

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO
BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL,
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,
ON TUESDAY, 7 OCTOBER 2008,
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
4 CONFIRMATION OF MINUTES	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
5 LEGAL UPDATE (AS AT 30 SEPTEMBER 2008)	2
<u>PART C - DISTRICT PLAN / STRUCTURE PLANS</u>	14
6 PROPOSED HERITAGE PLAN CHANGE 28	14
<u>PART D - ENVIRONMENTAL MANAGEMENT</u>	18
7 SCOPE OF THE NATIONAL POLICY STATEMENT ON URBAN DESIGN	18
8 WAITAKERE SUBMISSION ON NATIONAL POLICY STATEMENT FOR RENEWABLE ENERGY GENERATION	22

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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, 9 September 2008

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

Receive the minutes of the meeting of the Planning and Regulatory Committee held on Tuesday, 9 September 2008, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 SEPTEMBER 2008)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Ritchies Transport Holdings Limited	(Ritchie's)
Rodney District Council	(RDC)
Waitakere City Council	(The Council)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
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	(Building Act)
Public Works Act 1981	(PWA)
Metropolitan Urban Limit	(MUL)
Carter Holt Harvey	(CHH)

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 (the Committee) if it wishes.

RECOMMENDATION

It is recommended that the Planning and Regulatory Committee resolves as follows:

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

COURT OF APPEAL

(Unchanged) 1. 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 Council's. Bell Gully acted for Carter Holt Harvey (CHH). CHH argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Council's 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 CHH. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter is the resolution of costs. CHH 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. CHH has not yet lodged a claim for costs.

The Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process the Waitakere City Council has made submissions on the supplementary order paper to the Waste Minimisation Bill. The Waste Minimisation Bill now has proposed new definition for "waste" in line with that sought by the Council in its submission to Parliament.

HIGH COURT

(Unchanged) 2. J E Burgess v Waitakere City Council and Auckland Regional Council (February 2008)

This is a judicial review of the Council's decision (as well as that of the Auckland Regional Council) (ARC) to grant resource consent to a 15 lot subdivision and residential development on a non-notified basis at 2 properties which are situated back-to-back: 25 Kashmir Road and 47A Withers Road, Glen Eden; the properties are owned by one person and hereafter shall be referred to as 'the property'. The applicant, Ms Burgess, contends that in respect of the Council's decision there were adverse effects on her and the environment and therefore the resource 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, her property or the environment and that the Council 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.

(Unchanged) 3. Waitakere City Council v C P Brunel and the Cove Limited (December 2006)

Council sought to acquire land under the Public Works Act 1981 (PWA) 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, 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.

(Unchanged) 4. C W Williams and others v Waitakere City Council (February 2006)

The Council was served with 7 sets of proceedings under the PWA in the High Court claiming the Council breached its duty to offer back land on Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the PWA 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 Faire'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 s. 40 Public Works Act. A Court of Appeal hearing was held in April 2008 to hear Council's appeal against the High Court decision. A Judgment of the Court is awaited.

Substantive hearings involving Mr Mawhinney

(Changed) 5. 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 3 related appeals regarding purported applications for certificates of compliance and subdivision consents. Initial case management conferences have occurred. The Court has directed that:

- (a) Mr Mawhinney be substituted as appellant provided that he file an affidavit regarding his status as trustee.
- (b) Mr Mawhinney will be personally liable for any costs awarded against the appellants in this proceeding.
- (c) Timetable for filing of submissions and related documents.
- (d) A one-day hearing be allocated for this appeal on 12 November 2008.

ENVIRONMENT COURT

(Unchanged) 6. Community Waitakere Charitable Trust v Waitakere City Council (June 2008)

This appeal opposes the 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. A notice of reply has been filed. A mediation date is currently being negotiated with the various parties involved, and a date will be allocated by the Court shortly.

**(Unchanged) 7. J Hsu v Waitakere City Council (April 2008)
Weddings Etc Limited v Waitakere City Council (April 2008)**

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

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

An evidence exchange timetable has been agreed and evidence is in the process of being exchanged. The matter is set down for a hearing in the week of 17 November 2008.

**(Changed) 8. Protect Piha Heritage Society Incorporated v Waitakere City Council and Auckland Regional Council
Preserve Piha Limited v Waitakere City Council (March 2008)**

Protect Piha Heritage Society Incorporated (the appellant) has appealed the joint decision of the Council and the ARC to grant resource consent for the establishment of a café at Piha in a residential environment at 20 Seaview Road, Piha (the property). 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 the resource consent refused.

In the alternative the appellant would like: the consent to lapse in 2012 (and if unexercised for the consent to lapse in 2009); an archaeological report to be commissioned on the heritage status of the old post office that occupies the site; compliance conditions to ensure noise conditions are complied with; the café to operate 10.00 am to 5.00 pm, Monday to Saturday only and be closed on Sundays and public holidays; inside seating for only 35 persons be provided and no seating outside; no liquor to be consumed on site; no takeaways to be sold; no music to be played outside; and no odour to be emitted from the property at any time.

Preserve Piha Limited, (the applicant) who was the applicant for the consent has also appealed the conditions imposed on the consent by the Council. 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 12 s. 274 parties. They all support the granting of consent. The two s. 274 parties that opposed the grant of consent have withdrawn.

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. The Council and the applicant have exchanged evidence and the parties have almost completed exchange of rebuttal evidence. The matter has been set down for a hearing in the week of 10 November 2008.

(Changed) 9. M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)

This was an appeal by the applicants M and C Brickell, W Ashton and L Schwab under s. 121 of the RMA against a decision of the Council to refuse to grant resource consent for a seven-lot subdivision at 54-56 Christian Road, Swanson. The Waitakere Ranges Protection Society Incorporated (WRPS Inc.) lodged applications with the Court in support of the Council as s. 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing resumed on 23 May 2007. This was in order that the Court could hear the evidence of a witness for a s. 274 party that was not available during the March 2008 hearing.

The Court has now delivered its decision. The appeal was disallowed. Costs were reserved.

(Unchanged) 10. Waitakere City Council v Rodney District Council (April 2007)

An appeal and s. 274 notices were filed by the Council regarding decisions by Rodney District Council (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.

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

The Council's officers' have attended workshops and mediations on matters in which the Council has a s. 274 interest, and a number of Consent Orders have been made following these mediations in order to settle the appeal point. No orders for costs have been made. A small number of further mediations are scheduled to resolve those matters still outstanding.

(Changed) 11. The Tree Council and the Sunnyvale Protection Society v Waitakere City Council (June 2007)

An appeal against the 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 s. 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 and these changes have been accepted.

(Unchanged) 12. 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 (August 2007)

This appeal concerns ARC's decision to grant resource consents to the Council 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 have occurred and revised consent conditions are being finalised with a view to resolution by consent.

Mawhinney Matters in the Environment Court

(New) 13. London & Greenwich Trading Company Limited & Ors v Waitakere City Council (August 2008)

This is a new proceeding lodged in the Environment Court by companies associated with Mr Mawhinney on 25 August 2008. It seeks to revoke a determination made by Council to defer 2 subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application has been made to the Court under s.91(3) RMA. The applicant companies dispute the need for the further regional consents. Notice of opposition has been filed and a timetable for exchange of submissions and evidence put forward. Mr Mawhinney must now advise the Court whether he wishes to be heard by the Court or have the Court decide the appeal "on the papers".

(Unchanged) 14. Perceptus Limited v Waitakere City Council (January 2008)

These proceedings involve Mr Mawhinney seeking an enforcement order under s. 314 of the RMA directing the Council to give public notice on its decision to reserve control over "roads" under the subdivision rules. The Council amended the subdivision rules in 2001, and it is now opposing the application on substantive and procedural grounds. Evidence from Mr Mawhinney is now overdue and is being followed up.

(Unchanged) 15. 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 (March 2006)

These 3 appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under s. 358 of the RMA declining subdivision consents and certificates of compliance. The 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 which has sought costs from the unsuccessful appellants. A decision is awaited.

(Unchanged) 16. Waitakere Resource Consents Limited v Waitakere City Council (December 2005)

This is an appeal against a refusal to issue a certificate of compliance under s.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.

The Council's strike out application was heard before Judge Whiting and Commissioner McConally on 6 to 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. The Council has also been granted costs. An application seeking costs has been lodged with the Court and a decision is awaited.

(Unchanged) 17. 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 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 are part 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 held a hearing on 9 July 2008 to consider the application and released an oral decision declining the application for priority. The Dilworth Structure Plan proceedings will now need to be completed before the Abacus case can be recommended.

Plan Change Hearings

(Changed) 18. Local Government (Auckland) Amendment Act Plan Change Appeals (September 2007)

A1-A3 A summary of appeals against Plan Changes 13 to 18 is set out in Annexure 1 at pages A1 to A3 of this agenda. The summary identifies the appellants and the plan changes appealed. There are currently 53 appeals lodged by 27 parties. Further reports will be provided as time goes by.

In addition to appeals on the Council's Plan Changes 13 to 18, the Council has filed its own appeals regarding some decisions of the ARC in respect of Change 6 to the Auckland Regional Policy Statement (ARPS). The Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with the 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 reporting that each Council had summarised the points of relief sought on each appeal and that the appellants and all s. 274 parties would be invited to comment on those summaries. As a result, on the same day, the Council wrote to all appellants and s. 274 parties who had appealed the Council's plan changes, asking them to review the manner in which the appeals had been summarised and to provide feedback to the Council by 18 April 2008. The appellants and s. 274 parties were informed that the Auckland territorial local authorities would then make any relevant amendments and report to the Court after 2 May 2008.

The appeals have been separated into topics, with 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, which are concerned with 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.

The Council communicated the position it has maintained since the appeals commenced which is 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 Council reported back to the Court on 1 August and 1 September 2008 that it had met with the appellants to the appeals in this topic group and that there was a possibility of settlement, if an agreement could be reached with the s. 274 parties. The Council proposed, and the Court has accepted, that an evidence exchange timetable is premature at this stage and that the Council and the parties to these appeals have a further month to negotiate a settlement or otherwise seek for the matter to be set down for mediation. The Council will report back to the Court on 1 November 2008.

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 Councils jointly were required to report back to the Court on 1 September 2008 as to progress made in resolving these appeals. This report has been provided, advising that the Councils had met with the appellants but that further time was required to work through the issues. The Councils will report back to the Court on progress on these matters on 1 November 2008.

In respect of all other appeals to the Plan Changes, the Council reported back to the Court on 1 September 2008 that most appellants had been involved in discussions with the Council but further time was required to progress the resolution of these appeals and at some stage the parties may seek formal court assisted mediation and/or a hearing. The Council will provide the Court with a further progress report on 1 December 2008.

DISTRICT COURT

(New) 19. GD and DM Knight - 834 West Coast Road, Oratia (September 2008)

This matter relates to the alleged conversion of a garage and storage unit on the property to a minor household unit complete with bathroom facilities and a kitchen. No building consent was sought or granted for the conversion. Further, the owners had not sought resource consent for the minor household unit and the zoning does not allow for minor household units at this location.

Council had previously advised the owners that the garage/storage shed was not to be used as a minor household unit and the owner's agent at the time of the previous building consent, Totalspan, had agreed in writing to this requirement.

Council laid informations against the trustees of which is the registered proprietor of the property for the alleged unauthorised building works under s.40 of the Building Act 2004 ("the Building Act"). It is also considering a prosecution in relation to the breach of district plan rules under s.9 of the RMA.

(Unchanged) 20. Enterprise Steel Properties Limited & Others - 12 North Candia Road, Swanson (July 2008)

The defendants in this case allegedly constructed a pole retaining wall with an overall length of 115 metres long and 4 metres high. The wall was constructed without building consent.

The matter has a first call of 2 September 2008; however an adjournment by the defendants' has been sought and granted and the matter now has a first call on 20 October 2008.

(Unchanged) 21. 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 2 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. Mr Cullen has pleaded guilty and the matter has been set down for sentencing on 16 October 2008.

The Council has considered Ms Ko's involvement and withdrawn the informations laid against her in light of a sworn affidavit provided to counsel.

(Unchanged) 22. M and S Naicker - 12 Cushla Place, Massey (April 2008)

This matter relates to unauthorised building works allegedly undertaken by the Mr and Mrs Naickers that included: the enclosure of a basement under a conservatory to form a 2 bedroom unit and bathroom for use by the defendants' extended family. 1 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.

Mr Naicker has pleaded guilty and the matter has been set down for sentencing on 7 November 2008. The informations against Mrs Naicker have been withdrawn.

(Unchanged) 23. HQH Limited & Others - 193 McLeod Road, Henderson (Riverglade Parkways) (March 2008)

Riverglade Parkways is a subdivision on McLeod Road, Henderson where the 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. One contractor has pleaded guilty and sentencing has been set down for 24 October 2008.

HQH Limited, the company's director, and the project manager entered guilty pleas on 2 September 2008. The matters have been set down for sentencing on 5 November 2008.

The remaining defendants' have pleaded not guilty and the matters have been set down for defended hearings on 28 to 29 October and 24 to 24 November 2008.

(Unchanged) 24. 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 on 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.

The Enforcement Order granted by the Court has been filed and we await its sealing and return from the Court.

(Unchanged) 25. 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 company and Mr Kumar both entered guilty pleas on 15 July 2008. Sentencing has been set down for 31 October 2008.

(Unchanged) 26. 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 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.

(Changed) 27. G Yuan - 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home 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 intended for public use and any building works undertaken required a building consent under s.40 of the Building Act. A Certificate of Acceptance ("COA") cannot be granted for the building works. The Council referred the matter to the Ministry of Health who undertook an environmental audit on the property and granted certification that excluded the deck/dining room until the Council confirmed that the works had been undertaken in accordance with a building consent, and a code compliance certificate for the works could be issued.

The 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 close it to the use of residents. We understand the new owners have complied with the Council's instructions and a building consent to demolish the new parts of the deck and conservatory and reinstate in accordance with a building consent was granted on 11 August 2008.

The defendant pleaded not guilty. A hearing has been set down for 8 September 2008.

The defendant appeared on 8 September 2008; however, the Judge "recommended" that the matter be adjourned to a new fixture date due to several police fixtures on the same day. The parties were invited to either seek a new date for a hearing, or attempt to resolve the issues with a view to the informant indicating what quantum of fine would be sought. The defendant then pleaded guilty to 2 charges; those being under s.40 (unauthorised building works) and s.363 (failure to cease using the premises for public use after unauthorised building works were discovered). The informant for its part, withdrew a third charge under s.168 of the Building Act (failure to comply with council's notice to fix), and the matter was set down for sentencing on 5 November 2008.

(Unchanged) 28. 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 24 October 2008.

(Unchanged) 29. 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 it is an indictable matter, and was scheduled to proceed on 15 June 2007. As a judge was not available, it was unable to proceed and was set down for a jury trial on 18 February 2008.

Mr Gordon pleaded guilty to 5 of the 6 counts in the indictment. 2 of the charges were laid in the alternative. One has now dropped off because Mr Gordon pleaded guilty to the other.

Sentencing was adjourned to 30 June 2008 (then to 24 October 2008) to allow Mr Gordon to take steps to undertake works in accordance with Council's requirements and an agreement as to sentence indication signed by the parties on 28 February 2008.

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; and
- Permit reasonable access by Council employees.

The Building Act prosecution was also adjourned and will be dealt with at the sentencing.

The Council is required to undertake a further inspection of the property to ascertain compliance with the above matters. To date Mr Gordon has refused entry to the property, and has also refused to make any application for resource consent. A search warrant will be executed. Further to this, a Dangerous Building Notice has been issued pursuant to s.124 of the Building Act. This is because the dwelling is considered by the NZ Fire Service to be dangerous. Mr Gordon wishes to oppose the notice, and he has been advised to contact DBH if he wishes to seek a determination of the notice.

(Unchanged) 30. R Brooky - 18 Silverstone Place, Henderson (April 2007)

Charges were 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 further 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.

(Changed) 31. S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges were laid under the Building Act relating to undertaking building work without consent. The works involved the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls and included: new concrete slab; new exterior cladding; construction of block retaining wall installation of waste water drainage system; creation of bathroom facilities; as well as 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 appeared to have been resolved and Mr Hosaini was scheduled to be sentenced on 15 July 2008. However, at sentencing Mr Hosaini's solicitor advised the Court that there was a dispute on the facts. The Council and Mr Hosaini's solicitor are seeking to resolve the dispute and the matter is now set down for 30 September 2008.

(Changed) 32. Leaky Building Claims

Individual claims currently being handled are 32:

- High Court: 4
- District Court: 3
- WHRS/WHT 25

The number of claims recorded on the DBH website relating to properties in Waitakere City as at 31 August 2008 was 350, as against 338 at the end of July 2008. This slight increase clearly relates to claims in multi unit developments because the number of properties affected has fallen in the same period from 202 to 200.

These figures include any buildings where building consents were processed and/or inspections were undertaken by building certifiers. In respect of those matters the Council may have no liability exposure from claims. As previously advised well over half of these individual claims relate to 8 multi unit developments.

Significant new proceedings or developments in the handling of claims in the last month are:

- The Council has been served with High Court proceedings on behalf of 58 unit owners in multi unit development at Westward Ho. The total amount claimed is in the order of \$11.6 million. The developer of this block was associated with Dorchester Finance. The other parties sued at this stage are BH Heron Ltd, and the architect Brent Hulena. The property at Westward Ho is one of the 8 multi unit developments referred to above. Claims in respect of that development registered with the WHRS total 120. While researching the files related to the current proceedings we have discovered that the subsequent stages of this development may have been inspected by, a building certifier. This may significantly alter the Council's risk profile in respect of claims by the owners of the other units in this development. RiskPool appears to have allocated this claim to the 2006/2007 fund year which is the fund year in respect of which there is a multi unit indemnity sub-limit of \$500,000. Although this claim is lodged in the High Court the applicants first lodged claims in the WHRS in 2005 so that there is an argument that this claim should be allocated to the 2005/2006 fund year (which has no indemnity sub-limit).
- In June 2008 we became aware of a multi unit claim in respect of the units known as Clearwater Cove Apartments at West Park Marina through the WHT. More detail of that claim has now emerged. The claim has been brought by the body corporate and by 14 of the 18 unit owners against the Council as local authority, and Fletcher Construction Ltd as builder. The claim is for an amount just a little under \$2 million. There are several curious features about this claim. Of the 14 owners suing, a substantial majority of these are interests associated with the Livi Family Trust. ("livi" is "Ivil" spelt backwards. The settler of the trust was Mr Brent Ivil. The majority of the claimants appear to have interests associated with the trust and/or Mr Ivil.) The Livi Family Trust was the purchaser of the land from the Council and the developer of the complex. Fletcher Construction Ltd was engaged to build the units. A dispute arose on completion between the Livi Family Trust and Fletcher Construction Ltd which was settled. Fletcher Construction Ltd is now arguing that any claim against it is statute barred. If that argument succeeds the Council will be facing the claim alone. There are several technical defences available to the Council. (Some of the claimants appear to have purchased the units knowing that there were problems). This claim (at least to the extent that it is brought by interests associated with the Livi Family Trust) will be vigorously defended by the Council's insurers (Riskpool has accepted that this claim falls into the 2005/2006 fund year).

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 PROPOSED HERITAGE PLAN CHANGE 28

GLOSSARY

New Zealand Railways Corporation (ONTRACK)
The Holy Cross Church (the church)

EXECUTIVE SUMMARY

A4-A18

Council has several additional buildings that are worthy of heritage listing. These items have been brought to the Council's attention by the West Auckland Historical Society, local residents and staff. The buildings that are proposed for listing range from modernist designs to traditional Victorian era homes. The Swanson Railway Station is also recommended for listing to ensure that ONTRACK recognises the heritage value of stations in their plans for electrification (attached at pages A4 to A18).

RECOMMENDATIONS

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

1. **Receive** the Proposed Heritage Plan Change 28 report.
2. **Agree** that the Proposed Heritage Plan Change 28 should be publicly notified subject to landowner's approval of the proposed listing for the Culav property and Delegats Wines homestead.

BACKGROUND

1. There are some development pressures facing some of the items proposed for heritage listing. Barker & Associates (consultant planners) have been employed by ONTRACK to provide professional advice on the electrification of the North Auckland Line. Their report canvasses the issues relating to bridges in the rail corridor, and the works required in the vicinity of heritage railway stations. Their report states: *"It is further noted that the Glen Eden and Henderson stations are listed in the district plan's heritage schedule as "Category 1" items. The Swanson station (previously the Avondale station), whilst not being scheduled in the district plan, is intended to be scheduled in the district plan as part of an upcoming plan change. It is expected that the electrification works will be able to be carried out in such a way that does not compromise the heritage qualities of these items."*
2. The current Swanson Railway Station was moved from Avondale in 1995. It was in poor condition at that time, having suffered from vandalism and neglect. It has now been largely restored and is in a good and well-maintained condition. It is the third station to have existed at Swanson. The first station was constructed about 1881, and was composed of a small gabled building with possibly a store attached. This was replaced in 1916 by a '42 foot' station with a toilet attached to one end. This was later removed in the early 1970s in favour of a shelter. In 1995, when the Avondale Station was to be removed, it was secured for use at Swanson and moved to a parcel of land and paid for by the Swanson Balefill Trust. The station is recommended to be listed as a Category II building.

3. The Donner House and studios at 52 Kohu Road, Titirangi are recommended for heritage listing. Tibor Karl Donner was a noted Modernist architect in mid-twentieth century Auckland. His early designs reflect the Beaux-Arts and Art Deco traditions that prevailed in Auckland in the 1920s. The Donner house is a significant modern building, and is well regarded in the architectural community. A resurgence of interest in mid-twentieth century architecture, and publication of a recent article, has refocused attention on this house. It is recommended that the House is scheduled as Category I listing with some interior elements listed as well. The two studio buildings are recommended for a Category III listing.
4. The former Laurie House in Glen Marine Parade, Glendene is understood to have been lived in by the Laurie family from the early 1860s until 1932 when Peter Culav purchased the property. It remains in the ownership of the Culav family. Robert and Elizabeth Laurie first came to the area in 1862, purchasing 100 acres of land on the Whau River from Edward Bull and Lucy Reading, 1 May 1862, and established a brickworks. Their land surrounded the land owned by John Malam, who also operated a brick-works. The two operations later merged. The cottage may well have been constructed before the Laurie's arrived, suggesting that it dates from the late 1850s or early 1860s. There is an archaeological site in close proximity to the house on the foreshore where the brickworks were formerly located. A number of architectural and construction techniques support the early date of construction. However, it should be noted that the Culav family have expressed reluctance to list the house as a heritage item in the District Plan. This is because they do not wish to have any constraints to future development of the site, should they subdivide. The heritage architect recommends listing the house as a Category II item with protection of the interior elements that are appropriate.
5. There is a connection between the former Laurie House and the two brick villas at 170B and 172 Hepburn Road. The brick villas at 170B (currently owned by Mr Khan) and 172 Hepburn Road (within Delegates Wines) are understood to have been constructed by the members of the Laurie family. Robert and Elizabeth Laurie moved to the area in 1862, and established a brickworks nearby. The Laurie family house, constructed in the late 1850s or early 1860s, is close to the banks of the Whau River nearby. According to a Laurie family source, both Robert Laurie and his wife had arrived in New Zealand on the 'Duchess of Argyle' on 9 October 1842 as children. This ship, and the Jane Gifford, which arrived in Auckland the same day, were the first two immigrant ships to the fledgling town of Auckland, which brought settlers to join the officials (and their families) who had established the town in 1840. The Laurie's had eleven children.
6. The Laurie family built and owned four brick houses in the area. James lived at 170 Hepburn Rd (now 170B) until his death in 1938, and William at 172 Hepburn Road, until his death in 1930. Another example still remains within a subdivision immediately to the west. The two houses facing Hepburn Road are considered together as a pair, because they were built by the same family, in close proximity, with one being a mirror image of the other.
7. The house at 172 Hepburn Road owned by Delegates has recently had an extensive interior refurbishment, it has had some window openings widened and lowered, and some new external doors installed, both to the original front verandah and a new verandah on the side. The interior of the house next door remains relatively original throughout the main body of the house, but has been altered over the years to provide better kitchen and bathroom facilities. The house at 170B Hepburn Road is still in its original style and both houses have value as neighbourhood landmarks, particularly as a pair. It is recommended that the former James Laurie House at 170B Hepburn Road is scheduled as a Category II item and the house at 172 Hepburn Road as a Category III item.

8. The Holy Cross Church (the church) was constructed in 1959 and 1960, and opened and blessed by His Grace Archbishop of Auckland James Liston, the Roman Catholic Bishop of Auckland on 20 November 1960.
9. The church stands in a prominent location on the corner of View Road. The church replaced another smaller building, and was designed by architecture student Viktoras Procuta in a modern style. It was notable for its inclusion of the work of well-known artists of the time. A 2.2 metre crucifix, designed by Louise Henderson, was beaten out of metal by Mr Brigit Bryhn of Glen Eden. Louise Henderson also designed and made the St Peter and St Paul stained glass works. Vividly coloured mosaics were used for the Stations of the Cross, and set within the red brick walls which dominate the interior and exterior. The church was built with substantial contributions, in money or trade work done at cost by the local community. It is recommended that the church be listed as a Category III item and the art works as well. The Category II listing acknowledges that there are significant alterations proposed for this building as part of its renovation.

DECISION MAKING

Issues

Resource Management Act - Section 32 and landowner discussions

10. A section 32 report for this proposed Plan Change recommends listing the buildings nominated. There are two buildings where further discussions with the landowner are planned: the Culav property and Delegats Wines. Preliminary discussions with both landowners have focussed on the implications of heritage listing. Delegats Wines operate a multi-million dollar wine making business from Hepburn Road and the efficiency and effectiveness of that site must be maintained. The representatives from the company have given landowner permission for the assessment of the building to take place but will need a little time to respond to whether a listing suits the strategic direction of their business at this stage.
11. The Culav family have been reluctant to allow the heritage architect to inspect their historic house and wish to keep their options open on the possible future development of the site. It is also understood that some of the senior family members have had health issues this year.
12. It is considered that Council has a duty to protect historic heritage but this can be achieved either through regulatory or non-regulatory methods. The incentive for landowners obtaining a heritage listing is that they then become eligible for the heritage fund administered by Council and consents for additions and alterations to the building are processed free of charge. However, demolition is actively discouraged unless there are extenuating circumstances.
13. In the Delegats case, a heritage listing would not prevent the manufacturing process occurring on the rest of the site or limit the activities that the former homestead is currently used for. Similarly a heritage listing on the Culav historic house would not limit the current use as a rental. However, it is considered good resource management practice to obtain the landowners' approval prior to listing to avoid the possibility of an Environment Court challenge later on.

14. The following table highlights some of the wider issues:

	Option 1 - do not list the buildings		Option 2 - list additional buildings subject to landowner approval	
	Disadvantages	Advantages	Disadvantages	Advantages
Social	No certainty to the community that heritage is recognised and protected in the City	No cost	nil	There is support to list the buildings from the heritage community and landowners.
Economic	There is a risk that a building may be demolished as a permitted activity if it is not listed.	There would be no cost to Council of processing a proposed Plan Change.	There is the cost of staff time in processing a proposed plan change.	Any changes to the buildings can be assessed to make sure that they meet heritage best practice.
Cultural	If historic heritage is destroyed or altered in a unsympathetic manner, there is nothing that Council can do to influence the outcome.	nil	nil	There is recognition in a strategic document for known heritage items. The public may also realise what they have around them.
Environment	The survival of the buildings depends on the goodwill of land owners.	nil	nil	A heritage listing provides statutory protection for historic heritage in the City.

Consideration of Community Views

15. Most of the buildings that have been assessed for their historic merit have been nominated by the community or in some cases, the landowners have approached Council to recognise their heritage value. However, not all landowners have yet given their approval for the building to be listed. It is considered that there is little point in Council notifying a plan change that will result in conflict.

Preferred Option

16. It is considered that Council should go ahead and list those heritage buildings that have the support of the landowners.

STRATEGIC CONTEXT

17. The Strategic Platform that aligns most closely with this topic is the Vibrant Arts and Culture Platform whereby:

“Waitakere City’s arts and culture is reflected and appreciated in our everyday life and the City is itself a work of art. We participate in creative pursuits and have a deep and wide perception of arts and cultures in our City.”

CONSULTATION

18. Council has consulted with landowners in preparing this report affected by the proposed listings. In addition, it has received information from the West Auckland Historical Society, libraries (local history collections), the arts team and urban design staff.

19. Council will consult with the NZ Historic Places Trust over the proposed Plan Change.
20. None of the sites identified are of significance to iwi, therefore no specific iwi consultation has occurred.

RESOURCES

21. The proposed Plan Change can be resourced from existing budget. All staff time and professional services can be met from the resource management budget.

IMPLEMENTATION ISSUES

22. There are no issues associated with implementing the matters outlined in this report.

Report prepared by: Alina Wimmer, Principal Advisor: Heritage.



PART D - ENVIRONMENTAL MANAGEMENT

7 SCOPE OF THE NATIONAL POLICY STATEMENT ON URBAN DESIGN

GLOSSARY

National Policy Statement on Urban Design	(NPS-UD)
Resource Management Act 1991	(RMA)
Ministry for the Environment	(MfE)
Urban Design Protocol	(UDP)
Planning and Regulatory	(the Committee)

EXECUTIVE SUMMARY

Central Government has been considering whether it is desirable to prepare a National Policy Statement on Urban Design (NPS-UD) under the Resource Management Act 1991 (RMA). A NPS-UD would be a document prepared by the Ministry for the Environment (MfE) to guide councils on any urban design matter of national significance that would be relevant to achieving the purpose of the RMA. As a first step the opinions and views of councils are being sought.

This report sets out the background to the development of the NPS-UD and the matters that Council should submit to MfE for their consideration. If the Government determine that a NPS-UD is required then a further opportunity to make more detailed submissions on a draft NPS-UD will be provided.

RECOMMENDATIONS

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

1. **Receive** the Scope of the National Policy Statement on Urban Design report.
2. **Agree** that the matters of submission on the Scope of the Proposed National Policy Statement on Urban Design as detailed in the report be submitted to the Ministry for the Environment.

3. **Agree** that the Chairperson of the Planning and Regulatory Committee be authorise the submission to the Ministry for the Environment including the opinions and views of the Council on the Scope of the National Policy Statement on Urban Design.

BACKGROUND

1. Central Government recently concluded that preparing a NPS-UD under the RMA was desirable. Councils and key organisations with an interest in urban design and urban form have been discussing for some time the need to respond more collectively on the function and form of our cities and urban spaces.
2. Around 87% of the New Zealand population lives and works in towns and cities. The design of these places affects almost every aspect of people's lives and councils are challenged daily on how to make these places meet the needs and aspirations of people now and for the future.
3. Central Government consider that national guidance on urban design could improve the quality of urban design and would complement existing non-statutory initiatives like the New Zealand Urban Design Protocol. This Council is a signatory to the Urban Design Protocol (UDP) and since the UDP's adoption have commented and sought that the regulatory frameworks and resourcing of urban design be developed.
4. The scope of the NPS-UD proposal embraces five key areas:
 - **scope**, including issues, objectives and policies that should or should not be considered,
 - **alternatives**, to improve the quality of design in towns and cities,
 - **direction**, including the level of direction and detail that could be included in a national policy statement,
 - **scale**, identifying the spatial scale that objectives and policies might be pitched at (e.g. regional, city, neighbourhood),
 - **risks and consequences**, of acting or not acting.

A19-A27

Councils are invited to frame their comments and views around these 5 areas and a number of questions that are detailed in the background paper for the scope of the NPS-UD, and any other relevant matters. A copy of the background paper for the scope of the NPS-UD is attached at pages A19 to A27.

DECISION MAKING

5. The matters and questions set out in the background paper are a useful framework for commenting on the benefits or otherwise of a proposed NPS-UD. Council has been a strong advocate of urban design initiatives at the national level and have also made clear that Waitakere is committed to the urban design vision and principles as set out in the UDP. Council has also questioned the lack of a strong implementation framework to ensure that the principles committed to in the UDP translate to urban design action in New Zealand's towns and cities.
6. It is recommended that the Council support the Government's preparation of a NPS-UD and in doing so re-iterate the matters that Council submitted as a part of its adoption of the UDP in 2005. Submissions were requested to be submitted by the 30 September 2008, but to enable the Planning and Regulatory Committee's (the Committee) consideration of the matter, MfE were advised that the Council would not be in a position to confirm its submission until after the Committee meeting.

7. Local Government New Zealand also sought the feedback of councils to the scope of the NPS-UD and their deadline was the 22 September 2008. Council officers provided their comments and indicated the matters, which would be presented in this report, but advised Local Government New Zealand that due to the importance of the NPS-UD that Council's submission could not be confirmed until after the Committee meeting.
8. The proposed matters of submission are detailed below:
 - i) **Should a NPS-UD be developed? If so what issues of national significance do you consider it should address and what relative priority would you assign them?**
 - a. Council considers that Central Government needs to develop a NPS-UD to progress the legislative support for urban design. Without a clear implementation framework the principles of urban design will continue to be dependent on those councils and developers that have a commitment to urban design. At the forefront of a NPS-UD needs to be the means to achieve higher quality, and more sustainable built environment and communities.
 - b. A NPS-UD should establish where Central Government needs to focus and be involved in managing growth and the quality of development in urban environments. The principle objective needs to ensure that urban growth and development strategies align and reinforce national policies on sustainability.
 - c. The NPS-UD needs to clearly signal that from a wider sustainability perspective that there is a value case for urban living and that urban design principles can ensure that urban development integrates all the qualities and elements for a desirable way of living and working.
 - ii) **If a NPS on Urban Design were to be prepared how would you see it being structured, what level of detail would it contain and how directive would it be?**
 - a. The NPS-UD should principally express the extent of Government's commitment to urban design and create confidence in the ability of urban design to deliver sustainable and liveable communities. The NPS-UD would need to signal the role of the UDP in a framework for urban design commitment and delivery and as a result the UDP would need to be strengthened and endorsed as a significant document.
 - b. The NPS-UD should define the urban design and design quality (which would then allow councils to only accept good design) and deal in some detail with the processes and tools to ensure the delivery. For example the development of design codes, examples of design briefs and design statements. An example of this in the United Kingdom was the introduction of PPS1 – Delivering Sustainable Development, where the notion of Design Statements made it a requirement of all planning applications to be accompanied by a design statement. A poor design statement resulted in a refusal or invalidation of the planning application.
 - c. It may be necessary for the RMA to be amended to reinforce the desirability and legislative endorsement of urban design as a legitimate means to achieve sustainability and liveable towns and cities. The NPS-UD needs to provide the foundation that enables councils to only accept good urban design.

- d. The NPS-UD would also signal to the tertiary institutions that we need to improve our skills and knowledge to educate our future planners, designers and decision-makers.
 - e. It may also be necessary to signal a number of companion or supporting documents and ensure that they too are anchored into the planning legislation and policy at the national, regional and local levels.
- iii) **What should not be covered by an NPS on Urban Design?**
- a. The NPS-UD should be essentially inspirational and enabling and should set out a clear framework which refers to companion or other legislative documents that define the actual details of urban design principles, design statements and design processes required for implementation.
- iv) **At what scale or scales would it be appropriate for a NPS-UD to provide direction?**
- a. By establishing the role of urban design as a key contributor to sustainable urban development the NPS-UD needs to set out how sustainability benefits are to be gained at a local – regional – national level. It may also be appropriate to signal the contribution at a global level. It is considered that this is part of making the value case for sustainable urban development.
- v) **What additional qualities do you consider should be reflected in a NPS-UD?**
- a. The NPS-UD needs to be visionary, responsive and integrating. The NPS-UD needs to assure the New Zealand population that high quality urban environments based on sustainable development and urban design principles result in desirable and liveable town centres and cities.

STRATEGIC CONTEXT

9. The Council has for a number of years pursued a work programme and commitment to good quality urban design and an alignment and acceptance of the principles of urban design as set out in the UDP.
10. Quality urban design contributes positively to a number of Council's Strategic Platforms
 - Economic - strong and innovative economy;
 - Social and Cultural - strong communities; and
 - Environmental - Urban and rural villages, integrated transport and green network.

CONSULTATION

11. If Government agrees to pursue the drafting of a NPS-UD then a significant process of consultation will be developed. At that time the Council should seek to engage broadly with key external partners to ensure that the NPS-UD can deliver on the key principles of urban design and sustainability.

12. As this report is focusing on a submission on the scope of the NPS-UD only limited internal consultation has occurred with key staff to meet the deadline set down by MfE. Council officers also provided initial feedback to Local Government New Zealand officers but advised them that the Council submission would not be available until after the Committee meeting.

RESOURCES

13. The resources for preparing the matters of submissions are met from existing budgets in the Strategic Planning directorate.

IMPLEMENTATION ISSUES

14. Subject to the Committee's confirmation of the matters of submission a formal letter will be prepared and the Chairman of the Committee will authorise the submission on the Council's behalf. At some later date the submissions received by the MfE on the matters will be reported back as will the decision of Government on whether they will progress the development of a NPS-UD.

Report prepared by: Lesley Jenkins, Deputy Director: Strategic Planning; Tim Watts, Manager: Urban Design and Development and Peter Joyce, Project Manager: Urban Design.



8 WAITAKERE SUBMISSION ON NATIONAL POLICY STATEMENT FOR RENEWABLE ENERGY GENERATION

GLOSSARY

Proposed National Policy Statement on Renewable Energy Generation Planning and Regulatory Committee	(NPS:REG) (the Committee)
Resource Management Act 1991	(RMA)
National Policy Statement	(NPS)
National Environmental Standards	(NES)

EXECUTIVE SUMMARY

This report draws the Planning and Regulatory Committee's (the Committee) attention to the recently Proposed National Policy Statement on Renewable Energy Generation (NPS:REG), and seeks the Committee's approval for the lodgement of a Council submission.

The NPS:REG is a mechanism under the Resource Management Act 1991 (RMA) that will require local authorities to make various changes to their planning documents within a specified timeframe to recognise the national significance and benefits of renewable electricity generation and to ensure that 90% of New Zealand's electricity will be generated by renewable sources by 2025.

While the intent of the NPS:REG is supported, a number of amendments could be made to the document to improve certainty of outcomes, avoid unintended consequences and the potential for adverse effects.

Due to a timing of agenda reporting timeframes, and the due date for the submission, the submission is still being developed by a cross-Council officer working group. An advanced draft will be tabled for the Committee's consideration at the meeting. This report seeks that approval for the final version of the submission be delegated to the Chairman of this Committee.

RECOMMENDATIONS

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

1. **Receive** the Waitakere Submission on National Policy Statement for Renewable Electricity Generation report.
2. **Agree** that approval of the final Waitakere submission on National Policy Statement for Renewable Electricity Generation be delegated to the Chairman of the Planning and Regulatory Committee.
3. **Agree** that Council officers may take any further actions including making further submissions, appearing at meetings or before the Board of Inquiry into the National Policy Statement for Renewable Electricity Generation to advance the intent of the Waitakere submission, with the exception of legal action which shall require the further approval of the Planning and Regulatory Committee.

BACKGROUND

National Policy Statements and National Environmental Standards

1. The RMA contains provisions for a hierarchy of planning documents, from the national, to the regional, to the local (or District) level, where each level of the hierarchy must 'give effect' to that above. However, until recently, there has been a distinct lack of national level guidance, meaning many regional and district councils have developed, often in isolation, their own approach to the environmental issues facing their area of jurisdiction, despite those environmental issues being common across the country.
2. This situation has led to variable approaches to nationally common issues, and caused unnecessary expense both to local authorities and to applicants. Government has pledged, as a commitment to improving the RMA, to increase the level of national guidance, particularly as many councils will shortly be commencing the development of their 'second generation' planning documents.
3. This promised national guidance has led to the recent promulgation of a range of National Policy Statements (NPS) and National Environmental Standards (NES). NPS provide the national policy framework for consideration of a particular matter of national significance (note that the term 'national *significance*' distinguishes these issues from the 'matters of national *importance*' as listed in section 6 of the RMA) via the statement of objectives and policies, while a NPS will generally contain more technical details regarding the specifics of a standard, method or requirement regarding any issue.
4. NPS and NES are powerful tools, sitting at the top of the document hierarchy under the RMA, whereby each level must 'give effect' to the level above, thereby ensuring a 'cascade' of consistency from national, to regional, to local. As well as requiring or resulting in changes to regional and district planning documents, the regulations have immediate effect from commencement date by being 'had regard to' by decision makers when considering applications for consents under s104 of the RMA.

5. A 'proposed' NPS or NES has no regulatory status until it is confirmed as a regulation under the Resource Management Act 1991 by the Executive Council, receives the Royal assent and is published in the *New Zealand Gazette*.

Proposed National Policy Statement for Renewable Electricity Generation

A28-A31

6. The NPS:REG as proposed is attached at pages A28 to A31.
7. A Board of Inquiry, chaired by Dr Royden Somerville QC, has been appointed to hear and consider submissions and further submissions on the NPS:REG, and to make recommendations to the Minister for the Environment. Submissions close on 31 October 2008.

DECISION MAKING

8. In this instance, Council is not the final decision maker with respect to the NPS:REG, and will have the status of a submitter to the Board of Inquiry. The decision to make a submission is not considered significant. However, the NPS:REG as proposed could have significant impacts on the manner in which Council is able to discharge its statutory functions under the RMA, and it is therefore recommended, that a submission be made on the matter.

Issues

Enabling Renewable Electricity Generation

9. The overarching objective of the NPS:REG may be summarised as enabling renewable electricity generation. This is an aim that is supported by this Council as evidenced by its own actions such as - leading by example in the construction of Council buildings; waiving of solar hot water installation building consent fees; installation of the Swift turbine demonstration on the Civic Building; solar powered park lighting and school speed zone signage. This proactive approach is also advocated and outlined in a number of Council policies, strategies and action plans such as the Waitakere Action Plan on Climate Change and Energy, which includes a commitment to undertake a Plan Change to enable small scale renewable devices.
10. This scheduled Plan Change has not yet been advanced beyond the scoping phase to date due to:
 - a. the Auckland Regional Council postponing an earlier flagged review of Chapter 5: Energy to the Auckland Regional Policy Statement (RPS) due to the forthcoming 10 year review of the (RPS) scheduled to commence late 2009; and
 - b. anticipation of the NPS:REG, which has now been proposed.

A32-A36

11. In October 2007, Council officers received a letter from the Ministry for the Environment seeking comments on what should be included in a possible NPS on Renewable Energy. A copy of Officers response to this invitation is attached at pages A32 to A36. It appears that at least some of these earlier comments have been included in the NPS:REG.

Proposed NPS:REG

12. The NPS:REG sets out a number of policies that decision makers on resource consents must have regard to, and local authorities must make plan changes to give effect to (which must be notified by 13 March 2012), summarised below.

13. **Policy 1** - *Recognising the national significance of the benefits of renewable electricity generation activities*: decision makers must have regard to the national, regional and local benefits from renewable electricity generation include i) maintaining or increasing generating capacity while avoiding, reducing or displacing GHG emissions ii) maintaining or increasing security of supply at all scales by diversifying the type and/or location of generation
14. **Policy 2** - Acknowledging the practical constraints associated with the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities: renewable generation resources are location specific, and there are practical and technical constraints to harnessing that resource within the current technological state and in relation to other supporting infrastructure.
15. **Policy 3** - Having regard to the relative reversibility of adverse effects associated with particular generation types: some effects related to renewable generation are relatively reversible
16. **Policy 4** - *Enabling identification of renewable generation possibilities*: i) enable activities associated with identification, assessment and measurement of potential sites and sources, ii) enable activities associated with research scale investigation into new technologies.
17. **Policy 5** - *Supporting small and community-scale renewable electricity generation*: enable activities associated with “small and community scale distributed renewable generation” (4MW or less).
18. The intent, purpose and policy direction are all supported by officers currently reviewing the details of the NPS:REG, and essentially mirrors what was incorporated in the initial drafts of the plan change that is being developed under the Waitakere Action Plan on Climate Change and Energy.

Submission

19. A submission must be received by the Board of Inquiry by 31 October 2008. A further submission process is also indicated, with further submissions closing on 19 December 2008. The timeframe for a hearing date has yet to be indicated by the Board of Inquiry. An option to speak to the submission and further submissions, and present evidence at the hearing is provided.
20. The draft submission to be tabled will be in support of the NPS:REG but some changes to minor, technical or detail matters to clarify aspects of implementation and interpretation may be necessary. These aspects, which will be further outlined in the submission, cover matters such as:
21. Policy 3: ‘some effects are relatively reversible’ - which effects are reversible and relative to what? This will vary with the technology, resource and timeframe.
22. Policy 4(ii): how big or long term or ‘new’ is ‘research scale investigation into emerging renewable technologies and methods’?
23. Policy 5: is the 4MW size limit too large scale to be enabled as, or even called ‘small and community scale distributed renewable electricity generation’? A maximum output limit may not be appropriate given effects and generation technologies vary depending on the resource.

24. The NPS:REG also provides the opportunity to raise other RMA and non-RMA issues related to enabling renewable electricity generation, particularly at the small and community scale, such as:
- Balancing the tension between benefits of a particular project at the national, regional and local levels to the electrical system and 'greenhouse gas' reduction; and the localised impacts and effects of the same project on matters of national and local importance;
 - Net metering and grid inter-connection standards;
 - Building Act issues;
 - Appliance efficiency;
 - Government agency procurement, operations and building practices.
25. Further details will be provided in the draft submission to be tabled at the meeting.

Options Identified

26. There are three main options:
- c. Do Nothing: do not make a submission;
 - d. Make a written submission in support and participate in further pre-hearing processes (such as making further submissions or attending workshops) as required in support of that submission;
 - e. Make a submission in support and participate in further pre-hearing processes as required, and also speak to the submission at the Board of Inquiry hearing.

Assessment of Options

27. To some extent each of the identified options is reasonable, with advantages and disadvantages.
28. Option (a) Do Nothing: represents a missed opportunity to suggest reasonable improvements to achieve desired outcomes and better enable renewable electricity generation, and for the Council to be involved in the NPS:REG development process. The NPS:REG is mandatory and directive, and will impact on the Council's statutory functions in relation to the RMA. The proposed deadline for notification of plan changes is 13 March 2012.
29. Options (b) and (c) both involve making a submission and further work in support of the submission, but are differentiated by speaking to the submission at the hearing of the Board of Inquiry which is a formal process where submitters would be expected to provide constructive and considered arguments that add significantly to the Board of Inquiry's understanding of the issues. Given that a submission in support would only confirm the basis of the NPS:REG, and suggest improvements and potentially raise matters strictly beyond the terms of reference, a formal appearance may not be necessary. This cannot be ascertained for certain until all submissions have been received and the process begun. However, without making an initial submission, the Council will not be able to become involved in the process at a later stage.

30. An assessment of the Options is included in the Table below:

Option:		Social	Economic	Environmental	Cultural
Option A: Do Nothing	Disadvantages			Potential issues not addressed, lost opportunity to affect positive change.	
	Advantages				
	Resources		No Cost		
Option B: Written submission	Disadvantages				
	Advantages			Issues raised, involved in process. Maintain future options (incl. Option C).	
	Resources		Low Cost (Officer Time)		
Option C: Written Submission + speak to submission at Board of Inquiry.	Disadvantages			Unnecessary unless position advocates significant alteration or opposition to NPS	
	Advantages			Issues raised at highest level	
	Resources		Moderate cost (Officer + Expert + Member time).		

31. Future decisions in relation to having regard to (by making decisions on resource consents) or giving effect to the NPS:REG (by undertaking plan changes) may involve land or a body of water, and the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna and other taonga, and may include the Waitakere Ranges Heritage Area.

Consideration of Community Views

32. The role of the Board of Inquiry is to receive and consider community and stakeholder views in relation to the NPS:REG through the statutory process outlined by the RMA.
33. The draft submission has been developed in light of existing Council policies and strategies, most of which have been developed in conjunction with the community, including the Long Term Council Community Plan 2006-2016 and the Waitakere Action Plan on Climate Change and Energy.

Preferred Option

34. The preferred Option at this stage is Option b) - making a written submission which preserves the potential for Option c) - speaking to the submission at the Board of Inquiry if required or desired.

STRATEGIC CONTEXT

35. The key strategic linkages are outlined in the table below. Enabling Renewable Electricity Generation most directly relates to the Sustainable Energy and Clean Air Strategic Platform (in bold), but has cross over with a number of other Community Outcomes, Priorities and Strategic Platforms:

	Community Outcomes	Priorities	Strategic Platforms
Environmental	Sustainable Environment Environmental Protection Green Network	Sustainable Development	Sustainable Energy and Clean Air Green Network
Social	Urban and Rural Villages Working Together		Urban and Rural Villages
Cultural	Access to Maori Resources	Treaty of Waitangi	
Economic			Strong Innovative Economy Integrated Transport and Communications

CONSULTATION

36. There are two ‘levels’ of consultation in relation to this report. Consultation in relation to the development of the Council submission to the NPS:REG, and consultation in relation to the NPS:REG itself.

Consultation Regarding Council Submission

37. The submission is not due until 31 October 2008. Limited consultation has been undertaken at this stage, beyond consultation with staff across Council with some discussion and meetings, leading to:

- the development of the draft submission: and
- the collation of contacts for future consultation and/or discussions with relevant external agencies regarding the potential for a joint submission or to allow pooling of ideas and resources.

38. No external consultation or consultation with Maori, including Te Taumata Runanga or iwi has been undertaken in relation to the development of the submission.

39. It should be noted that the NPS:REG has no effect until it is confirmed as a regulation. Undertaking a Plan Change to give effect to the NPS:REG requires a further public consultation process.

Consultation regarding NPS: REG

40. Consultation in relation to the NPS:REG is being undertaken by the Board of Inquiry on behalf of the Minister for the Environment in accordance with the statutory process outlined in the RMA. The Minister is required to seek and consider comments from relevant iwi and the persons and organisations the minister considers appropriate as part of the development of the proposed NPS (section 46(a) of the RMA). Any person may make a submission to the Board of Inquiry in relation to a proposed NPS.

RESOURCES

41. Making a submission involves officer time, from across Council. Dealing with statutory change is provided for in current budgets. Speaking to the submission to the Board of Inquiry should involve expert technical or legal assistance and may involve political representation.
42. A final decision on the NPS:REG by the Minister for the Environment will result in future costs through implementation of changes to statutory documents, including District Plan change(s).

IMPLEMENTATION ISSUES

43. There are no implementation issues with making a submission, as this will allow improvement to the NPS:REG with little to no risk or cost other than budgeted officer time. It will also preserve the option of making an appearance before the Board of Inquiry, should this be necessary or desirable after the pre-hearing submission process is completed.
44. There are particular considerations in the implementation of any NPS in the Waitakere Ranges Heritage Area. Whereas the RMA requires that the consideration of an application for resource consent for a discretionary or non-complying activity must "have regard to" the relevant provisions of any NPS, section 13 of the Waitakere Ranges Heritage Area Act 2008, raises that test (within the Heritage Area) to a requirement to "have particular regard to" those matters. This aligns the status of the NPS (in this Area) with the purpose and objectives of the Waitakere Ranges Heritage area Act 2008, and with Section 7 of the RMA.

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