



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a meeting of the Planning and Regulatory Committee will be held on:-

DATE: Tuesday, 7 July 2009 **TIME:** 9.30 am

MEETING ROOM: Council Chamber

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to consider the business as set out herein and to take any necessary action connected therewith.

1 July 2009

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	DQ	Battersby, QSM, JP
	BA	Brady, JP
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper, JP
	AK	Corban, OBE, JP
	RP	Dallow, QPM, JP
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell

Mayor RA Harvey, QSO, JP (ex officio)
Deputy Mayor (ex officio)

(Quorum 5 members)

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(Meeting Room could be subject to change)

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

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 JULY 2009, COMMENCING AT 9.30 AM

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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 JULY 2009, COMMENCING AT 9.30 AM

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, 12 May 2009

RECOMMENDATION

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, 12 May 2009, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 JUNE 2009)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Rodney District Council	(RDC)
Waitakere City Council	(Council)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Hobsonville Land Company	(HLC)
Comprehensive Development Plan	(CDP)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Weathertight Homes Tribunal	(WHT)
Protect Piha Heritage Society Incorporated	(PPHS Inc.)
Swanson Structure Plan	(SSP)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Sentencing Act 2002	(Sentencing Act)
Summary Proceedings Act 1957	(Summary Proceedings Act)
Metropolitan Urban Limit	(MUL)
Minor Household Unit	(MHU)
Networth Developments Limited	(Networth)
National Trading Company	(NTC)

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 resolve to:

Receive the Legal Update (As At 30 June 2009) report.

HIGH COURT

(Changed)

Wilton Joubert Ltd & AR Wilton v Waitakere City Council (December 2008)

1. Waitakere City Council (Council) has received a Notice of Appeal in relation to the Court's decision on this matter. The Appellants' are an engineering company and its director, a professional registered engineer. They were found guilty in the District Court of undertaking building works without a building consent in breach of the Building Act 2004 (Building Act). The building works constituted the inspection of 14 foundations laid in accordance with the engineer's designs, but not in accordance with a building consent.

2. The matter went to sentencing on 8 December 2008 where all parties were discharged without conviction pursuant to s. 106 of the Sentencing Act 2002 (Sentencing Act), and an award of costs was made in favour of Council of \$10,000.00 per defendant.
3. An appeal was filed on 24 December 2008 and questions the Judge's findings at the hearing, and his imposition of a costs award. Both decisions are appealed on points of fact and law and the appeal has been lodged pursuant to the Summary Proceedings Act 1957 (Summary Proceedings Act).
4. Council is awaiting further information from the Court regarding timetables and hearing dates. We have had informal indications that the appeal may yet be withdrawn.

(Unchanged)

Waitakere City Council v Network Developments Limited (November 2008)

5. The Council liquidation proceedings against Network Developments Limited (Network) for failing to comply with a statutory demand. Network owes Council \$11,138.58 for unpaid consent application fees. This matter was called on 19 December 2008 and Network was put into liquidation. The liquidators, Jollands Callander, have advised in their first liquidator's report that it is unlikely there will be a distribution to creditors, which includes the Council.

(Unchanged)

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

6. The Council was served with seven sets of proceedings under the Public Works Act 1981 (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 PWA should not apply retrospectively.
7. Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of s. 40 of the PWA. The Court of Appeal has recently released a Judgment upholding the High Court decision and dismissing Council's strike out application. The Judgment however contains some useful findings about the statutory requirements before offer back obligations under s. 40 of the PWA arise. The plaintiff's are in the process of responding to Council's application for further and better particulars of the claim. Once the particulars are received, Council will need to file statements of defence. Discovery of documents is well advanced. The Legal Team met last month to discuss possible settlement strategy for this case and Senior Counsel is discussing possible settlement options with the Plaintiffs' Counsel currently. There have been no developments this month.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

8. An appeal by companies controlled by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three related appeals (see also paragraph 14 below) regarding purported applications for certificates of compliance and subdivision consents. The overall purpose of the application is to establish 77 dwellings on the subject site in the foothills environment. Mr Mawhinney filed lengthy submissions with the Court in support of his appeal.

9. The case was heard on 12 and 14 November 2008 before Heath J. Mr Mawhinney was unable to persuade the judge that the previous High Court rulings in the *Kitewaho* litigation were not determinative of the issues in this appeal, and on that basis, the appeal has been dismissed. Mr Mawhinney filed an application for leave to appeal to the Court of Appeal against the decision which was heard on 19 February 2009. Heath J after hearing argument dismissed Mr Mawhinney's application for leave. This was on the basis that he did not consider any of the alleged errors of law submitted by Mr Mawhinney were of general or public importance.
10. Costs were awarded to Council on both the substantive appeal and the leave application. Heath J awarded above scale costs with 50% uplift on the substantive matter - \$14,880. Costs of \$3,000 were awarded for the leave application. Enforcement of costs was stayed for 20 working days until determination of any application to the Court of Appeal for special leave.
11. Mr Mawhinney lodged an application for leave to appeal in the Court of Appeal against the High Court Judgment on 11 March 2009. The leave application has been set down for hearing on 21 July 2009. Mr Mawhinney's submissions are due on 9 June 2009 and Council is to respond by 30 June 2009.

ENVIRONMENT COURT

(Changed)

Britten v Waitakere City Council (March 2009)

12. An application was made to the Environment Court for an enforcement order requiring the property owners to remove slip debris from Council land and the Swanson Stream as the result of a slip which occurred in July 2008. The property owners argue that they do not have any liability because the slip was an "act of god".
13. The matter was heard on 26 May 2009 and the Court granted interim enforcement orders to be complied with by 8 June 2009. These orders require the Britten's to submit a site remediation plan to be approved by the Council. The remediation plan must include:
 - what materials are to be removed and from where;
 - where that material is to be placed to remediate the site;
 - the method by which the work is to be done, measures to assist in the stabilisation of the site; and
 - include a report on what caused the slip with a detailed assessment and proposal of how to remediate the cause and prevent future slips onto the Council's land. The Court is to reconvene on 18 June 2009 to hear the progress of the matter.

(Changed)

Morris v Waitakere City Council (March 2009)

Palmer v Waitakere City Council (March 2009)

Rex Bridgeford and others v Waitakere City Council (March 2009)

Joanne Hodge and others v Waitakere City Council (March 2009)

Henning and others v Waitakere City Council (March 2009)

14. These were all appeals against the decision of this Council through independent commissioners, to grant consent to the Hobsonville Land Company (HLC) for a Comprehensive Development Plan (CDP) to develop part of the former Hobsonville Airbase into a residential development under Plan Change 13 which urbanises the airbase as part of the extended Metropolitan Urban Limit (MUL).

15. The appellants raised issues in the appeal as to the nature of the proposed development, the ability of the CDP to comply with the Resource Management Act 1991 (RMA), the provision of community infrastructure (such as parks, playing fields and shops) and the provision of social housing by HLC.
16. All appeals will now be resolved by way of two consent orders. The consent orders were lodged with the Environment Court on 30 June 2009. In summary the Consent Orders require HLC to set up a management plan that looks at the provision of social infrastructure. In conjunction with that, the consent order invites HLC to set up a panel to look at the provision of social infrastructure and make recommendations to the Minister of Housing. The panel is to be constituted of a member of the Council, a member of the residents group and a representative from HLC. In addition, lesser number of units are permitted to occur in the "triangle area" and it is agreed that a park will be located there.
17. In respect of Mr Morris's appeal, there is one additional element which related to HLC doing some earthworks and providing some additional drainage on the boundary of the CDP and Mr Morris's property, subject to future consents being obtained by HLC.
18. It is expected that the Environment Court will execute the consent orders within the next fortnight.

(Unchanged)

Swanson Structure Plan Decisions (October 2008)

19. The Court has delivered its decision on the Swanson Structure Plan (SSP). At a special meeting of the Committee on Tuesday, 10 February 2009 it was resolved not to appeal the decision. No other party has appealed.
20. The Council has been directed to prepare a final version of the SSP along with the rules and policies that give effect to its decision by 31 July 2009, with amended provisions to be submitted three months thereafter.

(Unchanged)

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

21. Following the Council's decision being upheld and the appeal from the appellant, Protect Piha Heritage Society Incorporated (PPHS Inc.), being dismissed, the Council has applied for an award of costs from the Court. In total it cost the Council \$85,179.77 to defend its decision. The Council is seeking 35-50% of costs incurred to be awarded as the Court does not consider the full costs as being recoverable. The applicant, Preserve Piha Limited, has also applied for costs. It is seeking 50-67% of its costs to be awarded. It cost the applicant \$87,630.67 to present its case to the Environment Court. The appellant has until 14 April to respond to the costs applications filed by the Council and Preserve Piha Limited.
22. The appellant has filed a memorandum opposing the application for costs from the Council and the applicant. The Court will determine the matter and will issue its decision in Chambers without a hearing. We are still awaiting the Court's decision.

(Unchanged)

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

23. 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 7-lot subdivision at 54 to 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 was resumed on 23 May 2007 in order that the Court could hear the evidence of a witness for a s. 274 party that was not available during the March 2007 hearing.

24. The Court has now delivered its decision. The appeal was disallowed. Costs were reserved. The Council submitted its costs application and the Court in Auckland have forwarded the application to Judge Jackson, (who ordinarily sits in Christchurch) for a decision. As His Honour is currently involved in a large hearing, a decision on costs is expected to occur sometime after the conclusion of that matter.

(Unchanged)

Waitakere City Council v Rodney District Council (April 2007)

25. 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.
26. 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.
27. 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 points. No orders for costs have been made. A small number of further mediations are scheduled to resolve those matters still outstanding. There was a callover for all outstanding appeals in the Court last month, and timetable directions made on all matters. There has also been significant progress of resolution of various appeals and the withdrawal by one significant appellant (Scott & Putt).

(Unchanged)

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)

28. This appeal concerns the Auckland Regional Council's (ARC) 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

29. There are a number of matters being dealt with currently relating to Mr Mawhinney's companies. The matters are addressed below at paragraphs 31-39 of this report. The current status of Mr Mawhinney's companies referred to is as follows:
- London & Greenwich Trading Company Limited – Struck off;
 - Perceptus Limited – Struck off; and
 - Waitakere Resource Consents Limited – Struck off.

(Unchanged)

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

30. This was a proceeding lodged in the Environment Court by three companies associated with Mr Mawhinney on 25 August 2008. The companies are London and Greenwich Trading Limited, Perceptus Limited, and Waitakere Resource Consents Limited. It sought to revoke a determination made by Council to defer two subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application was made to the Court under s. 91(3) of the RMA.

31. The applicant companies dispute the need for the further regional consents.
32. Notice of opposition was filed and a timetable for exchange of submissions and evidence put forward. An affidavit explaining the reasons for the deferral, and submissions was filed with the Court. Mr Mawhinney did not reply within the specified timeframe (16 March 2009). Waitakere Resource Consents Limited, the sole remaining corporate appellant, has now been struck off the register. A memorandum was filed requesting directions that the proceeding be struck out (on the basis none of the appellants are currently registered companies) or, failing that, that Mr Mawhinney be allowed a short period to lodge an application to have himself substituted personally as an appellant in the proceedings. Mr Mawhinney has recently advised the Court that he has been in settlement discussions with Council directly about this matter and has requested 4 weeks for those negotiations to take place. He also advises that another corporate entity, Alex Simpson Limited, should be substituted as appellant in the event that settlement discussions are unsuccessful. Further instructions are awaited.

(Unchanged)

Waitakere Resource Consents Limited (formerly on this report as Perceptus Limited) v Waitakere City Council (January 2008)

33. 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.
34. Mr Mawhinney advised the Court on 16 January 2009 that he has no further evidence to file other than that which was originally filed, namely submissions and affidavit evidence. Council served legal submissions and an affidavit from Philip Brown on 17 February 2009. Mr Mawhinney has not replied within the specified timeframe (16 March 2009). Waitakere Resource Consents Limited, the sole remaining corporate appellant, has now been struck off the register. An application has been filed requesting directions that the proceeding be struck out (on the basis none of the appellants are currently registered companies) or, failing that, that Mr Mawhinney be allowed a short period to lodge an application to have himself substituted personally as an appellant in the proceedings. This will ensure that he is personally responsible for Council's costs in the case. Mr Mawhinney has sought that these proceedings be placed on hold for four weeks on the same basis as the previous matter. Further instructions are awaited.

(Unchanged)

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

35. This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (RMA) 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)

**Local Government (Auckland) Amendment Act Plan Change Appeals
(September 2007)**

- A1-A3*
36. A summary of appeals against Plan Changes 13 to 18 is set out in Annexure 1 attached at pages A1 to A3. The summary identifies the appellants and the plan changes appealed. There are 53 appeals lodged by 27 parties. Further reports will be provided as time goes by.
 37. 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.
 38. 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 large format retail appellants, which are concerned with whether retail should be located in city centres or corridors.
 39. 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 has resolved the appeals against the MUL as well as the appeals by the National Trading Company (NTC) seeking to have Plan Changes 14 and 15 cancelled and withdrawn. NTC have withdrawn their appeal against the MUL and the substantive challenge against Plan Changes 14 and 15 has also been resolved. Therefore, only certain rules in the plan change areas are under challenge. To try to resolve some of these challenges, the Council and NTC have submitted a draft consent order to the Court. The s. 274 parties to that draft consent order are New Zealand Retail Property Group Management Limited (NZRPG), ARC, Auckland Regional Transport Authority (ARTA), New Zealand Transport Agency (NZTA), Progressive Enterprises and Garelja Brothers. All parties aside from Garelja Brothers have refused to sign on to the draft consent order. The Council has requested that this matter be dealt with through mediation. We expect to be notified of a date for mediation soon.
 40. The Council has also been in discussions with Mr Midgely about his appeal. To date those negotiations have not been successful given the opposition from Progressive Enterprises and Westfield to a solution that would satisfy Mr Midgely. As a result, the Council requested this matter to also be referred to mediation as soon as possible. Subsequently some progress has been made, and a basis for resolving some issue has been tentatively identified.
 41. In respect of the North Shore City Council Appeal against Plan Change 13, we have resolved that appeal and the Court issued the consent order on 29 June 2009. The plan change is considered to be operative under s. 19 of the RMA other than for Bomb Point (see below) and Precinct H which have outstanding appeals. There will be a media release on the resolution of this appeal which officers of the North Shore City and the Council are working on.
 42. In respect of the ARC Appeal against Plan Change 13, we have resolved that appeal as between the Council and the ARC and s. 274 parties. In essence this appeal resolves the recognition of Bomb Point as regionally valuable. The signed consent orders have been sent to the Environment Court for its execution. Once that consent order is issued only the rules relating to Precinct H of the peninsula will not be effective given the appeals by Progressive Enterprises and the National Trading Company. As soon as we have that the consent order back from the Court, there will be a media release.

43. In respect of the appeals against Plan Change 16: Growth, classified under the topic Commercial Appeals, which gives rise to the issue of whether centres or corridors should be intensified by commercial purposes, or whether it should be both the councils have jointly commenced mediation with the large format retailers. The last mediation session took place on 25 May 2009. There the parties agreed that the scope of the appeal could be limited to matters not agreed to at mediation. Two further days are set aside to mediate the matters that relate to transport issues. Those mediations will take place on Friday, 3 July 2009 and Monday, 6 July 2006. The matter is likely to go to Court for hearing in late November 2008.
44. In respect of all other appeals, the Council must file a progress report with the Court by 1 October 2009.

DISTRICT COURT

(New)

Harvey Green – 125 View Road, Sunnyvale (June 2009)

45. Council has received ongoing complaints in relation to the property which is in an overwhelming state of disrepair. Mr Green refused entry to the property until the property was inspected under a search warrant on 12 March 2008. The inspection revealed accumulations of faecal matter, urine, waste food, rubbish within the interior, the building itself was dilapidated and the land around the dwelling was overgrown covered with large quantities of household refuse and inorganic waste.
46. On 4 April 2008 an unsanitary building notice was issued to Mr Green requiring repair of various aspects of the interior and exterior of the dwelling by 30 May 2008. An abatement notice was also issued on 7 April 2008 requiring Mr Green to repair the state of the building and property by 30 May 2008.
47. Informations were filed against Mr Green on 10 June 2009 for committing an offence against s. 124 of the Building Act for failing to comply with an unsanitary building notice. The offence is a continuing offence.

(New)

Lindsay Green – 8 Herrings Cove Place, Titirangi (June 2009)

48. Council was advised in February 2009 that native vegetation had been cut down on the property. The property is within the Managed Natural Area under the District Plan. Council Officers sought Dr Green's permission to inspect the property but were refused. A search warrant was obtained and the property inspected on 12 March 2009 by Council Officers who noticed one native tree had been felled, and a number of other native trees heavily pruned.
49. On 9 April 2009 Council Officers undertook a second inspection accompanied by a qualified arborist and a surveyor. As a result of this visit the arborist produced a report establishing that one native kanuka tree was recently felled and that four other kanuka trees were heavily pruned in breach of the District Plan. Informations were laid against Dr Green on 17 June 2009 for committing an offence against s 338 of the RMA for contravention of s. 9 of the RMA.

(New) Kwan Sik Kim – San Jang Limited, 22-24 Upper Harbour Drive, Hobsonville (June 2009)

50. A routine food inspection undertaken by a Council Officer on 27 May 2009 revealed a dirty, unhygienic premises with evidence of a rodent infestation. The Officer determined there was a risk of food contamination and required the premises to close. The owner contracted a registered pest control firm who treated the premises the same day and initiated a thorough clean of the premises. The premises were allowed to re-open with an E-grading the following day after re-inspection. Informations were laid against the owner on 18 June 2009 for breach of s. 239 of the Local Government Act 2002 for contravention of Council's Food Bylaw 2005 which carries a maximum penalty of \$20,000.

(New) Suwat Seemawong / Kanjana Suksa – Thai Flavour, 572A Te Atatu Road, Te Atatu Peninsula (May 2009)

51. A routine food inspection undertaken by a Council Officer on 19 February 2009 revealed a dirty, unhygienic premises with a cockroach infestation. The premises was given an E-grading and required to close until a registered pest control officer company could treat the location. The premises was reinspected on 20 February 2009 after being treated and thoroughly cleaned by the owners and was allowed to re-open. Following a re-inspection on 21 April 2009 the premises was given a B-grade. Informations were laid against the owners on 26 May 2009 for breach of s. 239 of the Local Government Act 2002 for contravention of Council's Food Bylaw 2005 which carries a maximum penalty of \$20,000.

(Unchanged) Leslie Comer – 164 Statehighway 16 (April 2009)

52. Mr Comer sought a resource consent to establish a firewood store and processing facility at the property. A resource consent RMA20060922 was granted to Mr Comer on 26 October 2006 subject to 26 conditions. On 11 November 2008 an Environmental Monitoring Officer inspecting the site found that Mr Comer had laid a huge concrete slab instead of a turning circle which was a breach of Condition 1 of RMA20060922 that required Mr Comer to follow the architect's plans which were submitted with the application for resource consent, and in addition Mr Comer had erected signs that did not include the words "no retail sales" in contravention of Condition 15 of RMA20060922.
53. A subsequent inspection was made on 22 December 2008 by an Environmental Protection Officer who took measurements of the building coverage as well as photographs of the site. A Significant Breaches Report was subsequently completed which identified substantial breaches of building coverage limits in the district plan as well as condition 1 and 15 of RMA20060922. As a result of the gravity of the breaches, prosecution was recommended.
54. Informations were laid on 8 April 2009 and the first call of the matter was heard by Judge Tremewan at Waitakere District Court on 25 May 2009. Mr Comer entered a plea of not guilty and indicated that he would have legal representation at the substantive hearing. Judge Tremewan agreed to counsel's request to transfer the matter to Auckland District Court to be heard by a judge with an Environment Court warrant. The matter has been set down for a status hearing at Auckland District Court on 10 August 2009.

(Changed) Trustee Management Services Ltd & OAAIP Investments Ltd – 10-16 Pohutukawa Road, Whenuapai (December 2008)

55. The parties are trustees of the above property. The individual trustees have been charged under s. 338 of the RMA for a contravention of s. 9 of the RMA namely that they allegedly permitted the conversion of a Minor Household Unit (MHU) into a second residential dwelling on the property by increasing the size of the MHU to 96 m², 30 m² over the permitted Ground Floor Area under the rules of the District Plan for that location.

56. One of the defendants, Mr Dean Thompson, has twice previously been prosecuted for similar offences.
57. The first call of the matter was on 30 March 2009 at the District Court in Auckland. Mr Thomson entered a plea of not guilty and the matter was set down for hearing on 12 August 2009. Mr Thomson will represent himself. The trustees are professional trustees and the Council requested affidavits from the trustees advising their involvement with the property. Affidavits were provided by the trustees establishing that that they were at arms length from the offending. Mr Thomson is settler, trustee and beneficiary of one the two trusts that owns the property, and it is accepted by the informant that he was the party that made all material decisions connected with the offending. The matter was adjourned until pleas were entered on 15 June 2009.
58. On 15 June 2009 the Council withdrew charges against the professional trustees on the basis of the affidavits. The charges against Mr Thomson are set down for a hearing on 12 August 2009.

(Changed)

GD Philpott & SL Wright – 28 Metcalfe Road, Ranui (December 2008)

59. Council issued an Abatement Notice in December 2008 requiring the above parties to remove all cars and other items from the property. The activity constitutes a contravention of Rule 1.1(b) of the Maintenance and Condition of Land and Buildings rules of the Citywide Rules section of the District Plan. Such activities are non-complying in that: *“Land which due to inadequate maintenance, or the presence of structures or vehicles or other materials or storage of materials or property detracts from amenity values or neighbourhood character”*. The current activity at the property is non-complying and would require resource consent. No resource consent was sought by the Appellants for this activity.
60. The parties appealed Council’s Abatement Notice. The Court made directions that the appellants were required to file an affidavit in support of the application to stay the Abatement Notice by 12 December 2008. The appellants failed to do so.
61. The Council filed a Motion for Strike-out on 19 December 2008 on the basis that the appeal discloses no reasonable or relevant case, and/or that the appeal involves an abuse of the process of the Environment Court.
62. The Court heard all matters together and requested the parties meet and arrange a timetable for the clean-up, and then report back to the Court for endorsement. The parties agreed that if the works were attended to within the timeframe, the abatement notice would be cancelled. If the work was not completed as agreed, Council could request Court intervention and seek an order for costs. Council’s officers were instructed to check compliance at the end of May 2009.
63. Mr Philpott’s property was inspected by a Council Officer on 28-29 May 2009 and it was discovered that there had been no noticeable progress in relation to cleaning up the property. The stay on the abatement notice expired on 29 May 2009 and the Council applied to the Court to have the abatement notice reinstated and sought an order for costs against Mr Philpott.

(Changed)

Abdul Hafeez – 32 Kauri Point Road, Laingholm (September 2008)

64. Mr Hafeez has been charged with two offences under the Building Act. The first involves allegedly unauthorised building works consisting of the construction of two large timber decks without consent, and not in accordance with the Building Code. The second offence is that Mr Hafeez allegedly failed to comply with the Council’s Notice to Fix. The informant laid informations on 26 September 2008 and the matter had a first call on 3 November 2008.

65. Mr Hafeez has previously been convicted under the RMA for contraventions on a different property. The Council's officers' are also investigating further breaches of the RMA on the current property. Mr Hafeez appeared on 1 December 2008. Mr Hafeez pleaded not guilty and the matter was set down for a status hearing on 4 June 2009. The matter was adjourned by the Court until 7 September 2009 due to new Counsel being instructed in the matter.

(Changed)

GD and DM Knight – 834 West Coast Road, Oratia (September 2008)

66. 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.
67. The 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.
68. The Council laid informations against the trustees of the trust which is the registered proprietor of the property for the alleged unauthorised building works under s. 40 of the Building Act and for breaches of the district of the District Plan. The matter had a first call on 3 November 2008.
69. The matter was transferred to the Auckland District Court to be heard by a Judge with an Environment Court warrant on 23 January 2009. The parties entered pleas of not-guilty. The matter was set down for a defended hearing on 18 and 19 June 2009. Mr Knight will represent himself. The informant received an affidavit from Mrs Knight that sought to explain her involvement in the offending. The informant accepts that she was not involved, except in her capacity as a trustee of the trust that owned the property, and has withdrawn the two charges laid against her.
70. Mr Knight appeared at the Auckland District Court on 15 June 2009 and substituted a guilty plea for both RMA and Building Act charges. A sentencing hearing was set for 21 September 2009, and the informant's submissions are due by 7 September 2009.

(Unchanged)

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

71. 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 was pursued in respect of issues under the RMA.
72. The defendant applied for a determination from the Department of Building and Housing (DBH) in respect of the Council's decision to decline application for a certificate of acceptance for the illegal conversion of four 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 determination. The final determination accepts that there are five unauthorised sleep outs on the property, but that if the property owners did undertake certain works then four of the five could be building code compliant. Mr Cottingham was due to be sentenced on 23 March 2009 but he changed his position at the last minute seeking for the Court to discharge him without conviction. The Council opposed the discharge because it is not appropriate that someone who has undertaken such significant unauthorised work, confirmed by the DBH, and then pleaded guilty to having done the work should then be discharged. It is very unusual for such a discharge to be granted. The Court has set the matter down for a hearing to resolve this issue on 23 July 2009. The Court will then decide whether a discharge is disproportionate to the offence and determine whether or not to convict the defendant.

(Changed)

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

73. 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.
74. The Court part heard the matter on 19 June 2008. Although a new date was allocated for 22 October 2008 the Court had erred and not served the notes of evidence for the parties to review and respond, and therefore the Court at its own discretion adjourned the matter to 5 March 2009. The Council concluded its case in the absence of the defendant who did not show.
75. The Court issued its reserved decision on 25 June 2009. Her Honour Judge Tremewan found the defendant guilty of not complying with the notice to fix and following conviction fined him \$8,000, 90% of which will go to the Council. Legal Costs of \$ 678 were also granted.

(Changed)

Leaky Building Claims

TOTAL CURRENT CLAIMS

76. Claim statistics are as follows:
- (a.) There are 19 unresolved leaky building claims being handled by Council's lawyers as at 31 May 2009. The 19 claims represent 306 units, with 8 multi unit claims representing 293 units:
- High Court: 8 (including 4 multi unit claims)
 - Weathertight Home Resolution Service (WHRS) 6 (including 1 multi unit)
 - Weathertight Homes Tribunal (WHT) 5 (including 3 multi units claims)
- (b.) The total number of WHRS claims recorded on the DBH website relating to properties in Waitakere as at 30 May 2009 was 175. There is one less WHRS claims than reported in the legal update for 31 May 2009. The total number of properties affected is also reduced by two to 330. These figures include 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.

CLAIMS SETTLED

June 2009

77. No claims were settled during June 2009.

May 2009

78. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

April 2009

79. No claims settled during April 2009.

March 2009

80. No claims settled during March 2009.

February 2009

81. Two claims were settled during February 2009:
- 129 Hobsonville Road settled at a Judicial Settlement Conference on the 12 February 2009. The Council contributed its \$50,000 Riskpool excess to the settlement.
 - 3/13 Ambler Avenue settled at mediation on the 10 February 2009. The Council contributed its excess of \$50,000 to the settlement.

January 2009

82. There was one claim settled during January 2009:
- Bocage Lane settled on 26 January 2009 at mediation. The Council contributed its excess of \$50,000.00 to the settlement.

CLAIMS RECEIVED

June 2009

83. We have received one WHT notice of adjudication claim this month covering 89 units in a 97 unit development at Tuscany Towers, 1 Ambrico Place, New Lynn. The claim is for \$15,734,695.

March 2009

84. There was one claim received during March 2009:
- Three WHRS notifications of acceptance for the purposes of assessor's reports have been received since the last update. These are for: 116 Wood Bay Road, Titirangi - accepted 25 February 2009; 24 Ruze Vida Drive, Royal Heights - accepted 11 March 2009; and 49 Pooks Road, Ranui - accepted 17 March 2009.

February 2009

85. There were two claims received during February 2009:
- A High Court Claim in respect of 23 Kopiko Road, Titirangi was received on the 16 February 2009. The claim is not fully quantified, but the costs of the remedial works are estimated at \$344,000.
 - The Council also received notification from the WHRS of acceptance for an assessors report on the 12 February 2009, in respect of 79 Kamara Road, Glen Eden.

January 2009

86. There was one claim received during January 2009:
- Notification of the acceptance for the purposes of assessor's reports by the WHRS was received in respect of two properties. These were 111A Rosier Road, Glen Eden which was accepted on the 6 January 2009 and 1/4 Mickle Street, Te Atatu which was accepted on 20 January 2009.

Report prepared by: David Collins, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 RECOMMENDATIONS ON SUBMISSIONS TO PLAN CHANGES 30 AND 31 – EARTHWORKS IN THE TRANSPORT ENVIRONMENT

GLOSSARY

New Zealand Transport Agency	(NZTA)
Proposed Plan Change 30 – Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area	(Plan Change 30)
Proposed Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area	(Plan Change 31)
The Resource Management Act 1991	(the Act)
Waitakere City Council	(WCC)

EXECUTIVE SUMMARY

This report advises the Planning and Regulatory Committee on the content of submissions on Proposed Plan Change 30 - Earthworks in the Transport Environment that is Outside the Waitakere Ranges Heritage Area (Plan Change 30) and Proposed Plan Change 31 - Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area (Plan Change 31). It also makes recommendations on the submissions. Two submissions were received. One is from the New Zealand Transport Agency (NZTA) supporting Plan Change 30 and Plan Change 31. The other is from Waitakere City Council (WCC) which seeks amendments to clarify and shorten the text of Plan Change 30 and Plan Change 31. It is recommended that the submissions be accepted.

RECOMMENDATIONS

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

1. **Receive** the Recommendations On Submissions To Plan Changes 30 And 31 – Earthworks In The Transport Environment report.
2. **Agree** to accept the submissions to Plan Change 30 – Earthworks in the Transport Environment Outside the Waitakere Ranges Heritage Area and Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area.
3. **Agree** to make minor or consequential amendments to the Waitakere City Operative District Plan in accordance with Clause 16 of the First Schedule of the Resource Management Act 1991.
4. **Agree** that pursuant to Clause 10 of the First Schedule to the Resource Management Act 1991, the Planning and Regulatory Committee approves Plan Change 30 – Earthworks in the Transport Environment Outside the Waitakere Ranges Heritage Area and Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area.
5. **Agree** that a decision notice stating approval of Plan Change 30 – Earthworks in the Transport Environment Outside the Waitakere Ranges Heritage Area and Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area, shall be notified on or about the 13 July 2009.
6. **Agree** that Plan Change 30 – Earthworks in the Transport Environment Outside the Waitakere Ranges Heritage Area and Plan Change 31 – Earthworks in the Transport Environment that is Within the Waitakere Ranges Heritage Area, shall be publicly notified as operative on a date set in accordance with the provisions of the Resource Management Act 1991.

BACKGROUND

1. Plan Change 30 and Plan Change 31 were both notified for submissions on 18 March 2009. Two submissions were received relating to both plan changes. A summary of submissions was notified for further submissions on 1 May 2009. The period for further submissions closed on the 29 May 2009. No further submissions were received.

DECISION MAKING

Issues

2. Council has received submissions on Plan Change 30 and Plan Change 31. A hearing is not required. Nevertheless, the Council is required under the Resource Management Act 1991 (the Act) to respond to the submissions in one of the three ways set out under the heading "options identified" below.

Options Identified

3. The Act provides that the Council may either accept or reject a submission. It may also accept or reject a submission in part.
4. The Council may also defer making decisions on submissions but must make decisions within two years of public notice of the proposed plan changes.
5. The Council also has the option of withdrawing the proposed plan changes.

Assessment of Options

6. The options of either deferring decision making or withdrawing Plan Change 30 and Plan Change 31 are inappropriate because:
 - there has been no change in environmental circumstances since the notification of the proposed plan changes,
 - the proposed plan changes will provide administrative cost savings,
 - the proposed plan changes will not adversely affect future preparation of a single district plan for Auckland City as a whole,
 - the submissions support the proposed plan changes.
7. Therefore it is recommended that the Planning and Regulatory Committee proceed to make decisions on the submissions as recommended below.

Submissions

A4-A9

8. Two submissions were received on Plan Change 30 and Plan Change 31. The submissions are attached at pages A4 to A9. One submission is from the NZTA and the other submission is from WCC.
9. The submission from the NZTA supports both Plan Change 30 and Plan Change 31.
10. The submission from WCC requests three amendments. The first of these seeks to amend the natural area earthworks rules so that cuts and fills in the Transport Environment are regulated equally. The second seeks an amendment to Transport Environment rule 2.2(a) to clarify that it does not apply to retaining walls. The third amendment seeks to amalgamate and simplify the text of Plan Change 30 and Plan Change 31, without altering the effect of the rules.

11. The intent of the submission by WCC is to clarify the application of the rules as amended by Plan Change 30 and 31.

Consideration of Community Views

12. The submission and further submission process has provided sufficient opportunity for community input and no additional consultation process is required.

Preferred Option

13. The recommended option is to make decisions on the submissions as follows.
14. It is recommended that the submission by NZTA be accepted in part. The reasons for this are that the support is acknowledged and accepted, while accepting the amendments requested by WCC which will not substantially alter the intended effect of Plan Change 30 and Plan Change 31.
15. It is recommended that the submission by WCC be accepted. The reason is that the amendments requested by the submitter will clarify the interpretation of the rules.
16. It is also recommended that the Council make the plan changes operative.

Section 32 of the Act

17. The Council is required to apply section 32 of the Act in making decisions on submissions and update its section 32 report accordingly. As the submissions either support the plan changes or request minor changes only, the existing section 32 analysis is not significantly altered and no further amendments to the section 32 report are required.

STRATEGIC CONTEXT

18. The Long Term Council Community Plan contains five priorities and nine strategic platforms. Plan Change 30 and Plan Change 31, as amended in response to submissions, will be consistent with the Council's strategic priority: Sustainable Development, and the strategic platform of Three Waters.

CONSULTATION

19. The submission process provided opportunities for submissions and further submissions. No further consultation process is appropriate under the Act.

IMPLEMENTATION ISSUES

20. There are no issues involved in implementing the recommended decision.

AUCKLAND COUNCIL TRANSITION ISSUES

21. The decision making proposed in this report is not constrained by section 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, as it does not directly or because of its consequences: significantly prejudice the reorganisation, significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.

Report prepared by: Christopher Turbott, Senior Planner: Policy Implementation.

