter relates to charges laid for substantial unauthorised building works at the property. The works include internal structural works and significant structural changes to the basement area.

The building works were not in accordance with a building consent.

The defendant did not appear in Court at the last appearance. The matter has been adjourned to 19 May 2008 for a plea to be entered.

(Changed) V Kumar and others – 9-11 Aetna Place, Henderson (January 2008)

This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store and warehouse currently under construction at Henderson.

Council laid informations against all the parties for the unauthorised building works on 30 January 2008.

Further informations have been laid against the developer company and a director.

The matter has been adjourned to 15 July 2008 for pleas to be entered.

(Unchanged) GM Garland – 82 Woodlands Park, Titirangi (November 2007)

Council has laid informations in relation to unauthorised building works that include the development of the basement/garage of the dwelling into a habitable space. The works have not been carried in otherwise in accordance with a building consent.

The defendant has pleaded not-guilty to the charges. The matter has been set down for a status hearing for the Court to determine timetable orders on 10 June 2008.

(Unchanged) Metlifecare Pinesong – 48-72 Avonleigh Road, Green Bay

Charges have been laid under the Building Act 2004 (the Building Act) for building work undertaken without consent. The building work relates to a partial re-cladding of 20 houses owned and operated by Metlifecare Pinesong Limited as retirement village where the occupants have a lifetime lease of the properties. The building work was undertaken by Apsac Construction. Both parties are being prosecuted. The matter was called on 28 April 2008. Both parties entered guilty pleas and the matter is set down for sentencing on 15 July 2008.

(Changed) Hong Chen – 15 Ayrton Street, Te Atatu South (August 2007)

This relates to unauthorised building works being undertaken at the property which included the construction of front and rear lean-to attached to the dwelling, unauthorised plumbing and drainage, the installation of windows and the construction of sub-floor

framing and foundations. The building works required a building consent, and are not in compliance with the building code.

Charges were laid by Council under the Building Act in relation to the unauthorised works and in relation to Hong Chen's failure to comply with two separate notices to fix (NTF) issued by Council in March and May 2007.

Ms Chen entered a guilty plea in relation to the unauthorised building works, and not guilty pleas in relation to the NTF offences. Ms Chen subsequently changed her plea to guilty in relation to the two Section 168 NTF offences at the commencement of the defended hearing.

Sentencing was set down for 28 April 2008. The Judge reserved his decision in order to look further into the cases submitted by Counsels'. The Judge will deliver the decision on 14 May 2008.

(Unchanged) G Yuan – 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home and is known as "Abbey Heights Rest Home". Ms Yuan built a conservatory on an existing deck, and installed a shower enclosure and vanity in the staff room without a building consent.

The deck area/conservatory is used as the rest home's dining room. Any building works undertaken on a building intended for public use requires a building consent, or the public should not have access to that area.

Council instructed the owners to cease using the conservatory area as a public area, and laid charges in relation to the unauthorised work, failure to comply with the NTF, and failure in permitting the use of the premises by the public where no building consent has been issued.

Ms Yuan sold the business in late August 2007. The new owners have been instructed to cease using the conservatory as a dining area and to close it to the use of residents. We understand the new owners have complied with Council's instructions. The Council has also referred the matter to the Ministry of Health.

The defendant has pleaded not guilty and Council has sought an adjournment as she has not raised a statutory defence under the Building Act. A status hearing has been set down for 20 May 2008, with submissions to be exchanged prior to the hearing.

(Unchanged) N and KG Bishop, AR Kiff and DR Jordan – 15 Williams Road, Hobsonville (August 2007)

This matter is in relation to the unauthorised re-cladding in a Monotec exterior cladding system, of a minor household unit on the property. Council has laid charges under the Building Act against the owners, the builder and the contract plasterer.

The unauthorised works consisted of the removal of exterior cladding, the removal and reinstatement of windows and joinery, and the installation of a Monotec exterior cladding system without building consent.

The owner pleaded guilty and appeared on 28 February 2008 for sentencing. The builder also pleaded guilty and appeared on the same date.

The matters were heard together, and the parties were convicted and sentenced as follows:

Mr Bishop – Fined \$3,750.00 and costs which included \$226.00 solicitors costs and \$130.00 Court costs; and

Mr Jordan – Fined \$4,000.00 and costs as above.

Mr Kiff has now pleaded guilty to the Section 40(1) offences. Sentencing has been set down for 1 August 2008.

(Unchanged) P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)

Charges were laid under the RMA and the Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 7 buildings on the property into sleep outs. The other charges of contraventions of the RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court and an out of court solution is being pursued in respect of issues under the RMA. The defendant applied for a determination from the Department of Building and Housing (DBH) in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH appointed an investigator to look into this matter. That report has now been received by the Council along with a draft determination. The draft determination accepts that there are 7 unauthorised sleep outs on the property. The matter has yet to be set down for sentencing on 15 July 2008.

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

This matter relates to breaches of the RMA and the Building Act. Mr Gordon pleaded not guilty to both charges on 31 March 2006. The RMA matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court.

The matter proceeded to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007, but as a judge was not available, it was unable to proceed and was set down for a jury trial on 18 February 2008.

The Building Act charges had been set down to be heard by a Judge alone in the week of 25 February 2008.

Mr Gordon was assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This was because Mr Gordon refused to obtain legal representation.

Mr Gordon has now pleaded guilty to 5 of the 6 counts in the indictment. Two of the charges were laid in the alternative. One has now dropped off because Mr Gordon pleaded guilty to the other.

Sentencing has been adjourned to 30 June 2008 to allow Mr Gordon to take steps to undertake works in accordance with Council's requirements.

The works will include:

- Removal of car wrecks from the property by 14 April 2008;
- Removal of house trucks and caravans by 30 June 2008;
- Provide a fire report by 10 March 2008;
- Cease all earthworks;
- Cease depositing organic and inorganic material on the property;

- Apply for all necessary consents by 14 April 2008;
- Permit reasonable access by Council employees.

The Building Act prosecution and application for costs will be adjourned to 30 June 2008.

In the event of non-compliance, the Crown will seek a custodial sentence.

The following update has been provided after an appearance before the Judge on 24 April 2008:

- Sonja Bury of Council has undertaken an inspection of the property. As at 17 April 2008, 4 cars remain including 1 truck wreck. The Judge has instructed Mr Gordan to remove the remaining wrecks.
- Mr Gordan was to obtain a fire report. This has not been provided and a memo was filed with the Court accordingly. Mr Gordon did advise that he would provide the report by 5.00 pm, Tuesday, 29 April 2008, however this was not done. Wednesday, 30 April 2008, the Court received a letter from Wormald, however this was inadequate as no assessment of the buildings' safety for ingress and egress had been done. Field Services are to follow up in relation to the dangerous building issues, and report back to the Crown.
- An application for retrospective consent for earthworks has been lodged, and boundary adjustment application to address Council's concerns about the numbers of dwellings allowed on a lot. The boundary adjustment will address this, and looks likely to be granted.
- Further reports are also required in relation to the contamination of the land.
- Mr Gordan has also proposed an application for chalets to be built to house tenants on the property. The matter has a further Court date of 30 June 2008 for sentencing.

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

Charges have been laid under the RMA for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200m² 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 matter was called on 3 September 2007 where the informations against D Gladwin were withdrawn and M Gladwin reserved the right not to enter a plea until 11 February 2008. The Court was informed that the Gladwin's intended to apply for retrospective resource consent to regularise the breach so as to mitigate the offending.

Mr Gladwin has pleaded not guilty and the matter has been set down for a hearing on 15 June 2008.

(Unchanged) R Brooky – 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act for non-compliance with a notice to fix for work undertaken to re-clad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter was set down for 20 August 2007 for the defendant to plead. The defendant pleaded not-guilty.

The matter was set down for a one day hearing on 9 November 2007 with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November 2007, the Court had not allocated adequate time and considered that because Mr Brooky had not served summonses on his witnesses the Court ought to set the matter aside until 2008; particularly because Mr Brooky is a lay litigant. The Court has now set the matter down for hearing on 19 June 2008.

(Changed) **S Hosaini - 71 Rosier Road, Glen Eden (May 2007)**

Charges have been laid under the Building Act relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed. Mr Hosaini entered a guilty plea on 15 October 2007 with facts in dispute set for resolution between the parties by 28 April 2008. The facts have now been resolved and Mr Hosaini is being sentenced on 15 July 2008.

Leaky Building Claims

(Changed) Claims statistics are as follows:

- (a) Claims currently being handled are 30.
 - High Court: 4
 - District Court: 3
 - Weathertight Home Resolution Service (WHRS) / WHT 24
- (b) Number of claims for Waitakere City as at 30 April 2008, which may include some consents processed by building certifiers, was 338. This is the same as the number reported on 30 April 2008.
- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.
- (d) The latest High Court claim relates to a property at 4 Keeling Road, and is a block of 22 units. The other defendants include James Hardies and the architect. The builder, and other contractors, has not been identified. The claim is presently for \$1.7M consisting of remedial work, plus \$220,000.00 general damages (\$10,000.00 per unit), loss of market value, fees, interest and costs.

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

6 WAITAKERE CITY DISTRICT PLAN PROPOSED PLAN CHANGE 26: LIVING ENVIRONMENT BULK AND LOCATION RULES

GLOSSARY

Resource Management Act 1991	(RMA)
Planning and Regulatory Committee	(the Committee)
Living Environment Rules	(the Rules)

EXECUTIVE SUMMARY

The purpose of this report is to present to the Planning and Regulatory Committee (the Committee) the proposed Plan Change relating to the amendment of the District Plan provisions that apply to the Living Environment (and associated consequential changes).

It is considered that the proposed Plan Change will allow for a clearer interpretation of the Living Environment Rules (the Rules), provide simplification of the Rules where possible, and ultimately provide enhanced amenity within suburban residential areas, without substantially changing or challenging the Objectives of the Plan.

The proposed Plan Change is considered necessary to achieve the purpose of the Resource Management Act 1991 (RMA) and is the most appropriate course of action in terms of effectiveness and efficiency of Council exercising its function. In addition, the proposed Plan Change is consistent with the existing District Plan Policies and Objectives and it is considered that there will be no adverse environmental effects generated as a result of the proposed Plan Change.

This report seeks approval from the Committee to enable the proposed Plan Change to be publicly notified.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Waitakere City District Plan Proposed Plan Change 26: Living Environment Bulk and Location Rules report.
2. **Approve** the public notification of Waitakere City District Plan Proposed Plan Change 26: Living Environment Bulk and Location Rules, pursuant to the First Schedule of the Resource Management Act 1991, as set out in attachment A4 to A32 to the agenda report.

A4-A32

BACKGROUND

1. The proposed Plan Change seeks to amend the Rules which have either been drafted incorrectly, are open to misinterpretation, or are not achieving the desired outcomes in Living Environments across the City.
2. Two reports on this topic were presented to the Committee last year, the first sought approval to prepare a draft Plan Change; the second provided a timeline for the processing of the proposed Plan Change.
3. On 10 July 2007 the Committee resolved as follows:

“1. That the Issues and Options Paper: Review of the Bulk and Location Rules of the Waitakere City Council District Plan (Living Environment) report be received.

2. That a review of the bulk and location Rules of the Living Environment be undertaken and that a draft Plan Change be prepared and reported back to the Planning and Regulatory Committee for consideration.

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

3047/2007

4. A timeline was developed and on 7 August 2007 the Committee resolved as follows:

“1. That the timeline for the Review of the Bulk and Location Rules of the Waitakere City Council District Plan (Living Environment) report be received.”

3231/2007

5. On this basis, the proposed Plan Change has been prepared.

DECISION MAKING

Issues

6. Decisions in relation to Plan Changes must be assessed under section 32 of the RMA, which requires an analysis of costs and benefits of options. It is noted that the analysis required under section 32 is similar to that undertaken under section 78 of the Local Government Act 2002.

Resource Management Act 1991

A33-A53

7. The RMA provides for changes to be made to the District Plan. Attachment A33 to A53 entitled, 'Proposed Plan Change 26: Living Environment Bulk and Location Rules, prepared in fulfilment of section 32 of the Resource Management Act 1991' clearly identifies the relevant sections of the RMA, and other statutory documents, that must be taken into account when notifying a proposed Plan Change. Summaries of the relevant discussions from that report follow.

Auckland Regional Policy Statement

8. It is considered that the proposed Plan Change is entirely consistent with the Objectives of the Auckland Regional Policy Statement.

The Proposed Plan Change

A4-A32

9. The proposed Plan Change attached at pages A4 to A32 includes amendments to the following Rules and Definitions:
- Living Environment Rule 2: Density – to exclude assessment of Density where only additions and alterations to existing dwellings are proposed;
 - Living Environment Rule 3: Building Location – to allow additions and alterations to existing buildings located on sensitive ridgelines where there is no increase to the building coverage or change to the building footprint;
 - Living Environment Rule 5: Height in Relation to Boundary – to allow the recession plane to be taken from the far side of an adjoining driveway (to a maximum of 3.2m);
 - Living Environment Rule 8: Privacy / Amenity – to clarify the intent of the Rule;
 - Living Environment Rule 9: Outdoor Space – to clarify the intent of the Rule and require the provision of outdoor space for Minor Household Units;
 - Living Environment Rule 10: Non-Residential Activities – delete requirement for minimum site areas for non-residential activities;
 - Living Environment Rule 12: Carparking and Driveways – to include minor household units in minimum standards for shared driveways;
 - Living Environment Rule 13: Noise – to reflect current noise standards;
 - Consequential amendments to the District Plan Rules in other Human Environments where the same or similar Rules occur;
 - Amendments to the District Plan Natural Area Rules where changes to the Human Environment Rules have consequential impacts;
 - Amendments to the City Wide Noise Rule to reflect current noise standards;
 - Amendment to the District Plan Definition of *Building* and *Building Coverage* to exclude decks and terraces up to 1.0m above ground from calculations of total building coverage; and

- Include a new District Plan Definition for *Building Footprint* or *Building Envelope* to better describe the area occupied by a building in three-dimensional terms.
10. There are no changes to the District Plan Objectives and Policies, nor to the District Plan Maps.
 11. At time of writing, the District Plan Definition of '*Building Footprint*' or '*Building Envelope*' was not finalised. This finalised Definition will be tabled at the Committee meeting.

Section 32 of the RMA

12. Council's obligations under Section 32 are divided into five parts that comprise the following:
 - examining the extent to which each objective is the most appropriate way to achieve the purpose of the RMA;
 - examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
 - taking into account the benefits and costs of the policies, rules or other methods;
 - taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
 - summarising the evaluation and reasons for evaluation.

A33-A53

13. An evaluation under each of the above subsections has been undertaken and is outlined in attachment A33 to A53. The evaluation fulfils Council's requirements with regard to Section 32 of the RMA.
14. The Section 32 analysis identified that the proposed Plan Change would enable the Council to manage its land resources efficiently whilst meeting the purpose of the RMA by allowing sustainable management of natural and physical resources. The Section 32 analysis also concludes that the proposed Plan Change would enable a clearer interpretation of the Rules, which would result in better amenity outcomes in residential areas, as well as minimising time and cost spent on interpretation of the Rules.
15. Further, the evaluation will be available for public inspection at the same time as the proposed Plan Change is publicly notified (in accordance with Section 32(6)).

Actual or Potential Adverse Effects on the Environment

16. Under Section 31 of the RMA Council's function includes "*the control of any actual or potential effects of the use, development, or protection of land*". Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment.
17. The proposed Plan Change does not enable any new significant activities that have not previously been permitted or consented to under the Plan. Rather, it seeks to provide clarification of the interpretation of a range of District Plan Rules. Resource consent is, and will continue to be, required for activities that do not comply with the District Plan provisions. This allows the Council to be confident that any adverse effects arising from these activities will be avoided or mitigated through the resource consent process.

18. Overall it is considered that there are no adverse environmental effects that will be generated by the proposed Plan Change. The proposed Plan Change will enhance the framework that avoids remedies or mitigates the adverse effects arising from residential development in the City.

STRATEGIC CONTEXT

19. The working draft of the Waitakere Growth Management Strategy (August 2006) aims to ensure that the City remains a great place to work, live and play well into the future. The Waitakere Growth Management Strategy provides a blueprint for how the City might best accommodate growth pressures.
20. These issues are also documented and influenced by the Auckland Regional Policy Statement (updated 2005), the Auckland Regional Growth Strategy 1999, the Northern and Western Sectors Agreement 2001 and the Local Government Auckland Amendment Act 2004.
21. All of these documents highlight the need to manage the growth of the Auckland region in an integrated manner with the aim of consolidating development into a sustainable compact urban form, with well-integrated land uses and transport network. With increased intensification of building development within the existing metropolitan urban limit there is a need to maintain adequate amenity in residential neighbourhoods.
22. The bulk and location rules within the District Plan are one of the main mechanisms which Council utilises to manage the effects of land use and to achieve a high standard of amenity in the urban areas. The District Plan integrates the Urban and Rural Villages section of the Long Term Council Community Plan 2006-2016, which supports urban consolidation and sustainable development, and seeks to provide for a mix of housing styles.
23. The Objectives under the District Plan that are relevant to the bulk and location rules include Objectives 9, 10 and 11. These seek to protect the quality and significance of the City's landscapes, and to maintain and enhance amenity values and neighbourhood character. The relevant Policies under each Objective outline in more detail what the Rules are seeking to achieve. The proposed Plan Change improves the ability of Council to assess the effects of each activity.

CONSULTATION

24. Clause 3 to the First Schedule to the RMA states that during the preparation of a proposed Plan Change, a local authority shall consult with the Ministry for the Environment, other Ministers of the Crown deemed to be affected, other Local Authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a Plan Change.
25. The issues addressed in the Plan Change are amendments to existing Rules in order to clarify interpretation or improve amenity on site. These are minor changes which will not impact on the Ministry for the Environment or other Ministers of the Crown. No consultation has been undertaken as part of this proposed Plan Change, however consultation is to be undertaken with local iwi prior to the decision on notification.
26. Opportunities for residents and any other interested party to comment will be available to those persons through the public notification process of this Plan Change.

RESOURCES

27. The costs of the proposed Plan Change include the costs of notification, including the costs of conducting a hearing and resolving any subsequent appeals (if required). No additional staff funding or resources are required.

IMPLEMENTATION ISSUES

28. There are no implementation issues associated with this report.

Report prepared by: Claire Gray, Planner: Policy Implementation.



PART D - REPORT OF THE SUBCOMMITTEE

7 SWIMMING POOL EXEMPTION SUBCOMMITTEE

THE MANAGEMENT COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 17 APRIL 2008

MATTERS CONSIDERED

A54-A57

The Subcommittee dealt with a number of items for which it has delegated powers to act and a copy of the minutes of the meeting is attached at pages A54 to A57.

The Subcommittee Recommends:

That the Meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 17 April 2008 be received.

WW Flaunty, QSM, JP

CHAIRMAN

