



**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 8 JULY 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, 10 June 2008

**RECOMMENDATION**

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

**Receive** that the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 10 June 2008, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 30 JUNE 2008)**

#### **GLOSSARY**

Ritchies Transport Holdings Limited	(Ritchie's)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Environmental Health Officer	(EHO)
Auckland Regional Public Health Service	(ARPHS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Notice to Fix	(NTF)
Certificate of Acceptance	(COA)
Building Act 2004	(the Building Act)
Metropolitan Urban Limit	(MUL)
Memorandum of Understanding	(MoU)

#### **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 resolves as follows:

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

#### **COURT OF APPEAL**

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. 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 is resolution of costs. Carter Holt has now directly contacted the Mayor's Office to discuss among other things, the 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. Carter Holt has not yet lodged a claim for costs.

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 made submissions on the supplementary order paper to Waste Minimisation. The Bill now has a new definition of waste in line with that sought by Council. A further paper has been sent direct to the Ministers prior to the Bill's second reading on 18 June 2008.

## **HIGH COURT**

### **(Unchanged) J E Burgess v Waitakere City Council and Auckland Regional Council**

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 property"). 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 Ms 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 452 m<sup>2</sup>. 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.

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

Council sought to acquire land under the Public Works Act 1981 for a 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 heard in the High Court on 19 March 2007. Leave was declined.

Negotiations to purchase the properties have been completed and the Council now owns the land notwithstanding some minor unresolved compensation issues including costs. 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.

### **(Unchanged) 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 1981 in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force, and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Judge Williams on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 Public Works Act 1981. A Court of Appeal hearing was held in April to hear Council's appeal against the High Court decision. A Judgment of the Court is pending.

**Substantive hearings involving Mr Mawhinney**

**(New) Perceptus Limited & Others v Waitakere City Council (May 2008)**

An appeal by companies controlled by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three related appeals regarding purported applications for certificates of compliance and subdivision consents. An initial case management conference is scheduled for 15 July 2008.

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

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

Mr Mawhinney's appeal was heard in the High Court before Judge Venning 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.

**ENVIRONMENT COURT**

**(New) Community Waitakere Charitable Trust v Waitakere City Council (June 2008)**

This appeal opposes Council's decision to decline a resource consent application by the appellant to construct a new "Community Resource" building within the Tui Glen Reserve at Henderson. The matter has been placed on the Court's Standard Track, with general case management directions applying. It is likely that this matter will proceed to a Court-assisted mediation in the first instance. A notice of reply will be filed shortly.

**(Changed) Ritchie's Transport Holding Limited v Waitakere City Council and Rex Campell (as Section 274 party) (May 2008)**

Ritchie's Transport Holding Limited ("Ritchie's") 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 Ritchie's 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. No other parties have applied to join this appeal.

At the same time Ritchie's have applied to push the commencement date of the consent forward, instead of waiting for the appeal to be resolved. The Council has agreed to this and a draft order has been forwarded to the Court. This will mean that the abatement notice can be cancelled and the new consent will be the basis of monitoring.

Mr Campbell has joined as a Section 274 party opposing the grant of the three year period being sought by Ritchies. 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.

**(Changed) J Hsu v Waitakere City Council (April 2008)  
Weddings Etc Limited v Waitakere City Council**

These appeals relate to the grant of consent for aspects of the operation of the function centre known as "Cassels"; including the extension of extended hours of operation.

Mr Hsu has appealed Council's decision to grant consent. Weddings Etc Limited (applicant/consent holder) has appealed several conditions of consent. Mr Chapman has joined these appeals as a Section 274 party seeking additional conditions of consent.

The appeals may be referred to mediation in the first instance, although the consent holder, Weddings Etc Limited, is at this stage, opposed to mediation. They have informed the Court that this opposition is due to the long and litigious history of this matter. The matter has been placed on the Environment Court's standard track list.

**(Unchanged) Protect Piha Heritage Society Incorporated v Waitakere City Council and Auckland Regional Council  
Preserve Piha Limited v Waitakere City Council**

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 10am to 5pm, 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 are now 14 Section 274 parties. The majority of these support the granting of consent.

These matters have been joined together by the Environment Court and standard track directions have been issued. Notices of reply have been served. The matter was before an Environment Court Commissioner for mediation on Monday, 26 May 2008. Mediation was not successful and the matter is proceeding to a hearing, most likely in early September 2008. An evidence exchange timetable has been agreed.

**(Changed) Hall v Waitakere City Council (November 2007)**

This is an appeal against Council's decision to grant resource consent for the subdivision of 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, the installation of under-ground power and telecom services, and the removal of certain specified 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. The parties are attending half day mediation on 7 July 2008 in an attempt to resolve the issues.

**(Changed) Waitakere City Council 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 Feb 2008 and the appeal was dismissed, the Court finding that the Environment Court did not make an error of law, and any issues still at large were to be determined by the Environment Court. Costs were reserved.

The claim has now been settled, by a payment of \$500,000.00 plus GST. (The annual plan amount held to cover the settlement was \$800,000.00).

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

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

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision. 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 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 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The Waitakere Ranges Protection Society Incorporated ("WRPS Inc.") has 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.

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

An application by the Council for interim and final enforcement orders in respect of a landslip 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 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 commenced on Monday, 3 March 2008. The remedial works include: concrete fill, buttressing, and reinstatement of vegetation. The works on the property have commenced.

Further time is required to implement a restoration planting plan. Council is required to provide a further progress report to the Environment Court by 3 October 2008.

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

This is an appeal against an abatement notice issued 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 6.00am and 9.00pm. The requirements are those set out in the Ritchies resource consent (RMA 991374).

As a result of the decision on consent and the application by Ritchies to commence the operation of the consent, the Council will be making an application to cancel the abatement notice as the consent granted by the Council addresses the matters raised in the abatement notice.

**(Unchanged) Waitakere City Council v Rodney District Council ("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. Further mediations are scheduled.

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

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

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 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, and these changes have been accepted (which should occur shortly).

**(Changed) Waitakere City Council v Auckland Regional Council, IMF v Auckland Regional Council, NZ Steel v Auckland Regional Council and Hahn and Others v Auckland City Council**

This appeal concerns 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. Mediation and discussions/negotiations between the parties has occurred. Some aspects are still to be agreed, however it is expected that the matters will be resolved by consent orders in due course.

**Mawhinney Matters in the Environment Court**

**(Changed) Perceptus Limited v Waitakere City Council**

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 now overdue and is being followed up.

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

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the RMA declining subdivision consents and certificates of compliance. Council filed an application to strike out the appeals. A decision was released in April 2008 striking out this appeal and granting costs to the Council. Council has sought costs from the unsuccessful appellants. A decision is pending.

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

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the 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 and 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 has been lodged with the Court and a decision is awaited.

**(Changed) Abacus Developments Ltd & Mawhinney v Waitakere City Council (February 2000)**

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (Resource Management Act 886/98) have been concluded. Mr Mawhinney has recently applied to reactivate this matter on the basis that it should be determined in advance of the completion of the Dilworth structure plan proceedings (which have been partially heard) seeking deferment of a decision for the Dilworth Structure Plan. A Joint Memorandum has been filed with the Court opposing these applications. The Court has set the matter down for a hearing on 9 July 2008 to consider this application.

**Plan Change Hearings**

**Local Government (Auckland) Amendment Act Plan Change Appeals**

**(Unchanged)** 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 of this agenda.  
A1-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 received which have been considered and amendments made. Accordingly a third version of summary tables and topic tables will be released. The appeals have been separated into topics by each Council having its own topic groups and the region as a whole creating a topic for Commercial Appeals which address the appeals by the five large format retail appellants as to whether retail should be located in city centres or corridors.

A judicial conference was held on 23 May 2008 where all parties, including the Councils, put forward their strategies for managing the appeals.

Waitakere communicated the position it has maintained since the appeals commenced which was to expedite any hearings in relation to the Metropolitan Urban Limit (MUL) shift and Plan Changes 14 and 15. The Court accepted this position and the matter is set down for hearing, if one is needed, in late January - early February 2009. The parties are to report back to the Court on 1 August 2008 as to whether any aspects of the appeals relating to the topic MUL Issues have been settled and otherwise propose an evidence exchange timetable for a hearing in late January to early February 2009.

In respect of all other appeals, the topics classified and referred to above as Commercial Appeals has been set down for a hearing, if one is necessary, in the early part of the second quarter of 2009. The parties are required to report back to the Court on 31 July 2008 as to progress made in resolving these appeals.

In respect of all other appeals to the Waitakere City Proposed Plan Change, the Council is to report back to the Court by 1 September 2008 as to the progress of resolving these appeals and at that stage the parties can seek formal court assisted mediation and/or a hearing.

### **DISTRICT COURT**

#### **(New) Albert Edward Gunn - 3 Dovey Place, Te Atatu (June 2008)**

This matter relates to a current prosecution against the previous owner of the "Abbey Heights Rest Home".

It is alleged that Mr Gunn undertook the building works at the rest home. This information has only recently been received by Council.

Informations have been laid against Mr Gunn pursuant to Section 40(1) of the Building Act 2004. The matter has a first call on 15 July 2008.

#### **(New) Albany Apartments Limited - 80 Clover Road, Henderson (June 2008)**

Council has laid informations in relation to unauthorised earthworks on the property. The earthworks consisted of excavation, cut and fill and allegedly constitute a contravention of Section 9 of the RMA.

Informations have been laid against the company and its directors in respect of the breaches of the general natural area rules, and earthworks within a riparian margin area. The matter has a first call on 15 July 2008.

#### **(Unchanged) Cullen and Ko - 4 Kauri Point Road, Laingholm (April 2008)**

This prosecution concerns alleged 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. The matter has a first call on 15 July 2008.

#### **(Unchanged) 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 sought or granted for the work undertaken. Council has laid information with the Court and the matter has a first call on 15 July 2008.

**(Unchanged) HQH Limited & 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 for that party will be allocated once all pleas have been entered.

**(Changed) 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 defendant 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 defendant contravened Council's district plan Citywide Maintenance of Land and Buildings amenities rule. The defendant did not comply with the abatement notice, namely she did not remove any of the specified articles and vehicles from the property in accordance with the abatement notice.

Sentencing was set down for 16 June 2008. The defendant was convicted and sentenced to 80 hours of community service. Council was awarded costs of \$500.00, and the Court ordered that an enforcement order be put in place to ensure the lawful removal of the miscellaneous chattels by 16 December 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 sought for the earthworks and is in the process of being granted. The defendant pleaded guilty and was convicted and sentenced on 16 June 2008. The Court fined the defendant \$4500.00 and awarded costs in favour of Council of \$1000.00.

**(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 has pleaded guilty and sentencing has been set down for 15 July 2008.

**(Unchanged) V Kumar & others - 9-11 Aetna Place, Henderson (January 2008)**

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

Council laid informations against various parties (including the developer company and a director) in respect of the unauthorised building works.

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

**(Changed) GM Garland - 82 Woodlands Park, Titirangi (November 2007)**

Council 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 out in accordance with a building consent.

The defendant pleaded not-guilty to the charges, and a hearing date was allocated by the Court. The matter has been set down for 9 and 10 October 2008.

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

Charges have been laid under 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 Apec 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.

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

The property is being used as a private resthome known as "Abbey Heights Rest Home". Ms Yuan had a conservatory built on an existing deck, retrofitted the existing deck to strengthen it for the conservatory, and installed a shower enclosure and vanity in the staff room, all without a building consent.

The deck area was converted to be used as the rest home's dining room. The building is a building intended for public use and any building works undertaken required a building consent. A Certificate of Acceptance cannot be granted for the building works.

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 notice to fix, and failure in permitting the use of the premises by the public where no building consent has been issued.

The defendant sold the business in late August 2007. The new owners were also instructed to cease using the conservatory as a dining area, and to prevent resident use of this area. We understand the new owners have complied with Council's instructions and are currently seeking a building consent to regularise the work. Council also referred the matter to the Ministry of Health who undertook an environmental audit on the property.

The defendant has pleaded not guilty. A hearing has been set down for 8 September 2008. Further informations have been laid against other parties found to be involved in the unauthorised building works.

**(Unchanged) N & 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 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 \$3750.00 and costs which included \$226.00 solicitors costs and \$130.00 Court costs; and

Mr Jordan – Fined \$4000.00 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 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 been set down for sentencing on 15 July 2008.

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

This matter relates to breaches of the RMA and 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:

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 5pm, Tuesday 29 April, however this was not done. On 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.

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

Charges were laid under the RMA for: failure to comply with an abatement notice, undertaking earthworks of approximately 6,000m<sup>2</sup> (approximately 200m<sup>2</sup> were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without resource consent. Mr Gladwin pleaded not guilty and the matter was set down for a hearing on 15 June 2008. However, as a result of certain procedural issues as to Mr Gladwin's mental state, the Court has placed the matter on hold until the required remedial action is undertaken.

**(changed) 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 part heard the matter on 19 June 2008 and we will be going back to finish the case on 22 October 2008.

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

Charges have been laid under the Building Act relating to undertaking 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 32
- High Court: 4
  - District Court: 3
  - WHRS/WHT 25
- (b) Number of claims for Waitakere City as at 30 June 2008, which may include some building consents processed by building certifiers, was 338. This is the same as the number reported on 30 May 2008.
- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.
- (d) One High Court claim relates to a property at 4 Keeling Road. This 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 \$1.7 million 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 SUBMISSION TO GENESIS ENERGY "RODNEY POWER STATION" RESOURCE CONSENT AND PLAN CHANGE APPLICATIONS**

**GLOSSARY**

Planning and Regulatory Committee	(the Committee)
Rodney District Council	(RDC)
Auckland Regional Council	(ARC)
Genesis Energy 'Rodney Power Station'	(the Station)
Combined Cycle Gas Turbine	(CCGT)
Waitakere City Council Submission on Genesis Energy 'Rodney Power Station' Plan Change and Resource Consent Applications	(the submission)
The Resource Management Act 1991	(the RMA)

## EXECUTIVE SUMMARY

This report provides information to the Planning and Regulatory Committee (the Committee) in relation to the recent Private Plan Change and Resource Consent applications by Genesis Energy Ltd to the Rodney District Council (RDC) and Auckland Regional Council (ARC) to enable a 480 megawatt Combined Cycle Gas Turbine (CCGT) Power Station (the Station) to be constructed and operated at a location midway between Helensville and Kaukapakapa, adjacent to State Highway 16 and the Kaukapakapa River. The proposed location is approximately 20 kilometres (km) from the Waitakere City boundary with Rodney District.

The Station will provide mostly positive benefits to Waitakere through energy security and enabling future renewable generation, and CCGT is the cleanest burning and most efficient thermal generation option currently available.

However, the Station may also result in quite significant environmental effects in an area in close proximity to this City, and to ecosystems that are regionally significant (the Kaipara Harbour) and linked with the wider west coast marine environment.

Council officers have made a submission on the proposal in conditional support, also stating concerns regarding some aspects of the proposal.

A4-A20

This report seeks ratification of that submission (attached at pages A4 to A20), and approval to make appearances at any forthcoming consent hearing or pre-hearing discussions in support of that submission.

## RECOMMENDATIONS

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

1. **Receive** the Submission to Genesis Energy 'Rodney Power Station' Resource Consent and Plan Change Applications report.
2. **Agree** to ratify the Waitakere City Council Submission to Genesis Energy 'Rodney Power Station' Resource Consent and Plan Change Applications attached at pages A4 to A20.
3. **Agree** to Council Officers appearing on behalf of Waitakere City Council at any forthcoming Resource Consent, or Plan Change Hearing (or meeting prior to same) in relation to the Genesis Energy 'Rodney Power Station' Resource Consent and Plan Change Applications and undertaking further actions as necessary to advance the intent of the Waitakere City Council Submission to Genesis Energy 'Rodney Power Station' Resource Consent and Plan Change Applications, with the exception of the lodgement of appeals to any subsequent decision, which shall be subject to further approval by this Committee.
4. **Direct** the Chief Executive Officer to report back to the Planning and Regulatory Committee with a further report addressing the outcome of the Genesis Energy 'Rodney Power Station' Resource Consent and Plan Change hearings process, as soon as possible after a decision is released.

## BACKGROUND

1. On 7 April 2008, the Council received notice of an application by Genesis Energy to the Rodney District Council and the Auckland Regional Council of a proposed plan change and a number of resource consent applications in order to enable the construction and operation of a proposed 480MW Combined Cycle Gas Turbine Power Plant (Rodney Power Station), on a 48Ha site adjacent to the Kaukapakapa River and SH16, midway between Helensville and Kaukapakapa.

A21-A41

2. A summary of the application details is attached at pages A21 to A41 and full details of the application are available from the Genesis Energy website: [http://www.genesisenergy.co.nz/genesis/generation/our-future-developments/en/our-future-developments\\_home.cfm](http://www.genesisenergy.co.nz/genesis/generation/our-future-developments/en/our-future-developments_home.cfm)
3. The author also has a full copy of the application details should the members be interested.
4. The period for submissions closed on the 16 May 2008.
5. Following receipt of notice, and obtaining, reviewing and summarising the large amount of application information, and discussions with interested staff a submission was developed and lodged, which in summary, supported the application with some reservations around environmental matters.
6. This 'in principal' support is based on the ability of the Station to ensure long term security of supply for this City and the wider Rodney/Northland Region, and that its flexible design and responsive capabilities will enable and complement further development of more variable renewable energy generation, such as wind and tidal (note that the consent hearing for the 200MW Crest Energy Tidal Generation proposal for the Kaipara Harbour is set down to be heard in Whangarei in late May 2008 - a decision has yet to be released).
7. Concerns outlined in the submission are related to environmental issues, particularly water discharges for which a number of suggestions to address these concerns were made.
8. Issues relating to the emission and effects of so called 'greenhouse gases' such as CO<sub>2</sub> (carbon dioxide), CO (carbon monoxide), NO<sub>x</sub> (nitrous oxides), SO<sub>x</sub> (sulphur oxides) and others, from the natural gas fired Station are also of concern, but are not able to be considered by the consent authorities (as confirmed by a Declaratory Judgement from the Court of Appeal), this matter being a global concern, and covered by Central Government's commitments and programmes under the Kyoto Protocol (such as the currently proposed Emissions Trading Scheme), rather than controlled at the regional or local level.
9. Due to the tight submission period timeframe, and a high workload prioritised to other matters, no reporting was undertaken to the Planning and Regulatory Committee prior to lodgement, however the submission is in line with a number of recent reports and comments from this Committee in relation to recent reports in relation to energy and energy security issues (e.g. the recent Waitakere City Council submission to the National Policy Statement of Electricity Transmission, the Waitakere Climate Change Plan of Action, and the Sustainable Energy and Clean Air Strategic Platform).
10. The format of the submission, and the nature of the Resource Management Act 1991 process is such that aspects of the submission may be further emphasised or modified depending on feedback from this Committee.

#### **DECISION MAKING**

11. This report provides information on the recent application by Genesis Energy for consents to enable the construction and operation of the Rodney Power Station for the Committee's consideration, and also outlines Council's submission (made by Officers) to these applications. This report seeks the approval of the Committee to endorse the submission, and to approve any further actions required to support the submission through the Resource Management Act 1991 (RMA) statutory process.

## Issues

12. The Station represents a significant new energy generation resource, in a location and manner that addresses many long known generation and transmission network issues, while also facilitating renewable energy generation.
13. The Station also has the potential to create significant adverse effects on the immediate location and the wider region.

## Energy Security

14. The Station is located such that it will address an existing and future identified need for generation capacity north of the load centre of Auckland, enabling the rapidly growing greater Northland/Rodney area to be less dependent on the supply of electricity through Auckland, which is subject to severe transmission bottlenecks.
15. Addressing these transmission bottlenecks (for example to enable transmission of electricity from a new or expanded station located south of Otahuhu) would require significant transmission upgrades possibly including the three high voltage transmission lines traversing this City. The development of the Station may delay (but not cancel) the requirement for this transmission upgrade.
16. The Station will also effectively allow more transmission from south of Otahuhu to be 'diverted' for use in the Auckland Region, as less will be required to be through-transmitted into Northland.
17. It will also be able to provide backup or redundancy in times of peak loadings or emergencies where supply to Auckland from the south is restricted.
18. The Station will contribute positively to the security of supply to Waitakere.
19. Note that Genesis Energy is also currently the corporate supplier of energy to the Council, for all street lights, buildings, and related activities.

## Enabling Renewables

20. The nature of the gas turbine design allows for rapid start-up and flexibility of output. This ability allows the Rodney Power Station to complement variable renewable energy generation such as tidal (such as the 200MW Crest Kaipara Tidal Scheme, for which consent hearings were completed on 30 May 2008, and was granted \$1.85 million from the Marine Energy Deployment Fund on the 29 May 2008 (consents dependent)), which while very reliable and predictable, only generates when the tidal currents are flowing (i.e. not at high or low tide); wind, which is highly variable, being wind speed dependent, or wave, which is also swell (wind) dependent.
21. Renewable energy generation from wind, wave and tidal have been identified as having the most potential for feasibility in the Rodney and Northland Regions, and in the Auckland Region.
22. The Station will enable and complement the further development of renewable energy in the Northland and northern Auckland Regions.
23. The above conclusion is reached ignoring (current) electricity generation cost relativities between renewable and fossil fuel generation.

### Adverse Environmental Impacts

- A42
24. The Station is a significant industrial development in a rural area, and will result in discharges to air from turbine exhaust, and water-take from, and discharges to the Kaukapakapa River (then to the Kaipara River and Kaipara Harbour, and West Coast).
  25. The site is currently zoned General Rural in the Operative and Proposed Rodney District Plans, which does not provide for electricity generation activities. The activity is contrary to the existing provisions and a private Plan Change has been proposed to create a special zone to enable the Station to be established and operated.
  26. The location of the Station is within the Rodney Western Ward, which was suggested in Waitakere's submission to the Board of Enquiry on Auckland's Governance to be incorporated within an expanded Waitakere. A map illustrating the stations general location in relation to Waitakere is included in the attachment at page A42.
  27. The Station also requires a number of consents from the Auckland Regional Council, including a water permit (to take up to 2400 m<sup>3</sup> of water per day from the Kaukapakapa River); a water discharge permit (to discharge up to 1900m<sup>3</sup> of treated station wastewater per day to the Kaukapakapa River), earthworks consents to cut and fill up to 450,000 m<sup>3</sup> of earth for the station building platform, and a air discharge permit (to discharge contaminants to air from an industrial process - being the CCGT). A number of other more minor consents are also required, and is a non-complying activity under the various regional and district plans.
  28. The discharge of greenhouse gases and the effect of that discharge on climate change is not subject to consideration as an effect by the regional council under Section 104E of the RMA. Genesis Energy has obtained a declaration from the Court of Appeal in *Genesis Power Ltd vs Greenpeace New Zealand Inc CA372/07*, to the effect that the regional council must not have regard to the effects of air discharges on climate change:  
  
*[44] In considering the application by Genesis Power for a discharge permit relating to the discharge into the air of greenhouse gases associated with the proposed Rodney power station, the Auckland Regional Council must not have regard to the effects of that discharge on climate change.*
  29. The reasoning for this approach confirms the government policy direction to ensure that control of greenhouse gas emissions and climate change policy be dealt with at the national level, rather than at the local or regional level:  
  
*[17] ...The effects of greenhouse gas emissions are not of a regional character. If regions adopt different standards, this would encourage selective behaviour, with projects being set up in regions which offered the least restrictions and with no net gain to the wider environment to which climate change is relevant. Further, given New Zealand's relatively low contribution to GHG emissions [less than 0.3% of global emissions] and the infinitesimal contribution which any particular project might make, there could be no demonstrable linkages between GHG emissions associated with any particular project and climate change generally.*
  30. The national policy for dealing with greenhouse gas emissions is encompassed in the Climate Change (Emissions Trading and Renewable Preference) Bill 2007, expected to be implemented within the coming year. Genesis Energy have stated that they do not consider possible future carbon pricing to impact on the viability of the Station.

31. The Station will burn Compressed Natural Gas (CNG) sourced from New Zealand, or Liquefied Natural Gas (LNG) shipped from Singapore, both piped from Taranaki to the station via the existing Vector high pressure gas pipeline that traverses Waitakere. This pipeline may require upgrading or duplication. Vector has recently notified a Notice of Requirement to designate the pipeline route, which replicates many of the existing easements over private land, and better protects the pipeline over public land (roads, railway corridors, reserves, coastal marine area etc).

### **Submission**

32. In consideration of the three broad issues outlined above, the lodged submission conditionally supports Genesis Energy's applications for reasons of energy security and enabling of renewables, with the condition that adverse environmental effects be avoided, minimised or remedied as much as possible. Some suggestions have been made as to the manner in which concerns may be addressed to reduce the environmental impact of the Station.

### **Options Identified**

33. This report involves a decision as to whether or not the Council participates in a RMA statutory process, as a submitter to a major development with both positive and negative aspects on the environmental, social cultural and economic wellbeing of the City.
34. If a submission was not made, or is withdrawn, the Council may not be involved in the statutory process in the future, and would have no ability to influence the outcome.
35. A submission may be modified (in writing) at any time prior to the hearing.
36. In this case, the Council is neither the consent authority nor ultimate decision maker, for this consent/plan change, but may wish to be involved in the process to ensure that its policies and strategies are not undermined, and that the environmental, social, cultural and economic wellbeing of its residents is enhanced, or at least maintained.
37. There are a number of options identified available to the Committee, as the statutory process allows the submission (on resource consent matters) to be amended at any time prior to the commencement of a hearing.
38. The options are:
  1. Confirm the submission and authorise further appearances by officers;
  2. Amend the submission, and authorise further appearances by officers,
  3. Withdraw the submission; or
  4. Do Nothing.

### Assessment of Options

		Social	Economic	Environment	Cultural
<b>Option 1: Confirm Submission</b>	Disadvantages				
	Advantages			May result in reduction in adverse effects from proposal.	
	Resources	Application of staff time at hearing and/or pre-hearing.			
<b>Option 2: Amend submission</b>	Disadvantages	Change Dependent			
	Advantages				
	Resources	Application of staff time to amend application, and application of staff time at hearing and/or pre-hearing			
<b>Option 3: Withdraw Submission</b>	Disadvantages			Comments in submission no longer considered. No ability to influence outcome or be involved in future.	
	Advantages				
	Resources	No further resource required.			
<b>Option 4: Do Nothing</b>	Disadvantages				
	Advantages			May still result in reduction in adverse effects from proposal, but submission would be considered as an officer submission.	
	Resources	No further resource required.			

39. The assessment has focussed on the environmental advantages and disadvantages of making a submission (the decision), but as noted above, the proposal as a whole has a range of social and economic benefits to this City, but may result in adverse environmental effects. Conditionally supporting the proposal allows the positive aspects of the proposal to be supported, (which directly impacts in a positive way on this City) while highlighting concerns regarding the adverse environmental aspects (which may both indirectly affect the City and are in proximity to this City).

### Consideration of Community Views

40. The RMA is founded on public participation, and any member of the public or any body may make a submission should they so wish. It is anticipated that a number of interest groups and individuals, including some based in Waitakere, will have made submissions to the proposal (however at the time of writing, a summary of submissions has not been released).
41. For the purposes of this report and the submission, it has been assumed that adopted Council policies and strategies, and the Community Outcomes from the Long Term Council Community Plan reflect the wider community views. For this reason, the relevant policies, strategies and Community Outcomes have been reflected in the submission.

### Preferred Option

42. The preferred option is Option 1, that the Committee confirm the submission, and authorise Council Officers to attend hearing and pre-hearing meetings to speak on behalf of the Council as required to advance the content and intent of the lodged submission.

43. There is no risk to the Council of undertaking this course of action, but the benefits of involvement in the process may include a reduction in the adverse effects of the station on the environment, while supporting the proposal in principle ensuring the positive aspects are not lost. The only resource required is staff time.
44. It is unlikely that the Council's involvement in the statutory process will appreciably delay or lengthen the process, as the Waitakere submission will be one of many to be considered, is in (conditional) support of the proposal, and development of the Station may not be commenced for up to 10 years.
45. Appeals to any future consent authority decision (if required) will be the subject of a further report. However, an appeal may not be joined or lodged without first making a submission on the original application.

### STRATEGIC CONTEXT

46. The strategic context for the decision closely relates to several Strategic Platforms. Priorities and Community Outcomes, as highlighted and discussed in the table below:

Four Wellbeings	Community Outcomes	Priorities	Strategic Platforms	Contribution of Rodney Power Station to Strategic Context
Environmental	<b>Sustainable Environment</b>  <b>Environmental Protection</b>  Green Network	<b>Sustainable Development</b>	<b>Sustainable Energy and Clean Air</b>  Zero Waste  Green Network	Enables Renewables -security of supply to city - most efficient and 'clean' thermal generation option
Social	<b>Urban and Rural Villages</b>  Healthy lifestyles  Strong communities  Participation in Society  Working Together	Safe City Lifelong Learning - First Call for Children	<b>Urban and Rural Villages</b>  Three Waters  Strong Communities  Active Democracy	population growth requires provision of adequate infrastructure including electricity.  - closer, more intensive living and modern lifestyles and future demographic changes may results in higher energy use per household (however may be offset by improved building and appliance efficiency)
Cultural	Maori Leadership Access to resources Autonomy - Vibrant Arts & Culture	- Treaty of Waitangi		
Economic	<b>Strong Economy</b>  - <b>Sustainable Integrated Transport</b>		<b>Strong Innovative Economy</b>  - <b>Integrated Transport and Communications</b>	without a secure, reliable and resilient supply of electricity, the modern economy cannot function effectively.  - rail electrification will result in a one off increase in electricity demand equivalent to Auckland's annual electrical demand growth

## CONSULTATION

47. Consultation in this report refers to consultation undertaken with respect to the development of the submission, rather than consultation relating to the Station proposal by Genesis Energy, which is the responsibility of the applicant and consent authorities.
48. Consultation with staff included a number of requests for input from a wide cross-section of departments across Council. Responses have been received and incorporated from the Corporate Energy Manager; Strategic Advisor: Sustainability Initiatives; and Manager: Strategic Projects. Feedback was also included via review of the draft submission by Team Leader: Sustainable Management and Director: Strategic Planning.
49. No consultation with relevant external agencies was undertaken, though the Genesis Energy Rodney Information Centre helpfully provided some additional information used to develop the submission.
50. No consultation has been undertaken with Maori, including Te Taumata Runanga or iwi. It is understood that a number of iwi groups with mana whenua over the area subject to the proposal (the site is within the Te Uri o Hau Statutory Acknowledgement Area) have been involved in the pre-notification process, and are likely to be involved by making a submission to the proposal outlining their particular issues.

## RESOURCES

51. The development of the submission, its presentation to a joint hearings panel, and other related activities does not require any resources other than the application of staff time.
52. Retention of legal counsel and/or expert witnesses for further proceedings (for example the lodgement of appeals to any future decision) would be the subject of further report and approval from this committee.

## IMPLEMENTATION ISSUES

53. There are no implementation issues arising from the decision to make a submission on the application.
54. Attending the hearing and speaking to the approved submission, lodging further submissions (to the plan change process - If required), and attending pre-hearing meetings (if any) will require further preparation and staff time.

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



**PART D - REPORT OF THE SUBCOMMITTEE**

**7 SWIMMING POOL EXEMPTION SUBCOMMITTEE**

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 29 MAY 2008**

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**MATTERS CONSIDERED**

A43-A46

The Swimming Pool Exemption 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 A43 to A46.

**The Subcommittee Recommends:**

That the Meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 29 May 2008 be received.

WW Flaunty, QSM, JP

**CHAIRMAN**



8 **NOTICE OF MOTION**

**NOTICE OF MOTION**

We the undersigned Elected Members request that the Gambling Review Policy Document considered at the Planning and Regulatory Committee meeting held on Tuesday, 10 June 2008 be reconsidered at the Planning and Regulatory Committee meeting to be held on 8 July 2008 and that part of resolution 939/2008 as follows:

939/2008

2. **Agree** to support Option 4, a sinking lid policy for controlling the number of Class 4 gambling venues and machines in the City to be included in the draft gambling Venue policy.
3. **Agreed** that the preferred option, being Option 4, in the draft Gambling Venue Policy can be changed, if appropriate, following public consultation and public hearings.

be rescinded and be replaced by:

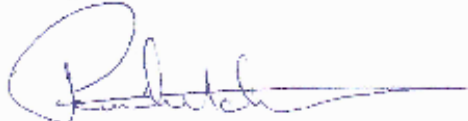
2. **Agree** that the community be consulted on whether to include in the Gambling Venue Policy:
  - a. Maintaining the status quo of the current cap on venue and machine numbers as stated in the existing policy, or
  - b. Including a sinking lid policy, where the cap on venue and machine numbers as stated in the existing policy will reduce each time a venue closes and no new venues be permitted.
3. **Agree** that the Council determine its position after consultation.

Signed

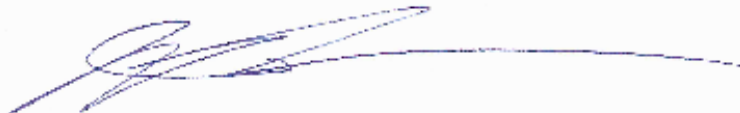
20 June 2008



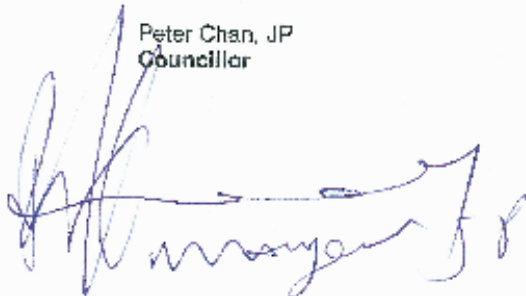
Mike Jalley  
Councillor



Paul Mitchell  
Councillor



Peter Chan, JP  
Councillor



Democracy &  
Governance  
Manager  
3:02 pm

Received  
Friday, 10 June  
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