



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, 9 February 2010 **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.

3 February 2010

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, 9 FEBRUARY 2010, 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, 9 FEBRUARY 2010, 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 Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to check that no such conflicts arise in relation to any items on this agenda.



4 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 8 December 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, 8 December 2009, as circulated, and that they be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 31 JANUARY 2010)

GLOSSARY

Planning and Regulatory Committee	(the Committee)
Waitakere City Council	(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.)
Weathertight Homes Tribunal	(WHT)
Protect Piha Heritage Society Incorporated	(PPHS Inc.)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Sentencing Act 2002	(Sentencing Act)
Summary Proceedings Act 1957	(Summary Proceedings Act)
Networth Developments Limited	(Networth)
National Trading Company	(NTC)
Metropolitan Urban Limit	(MUL)
metres squared	(m ²)

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 31 January 2010) report.

HIGH COURT

***(Unchanged)* 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 District 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 Networth Developments Limited (November 2008)

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

(Changed)

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 1991 (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 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.
8. Statements of Defence on all seven proceedings have now been finalised and will be served shortly. The plaintiffs have also been asked for information about their financial position to assess whether an application for Council's costs is necessary and details of any third party funders.

Substantive hearings involving Mr Mawhinney

(Changed)

Mawhinney & Others v Waitakere City Council (May 2008)

9. This proceeding relates to 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.
10. The matter has been the subject of proceedings in the High Court and Court of Appeal, which have now concluded. Mr Mawhinney has been unsuccessful at all levels and costs awards have been made in both Courts. Formal orders have been sealed and the demand for payment made. Payment was not received following the demand and accordingly bankruptcy notices have been filed with the High Court. Our process server had difficulty serving Mr Mawhinney with the notices, and a substituted service application was made to the Court and has now been granted.

11. Following service of the bankruptcy notices, Mr Mawhinney has applied to the High Court to set aside the notices on the basis of an alleged counterclaims or set offs against Council. This application has been opposed and affidavit evidence filed with the Court this month. There is a callover of the setting aside application on 11 February 2010 when it is anticipated a defended hearing date will be set.

ENVIRONMENT COURT

(New)

Waitakere City Council v Neil Milbank (November 2009)

12. The Council has applied to the Environment Court to make an enforcement order requiring the property owner to remove a large quantity of inorganic materials 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 Mr Milbank for this activity.
13. The Council initially elected for the matter to be dealt with at mediation between the parties. The defendant failed to respond to correspondence from the Court in relation to the proposed mediation and so the Council has requested that the matter be put before a Judge to resolve the application. A pre-hearing conference will take place on 28 January 2010.

(Unchanged)

Duaphorma Pacific v Waitakere City Council (August 2009)

14. The proceedings involve an appeal under s. 120 of the Resource Management Act 1991 (RMA). The appeal seeks to overturn a Council decision (made through Commissioners). The Council's decision was to decline consent for an 8 level apartment block with ground floor commercial space in Te Atatu Peninsula (543 Te Atatu Road). The proposal was classified as a non-complying activity and the Commissioners for the Council (one independent and two Councillors) were of the view that the effects of the proposal were more than minor and were unable to be remedied or otherwise mitigated. The decision of the Commissioners recorded that a reduced scale proposal may be more appropriate for the area. There are a number of s. 274 parties to this appeal.
15. The appellant now wishes to put forward through mediation a reduced scale development of six levels with more landscaping and reduced overall height. This proposal will be put to the parties at the mediation on 12 October 2009. If all parties to the mediation accept that the reduced scale proposal is acceptable, the matter will be brought back to the Planning and Regulatory Committee for determination on any consent order agreed, or any other option that is proposed to resolve the appeal. At present the appellant is considering its position, and mediation may resume in the year.

(Changed)

Britten v Waitakere City Council (March 2009)

16. An application was made to the Environment Court for an enforcement order requiring the property owners, the Brittons, 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 had argued that they do not have any liability because the slip was an "act of god."

17. 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 required 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 from where; and
 - 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
 - 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.
18. On 18 June 2009 the Court directed that the expert witnesses acting for the Applicant, Council and the Respondents, the Brittens, confer and agree a methodology and timescale for remediating the failed slope and stabilising the remainder of the slope to ensure the safety of Council owned land and the Swanson Stream at the slope toe. The two experts appointed by the parties, Rodney Hutchison and Don Buchanan, met with Commissioner Mcconachy on 18 June 2009 and produced a joint witness statement recording their agreement.
19. In a joint statement dated 7 July 2009, the experts agreed that the works would be undertaken over nine stages to begin in October 2009, with progress reports generated monthly until the completion of the restoration works at the end of May 2010. The stages include the following:
- Form an access to the lower slip area/extend existing access track;
 - Clear base of embankment/excavate slip material/install drains;
 - Fill excavated area and base of embankment with concrete rubble to form a working platform;
 - Clear damaged and leaning pine trees;
 - Remove remaining slip debris from slope/stream bank and stream bed/reinstate stream bank to original line;
 - Reconstruct embankment to profile required for railway;
 - Reprofile western zone of embankment;
 - Topsoil and plant surface of reconstructed embankment; and
 - Clear remaining debris from golf course if requested.
20. On 27 November 2009 the Council applied to the Environment Court for costs that it incurred in remedying the adverse effects from the Respondents' alleged failure to comply with their obligations under the abatement notice and RMA. The Court delivered the costs decision on Friday, 22 January 2010, which the Council received on Tuesday, 26 January 2010. The Court ordered the Respondents' to pay \$7,000 to Council to recognise that the Respondents' activities had contributed to the landslip which caused the discharge which lead to the Council incurring costs to remove the debris. On 27 January 2010 the Court issued the final enforcement order which requires stabilisation works to be completed in the 2010 planting season which is from May to September with earthworks to be completed by 1 November 2010.

(Unchanged)

Swanson Structure Plan Decisions (October 2008)

21. The Court has delivered its decision on the Swanson Structure Plan (SSP). At a special meeting of the Planning and Regulatory Committee on Tuesday, 10 February 2009 it was resolved not to appeal the decision. No other party has appealed. 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.

(Changed)

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

22. 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 had until 14 April 2009 to respond to the costs applications filed by the Council and Preserve Piha Limited.
23. The Appellant has filed a memorandum opposing the application for costs from the Council and the Applicant. The Court determined the matter in Chambers without a hearing. The Court ordered the Appellant PPHS Inc to pay costs of \$5,000 to the Council and \$10,000 to the applicant in a decision of 26 August 2009. The Court noted that although costs are not granted as of right in the Environment Court regime, this was a case where the appeal lodged by PPHS Inc and the manner in which the case was conducted in Court could have been more narrow; therefore given the broad range of matters appealed, and the end result, the Council and the Applicant were entitled to some costs. The Appellant, PPHS Inc had until 17 September 2009 to lodge an appeal in the High Court against those costs. There has been no appeal lodged and the costs remain unpaid. A member of PPHS Inc. has contacted the Council claiming that PPHS Inc. cannot afford to pay the costs and seeking agreement to write off the debt. There is no obvious basis for that action.

(Unchanged)

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

24. 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 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.
25. The Court has 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. We have been advised that Judge Jackson is working on the costs decision.

Mawhinney Matters in the Environment Court

26. 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.

(Changed)

Alex Simpson Limited and Peter Mawhinney (substituted plaintiffs) v Waitakere City Council (August 2008)

27. This was a proceeding lodged in the Environment Court by three companies associated with Mr Mawhinney on 25 August 2008. The original appellant companies were London and Greenwich Trading Limited, Perceptus Limited, and Waitakere Resource Consents Limited (all now struck off the register). Alex Simpson Limited and Peter Mawhinney have now been substituted as parties following a defended interlocutory application.
28. The application seeks to revoke a determination made by Council to defer two subdivision applications SUB2008-570 and SUB2008-571 pending obtaining further regional consents. The application has been made to the Court under s. 91(3) of the RMA. The applicant companies dispute the need for the further regional consents.
29. A Notice of Opposition has been filed and a timetable for exchange of submissions and evidence put forward. An affidavit explaining the reasons for the deferral, and legal submissions have been filed with the Court. The proceedings will now be referred to the judge for a decision 'on the papers'.

(Unchanged)

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

30. 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.
31. 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. Mr Mawhinney has applied to have another company, Alex Simpson Limited, substituted as the Appellant in the proceedings and the Council has opposed this application on the same basis as above.
32. The Court has made the same orders in this proceeding as in the London & Greenwich Trading Company Limited case. Alex Simpson Limited has been permitted to substitute as an Appellant, but Mr Mawhinney has also been required to become a party (and he will be liable for Council's costs). The proceedings will now be referred to the judge for a decision.

(Unchanged)

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

33. This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (RMA 886/98) have been concluded. Mr Mawhinney 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 recommenced.

Plan Change Hearings

(Unchanged)

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

- A1-A3
34. 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.
35. In addition to appeals on the Council's Plan Changes 13 to 18, the Council had filed its own appeal regarding some decisions of the Auckland Regional Council 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.
36. 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. A judicial conference was held on 23 May 2008 where all parties, including the councils, put forward their strategies for managing the appeals. There are no appeals to the Council's plan changes which seek whole plan changes to be cancelled or withdrawn. Only certain rules in each of the plan change areas are under challenge. There are no appeals to the Metropolitan Urban Limit (MUL) and the Auckland Regional Council (ARC) is working through the process of announcing a new MUL, which includes Hobsonville Peninsula, Hobsonville Village and Massey North. The ARC Strategy and Policy Committee had a meeting on 2 February 2010 to determine how it will progress the matter.
37. The Council has commenced negotiations with all the parties and is progressively working through the appeals.
- In respect of Plan Change 13 (Hobsonville Peninsula) there are only two appeals outstanding which relate to Precinct H of Hobsonville Peninsula. These appeals relate to the retail provisions in the plan and the appellants are the National Trading Company (NTC) and Progressive Enterprises.
 - The appeal to this plan change by ARC has been resolved by way of consent order.
 - The appeal to this plan change by North Shore City Council has been resolved by way of consent order.
 - In respect of Plan Change 14 (Hobsonville Village) there are a number of appeals. The appeal by NTC as to the location of a supermarket in Hobsonville Village is subject to a draft consent order in respect of which mediation has commenced.
 - The appeal to this plan change by ARC has been resolved by way of consent order.
 - The appeal from the Ockleston Familty Trust has been resolved by way of consent order.
 - In respect of Plan Change 15 (Massey North) there are a number of appeals. The appeal by NTC as an additional supermarket in Massey North is subject to a draft consent order in respect of which mediation has commenced. Similarly the appeal by the Midgley family regarding a retail cap in Precinct C of Plan Change 15 is subject to mediation and if unresolved may proceed to a hearing next year. Mediation was conducted between the parties to both of these appeals on 27 and 28 August. The parties agreed to exchange the evidential basis for their positions prior to mediation resuming. This has occurred and mediation will be resuming. The Court is yet to set the matter down for mediation, although it is expected it will do so soon. If these appeals are not resolved at mediation they will proceed to hearing. The appeal to this plan change by ARC is proposed to be resolved by way of consent order; the ARC Strategy and Policy Committee had a meeting on 2 February 2010 to determine how it will progress the matter.

- In respect of Plan Change 16 (Managing City Growth), there are a number of appeals. The appeals that relate to retail within centres and corridors is to be considered now that the appeals relating to this subject have been resolved by way of consent order between the parties. This means that the Council no longer has an appeal against the ARC in respect of Plan Change 6. The appeal by the Waitakere Ranges Protection Society has also been resolved by way of consent order which was lodged with the Court last week.
- In respect of Plan Change 17 (New Lynn) there are a number of appeals. The Council is progressing the resolution of a number of appeals. However some of the relief is subject to the resolution of appeals to Plan Change 18.
- In respect of Plan Change 18 (Urban Design) there are a number of appeals. Most of the appeals relate to the requirements of large format retailers. The Council is meeting with the appellants to attempt to resolve these appeals. If required, a number of appeals may be set down for mediation in the next few months with the possibility of hearing later in the year.

DISTRICT COURT

(Changed)

Sabrni Properties Limited / Christopher West / Glenda West - 91 Mountain Road, Henderson Valley (November 2009)

38. Council received a complaint on 19 June 2009 in relation to the construction of two additional dwellings at the site without building consent. Council officers inspected the site and discovered a newly built 30m² household unit at the site. In addition, an existing 45m² "outbuilding" at the site had been extensively renovated to create another household unit at the site. The works undertaken on both units required a building consent but the owners did not apply for one. Council officers are also concerned that there is inadequate provision for the disposal/treatment of wastewater at the property. As a result there is a risk of environmental contamination given that the two buildings are in close proximity to the western boundary of the property.
39. A Notice to Fix was issued to the owners of the property on 29 June 2009 giving the owners a number of options to ensure the buildings could comply with the Building Act and Building Regulations by 5 October 2009. The owners have not complied with the Notice to Fix. On 19 November 2009 the Council laid informations against the owners for undertaking unauthorised building works at the property. On 25 January 2010 the defendant's solicitor entered not guilty pleas to the charges. The matter is set down for a status hearing on 4 March 2010.

(Changed)

F Muliaga / P Muliaga / G Muliaga – 20 Islington Avenue, New Lynn (August 2009)

40. Mr Geoffrey Muliaga lodged an application for building consent with Council on 14 January 2009. The application was lodged on behalf of the owners to seek consent to undertake significant alterations and extensions to an existing garage at the property. The application was rejected on 15 January 2009 due to inadequate supporting information. On 1 April 2009, Council received an enquiry from the public in relation to work being undertaken at the property.
41. On 3 April 2009, a Council officer visited the site and noticed that building works were underway at the property despite the building consent application being denied. The works included significant extensions to the garage which appeared to be designed to convert the garage into a larger domestic building. A Notice to Fix was issued to the owners on the same day requiring work at the site to cease immediately and the owners to achieve compliance with the requirements of the Building Act 2004 by 11 May 2009.

42. At a site visit by a Council officer on 23 June 2009, Mr Filippo Muliaga admitted to undertaking further building works at the property which was a contravention of the Notice to Fix issued on 3 April 2009. Informations were laid against the owners for failing to comply with a Notice to Fix, and informations were laid against all three defendants for undertaking unauthorised building works at the site. The defendant did not enter a plea at the first call on 12 October 2009. On 17 December 2009 the defendants entered guilty pleas to the unauthorised building works charges. The Notice to Fix charges were withdrawn by leave of the Court. The defendants will be sentenced on 22 February 2010.

(Changed)

Stephen Chai – 109 Gardner Avenue, New Lynn (August 2009)

43. Council received a complaint alleging that unauthorised building works were taking place at the property on 20 March 2009. On 22 April 2009 Council officers went to the site and met the owner. The owner admitted to creating two additional units at the site by undertaking works to split the two existing units. The work had been undertaken without obtaining building consent or resource consent from Council. At the time of the visit, three of the four units were tenanted.
44. On 24 April 2009 a dangerous building notice was issued to the owner requiring him to vacate two of the units at the property due to fire safety issues arising from non-compliance with the Building Code. During subsequent correspondence with the owner he agreed to vacate the units as requested. On 17 June 2009 the owner advised that he would apply for a building consent to return the building to its original state.
45. On 12 August 2009 informations were laid against the owner for carrying out unauthorised building works at the property and breaching Rule 2 of the Living Environment Rules in the District Plan which defines limits to residential density in the Living Environment. On 12 October 2009 the matter was transferred to the Auckland District Court to be heard on 26 November 2009. A request for a Mandarin interpreter was made with the Court. The matter has been adjourned until 2 February 2010 to enable full disclosure to be made.

(Changed)

Neil Milbank – 185a Metcalfe Road, Ranui (August 2009)

46. On 28 August 2008 a Council officer inspected the property in response to a complaint from the public in relation to lack of stormwater control at the property. A number of photographs were taken of the property including of the upper deck which was estimated to be three metres above the ground but lacked any kind of safety barrier. A dangerous building notice was issued to the owner requiring him to immediately install a safety barrier to the upper deck that would comply with the Building Code. The notice was issued to the owner in person on 1 September 2008, and the safety issues were explained to him by the Council officer.
47. The site was re-inspected on 3 November 2008 by the Council officer who saw that no safety barrier had been installed. A second dangerous building notice was issued to the owner by affixing it to the fence at the property. Another inspection took place on 29 December 2008 and a third notice was issued to the defendant by post the following day. A fourth notice was issued to the owner on 1 May 2009 following another inspection. On 10 June 2009 the property was inspected again and a sofa was noticed situated on the upper level deck which was the subject of the notice. On 12 August 2009 informations were laid against the defendant for failing to comply with a dangerous building notice. The defendant did not enter a plea at the first call on 12 October 2009. The defendant entered a not guilty plea on 21 December 2009. At a status hearing on 25 January 2010 the defendant failed to appear and so the matter has been set down for formal proof on 22 February 2010.

(Changed)

Peter Butler – 55 Riverlea Road, Whenuapai (August 2009)

48. On 13 May 2009, the Council received a complaint in relation to unauthorised building works at the site. On 14 May 2009 a Council officer visited the property and noticed that an 18m² relocatable building had been attached to the existing dwelling at the property, and extensive renovations had been undertaken to link the two buildings including the construction of a large covered verandah measuring 48m². The total unauthorised building works measured 64m².
49. A letter was sent to the owner requesting an explanation for the unauthorised works on 15 May 2009, and included a Notice to Fix requiring the owner to stop work immediately and achieve compliance with the Building Act. On 18 June 2009, the owner applied for a Certificate of Acceptance to legalise the unauthorised works at the property. Informations were laid against the owner on 12 August 2009 for undertaking unauthorised building works at the property. The defendant did not enter a plea at the first call on 12 October 2009. On 21 December 2009 the defendant entered a guilty plea to the charge. The matter is set down for sentencing on 22 February 2010.

(Changed)

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

50. 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.
51. 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.
52. 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. The Court accepted the request from both parties for an adjournment until 19 October 2009 to enable remedial works to continue. On 5 October 2009 the property was inspected and photographed by a Council officer who noted some improvement in the state of the exterior and the interior of the dwelling. The Court granted a second adjournment to enable remedial works to continue.
53. During an inspection of the property on 4 December 2009 Mr Green advised Council's officer not to inspect the interior as he had not undertaken further works to comply with the unsanitary building notice. Counsel subsequently advised Mr Green that he would need to attend Court on 17 December 2009 to enter a plea to the s. 124 charge and that he should seek legal aid. Mr Green did not attend Court on 17 December 2009 despite being notified. At the callover, the matter was set down for formal proof to occur on 22 February 2010.

(Changed)

Leslie Comer – 164 Statehighway 16 (April 2009)

54. 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.

55. 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.
56. 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 was set down for a status hearing at Auckland District Court on 10 August 2009.
57. At a status hearing on 10 August 2009, Counsel for the defendant requested an adjournment until the retrospective consent application relating to the property is processed. Counsel for the informant opposed the adjournment application on the basis that the retrospective consent is not relevant to the defendant's culpability for the offence and an adjournment would unnecessarily delay the proceedings. The defendant elected a trial by jury and the matter was set down for a pre-depositions hearing date for 16 November 2009. The date has been moved to 17 November 2009 due to a clash in the Court schedule.
58. At the pre-depositions hearing the matter was adjourned until 18 December 2009 to enable the defendant's Counsel to advise the informant which of the informant's witnesses are to provide oral evidence at the depositions hearing. The parties have agreed to a hand-up depositions which is scheduled for 2 February 2010.

(Unchanged)

GD Philpott and 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. 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.
61. 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.
62. 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.

63. The Court dismissed Mr Philpott's appeal on 25 August 2009 and awarded \$3,000 costs in favour of the Council. An application for enforcement orders to require Mr Philpott to clean up his property is being prepared.

(Changed) Leaky Building Claims

Current Claims

64. Claim statistics are as follows:
- (a) There are 20 unresolved leaky building claims being handled by Council's lawyers. The 20 claims represent 341 units, with nine multi unit claims representing 330 units:
- High and District Court: 9 (including 5 multi unit claims)
 - Weathertight Home Resolution Service (WHRS) 2
 - Weathertight Homes Tribunal (WHT) 9 (including 4 multi units claims)
- (b) The total number of WHRS claims recorded on the Department of Building and Housing (DBH) website relating to properties in Waitakere City as at 4 January 2010 was 183. Four more than the number reported in the November update. The total number of properties affected has increased by 4 from that reported at the end of November to 356. 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

65. To date the total amount paid by Council to Claimants to settle claims, inclusive of contributions by Riskpool, is \$905,000. This includes an amount of \$25,000 which may be paid in respect of the 1/175A Titirangi Road claim (see November 2009 below). There are 4 claims, including one multi unit, with the Council's lawyers which are not covered by RiskPool.

January 2010

66. No claims have settled or been closed during January 2010.

December 2009

67. Two claims settled on 14 December 2009. These relate to 32 Turanga Road, Henderson Valley and 16 Courtneys, Hobsonville. In both cases the Council's RiskPool excess of \$50,000 was consumed in settling the claims.

November 2009

68. The Claimants in respect of 1/175A Titirangi Road accepted the Council's offer of \$25,000 to settle this claim on the 6 October 2009. However, settlement offers are subject to acceptance of the Council's settlement terms, which are contained in an agreement that remains unexecuted. Nevertheless, this claim may be regarded as being closed as the Council learned in early November 2009 that the Claimants have withdrawn their claim with the WHRS. A further claim cannot now be made because the limitation period during which claims must be brought has expired.

69. The Council has also learned that the claim relating to the Christian Mandarin Church at 78 Central Park Drive is to be discontinued. This is because the Claimants have accepted that recent case law has established that a viable building defects claim cannot be made against a building consent authority with respect to a non-residential property. The Council will recover \$7,000 of its legal costs.

October 2009

70. No claims settled during October 2009.

September 2009

71. The claim relating to 33 Chamari Close, Titirangi has been closed by the WHRS due to inaction, and consequently the Council's lawyers have closed their file.

August 2009

72. No claims were settled during August 2009.

July 2009

73. No claims were settled during July 2009.

June 2009

74. No claims were settled during June 2009.

May 2009

75. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

Claims Received

January 2010

76. No claims were received during January 2010.

December 2009

77. Two claims have been filed with the Council's lawyers. They are 16 Beach Road, Te Atatu and 121B Hobsonville Road, West Harbour. The first is with the Weathertight Homes Tribunal, while the latter is with the District Court.

78. Applications for Assessor reports accepted by the Weathertight Homes Resolution Service related to 7A Gill Avenue, Te Atatu Peninsula; 5 Kona Crescent Henderson; 5 Rakich Place Ranui and 8 Hornsby Avenue Henderson.

November 2009

79. The Council's lawyers have opened a file for 40 Danica Esplanade, Te Atatu Peninsula. Both the Council as the building control authority, and Waitakere Properties Ltd as developer, are Respondents to the claim. Waitakere Properties Ltd are covered by the same insurance arrangements as the Council, which means that both the Council and Waitakere Properties may have to contribute an excess of up to \$50,000 each to resolve the claim. This claim is a matter which had previously been notified to RiskPool. There is no longer insurance cover for leaky claims which come in which had not been notified to RiskPool prior to the 1 July 2009. At the moment there is only one such claim in respect of 17 Crown Lynn Place which is a multi unit claim in respect of which the estimated quantum for repairs alone currently stands at \$2,000,000.

80. Applications for Assessor's reports were accepted by the WHRS on 28 and 29 October 2009 in regard to 143A Hobsonville Road, West Harbour and 2/485 Don Buck Road, Massey (after the figures for last month's update were compiled). The Hobsonville Road property is one of 10 units built under a single consent under the control of private certifiers, while the Don Buck Road property is one of 14 free-standing units built under a single consent.

October 2009

81. The Council's lawyers have opened a file for 123A Hobsonville Road, West Harbour after a District Court Statement of Claim was received on 15 October. The property is one of two free-standing units built under a single consent.
82. Applications for Assessor's reports were accepted by the WHRS on 1 October 2009 in respect of 121B Hobsonville Road, West Harbour. The property is one of two free-standing units built under a single consent

September 2009

83. The Council's lawyers have opened a file on 20 Belvedere Court, West Harbour after the claim, which is for \$175,466, moved to the WHT.
84. Notification of acceptance on the 22 September 2009 by the WHRS for the purposes of an assessor's report has been received in respect of 9 Wakarua Avenue, Te Atatu Peninsula. The property is one of two free-standing units built under a single consent

August 2009

85. The High Court claim relating to the multi units at 17 Crown Lynn Place, New Lynn has now been received but relates to only 38 of the units.
86. We have received two WHRS notifications of acceptance for the purposes of an assessor's report since the last update. The first relates to a 16 multi unit claim at Cedarwood, 103 Swanson Road, Henderson accepted for an assessors report on 29 July 2009. The second relates to 201A Titirangi Road, Waitakere, and was accepted by the WHRS for an assessor's report on the 25 August 2009.

July 2009

87. We have received one WHRS notification of acceptance for the purposes of an assessor's report since the last update. It relates to 4 Twin Wharf Road, Herald Island, and was accepted by the WHRS on 20 July 2009.
88. We also understand that a further multi unit court claim in respect of 17 Crown Lynn Place, New Lynn is imminent in that our lawyers have been asked if they will accept service of papers. The property is a 72 unit development, but the precise details are not known yet, and are not included in the above statistics.

June 2009

89. 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.

Report prepared by: David Collins, Contract Solicitor.



6 **DOG CONTROL ACT 1996, SECTION 10A, ANNUAL REPORT FOR YEAR ENDED 30 JUNE 2009**

GLOSSARY

Dog Control Act 1996 (the Act)

EXECUTIVE SUMMARY

A4-A16

The purpose of this report is to seek approval from the Planning and Regulatory Committee to forward the Dog Control Act 1996 (the Act), Section 10A - Annual Report for the year ended 30 June 2009 attached at pages A4 to A16, to the Department of Internal Affairs, and for public notice of the availability of the report to be published in accordance with Section 10A(3) of the Act.

RECOMMENDATIONS

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

1. **Receive** the Dog Control Act 1996, Section 10A, Annual Report for the Year Ended 30 June 2009.
2. **Agree** that the Annual Report for the year ended the 30 June 2009, in relation to the Dog Control Act 1996, Section 10A, be approved and sent to the Department of Internal Affairs within one month following the Planning and Regulatory Committee's meeting on 9 February 2010.
3. **Agree** that a public notice advising that the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2009 has been approved and is available for inspection at Animal Welfare, Libraries and the public counter at Waitakere Central in accordance with Section 10A(3) of the Dog Control Act 1996

BACKGROUND

1. The Act was amended in 2003 to require territorial authorities to report to the Department of Internal Affairs on the administration of its dog control policy and practices.
2. This report provides information on the administration of dog control and its associated activities for the year ended 30 June 2009.

DECISION MAKING

Issues

3. The Annual Report on the administration of Waitakere's Dog Control Policy and dog control practices meets the requirements of Section 10A of the Act.
4. As at 30 June 2009, there were 13,055 registered dogs in Waitakere on the National Dog Database, a decrease of 548 dogs over 12 months.
5. The registration of all dogs is central to good dog control. It is the owners of unregistered dogs who are more likely to trigger a requirement for the services of dog control whether it be a dog not under proper control, a dog attacking livestock, or a dog attacking a person. Random street checks continue to find that up to 15% of dogs in some streets are unknown and therefore unregistered. Enforcement action is followed up against all owners of the unregistered dogs.

STRATEGIC CONTEXT

6. Dog control policy and practices are directly aligned with Council's strategic priority of a Safe City and Council's strategic platform of Strong Communities supporting the health and wellbeing of the City's residents.

CONSULTATION

7. There is no requirement in the Act to consult the community prior to this report being approved. However, the Act requires that a copy of this report be made available to the community within one month of the Planning and Regulatory Committee approving its content.

RESOURCES

8. No resources are required to fulfil the obligations of making this report to the Department of Internal Affairs.

IMPLEMENTATION ISSUES

9. Upon approval of the Dog Control Act 1996, Section 10A - Annual Report for the Year Ended 30 June 2009 report a copy will be forwarded to the Department of Internal Affairs, a public notice advising approval of the report will be actioned and copies of the report made available for inspection at Animal Welfare, Libraries and the public counter.

AUCKLAND COUNCIL TRANSITION ISSUES

10. 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: Neil Wells, Manager: Animal Welfare.



7 TREE CONSERVATION COVENANTS

GLOSSARY

Waitakere Ranges Heritage Area Act 2008	(WRHAA)
The Resource Management (Simplifying and Streamlining) Amendment Act 2009	(the Amendment Act)

EXECUTIVE SUMMARY

The approval of the Planning and Regulatory Committee is sought to develop a Tree Conservation Covenant programme as a non-regulatory method to protect heritage trees in Waitakere.

The Resource Management (Simplifying and Streamlining) Amendment Act 2009 (the Amendment Act) requires blanket tree protection rules to be removed from district plans on or before 1 January 2012. Deletion of these rules will remove protection for many trees within the urban environment. Ongoing protection for the most significant of these trees can be achieved by encouraging and allowing landowners to register Tree Conservation Covenants on heritage trees.

It is proposed that Tree Conservation Covenants will be prepared and managed through the existing Green Network Conservation Covenant Programme whereby Council will cover the costs of preparing the covenant document.

RECOMMENDATIONS

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

1. **Receive** the Tree Conservation Covenants report.
2. **Agree** that Council officers proceed with the preparation and promotion of Tree Conservation Covenants.

BACKGROUND

1. The Government enacted the Amendment Act in 2009. The Amendment Act introduced wide-ranging changes to the Resource Management Act 2001, aimed at improving the efficiency of resource management processes and reducing compliance costs.
2. Among the more high-profile reforms introduced by the Amendment Act were provisions requiring the removal of blanket tree protection rules from district plans. The Amendment Act deferred the commencement of those provisions until 1 January 2012, to provide sufficient time for councils to make any necessary changes to their district plans.
3. At the 10 November 2009 Planning and Regulatory Committee, a report highlighting the options available to respond to the removal of blanket tree protection rules was presented. The Planning and Regulatory Committee agreed that staff commence work on identifying individual trees within the urban environment that should be considered for protection under the District Plan. Once completed, those trees that have been identified as suitable will be listed in the Waitakere District Plan via a Plan Change.
4. The Planning and Regulatory Committee also agreed to seek a joint declaration by councils of the Auckland region to clarify whether areas of vegetation that are mapped in a district plan will continue to be protected by blanket tree protection rules. A joint application to the Environment Court is currently being drafted.

DECISION MAKING

Future District Plan Tree Protection Rules

5. The Amendment Act requires councils to delete blanket tree protection rules from district plans, where those rules apply to an 'urban environment'. Blanket tree protection rules can still be used to protect trees located on reserves and roads, as well as on private land which is not fully serviced by reticulated water and wastewater infrastructure.
6. The implication of this legislative change is that, from 1 January 2012, suburban trees will no longer be protected unless they are one of the limited number of trees specifically listed in the schedule of heritage vegetation or potentially are included in the mapped areas of the Waitakere District Plan if this rule is retained (as noted in paragraph four).
7. As part of the regulatory response to these changes, Council officers will be assessing the value of individual trees that have been identified using the Standard Tree Evaluation Method. During this process, Council officers may conclude that some trees are not significant enough to be listed in the Waitakere District Plan but may still be worthy of protection. If trees are not considered significant then affected landowners should be informed of the non-regulatory mechanisms for tree protection.

Non-Regulatory Options for Responding to Removal of Blanket Tree Protection Rules

8. Two key non-regulatory options in response to the impending deletion of blanket tree protection rules from the District Plan have been assessed.
9. The first option is to undertake an education campaign targeted at Waitakere residents, explaining the Amendment Act changes and implications for private landowners, and encouraging landowners to take action to ensure their heritage trees are protected into the future.
10. The second option is to develop a Tree Conservation Covenant document that provides long term protection for individual trees. This will be a simplified covenant similar to the Heritage Covenant created under the Waitakere Ranges Heritage Area Act 2008 (WRHAA).
11. It is proposed to undertake both options to provide a range of options to landowners.

Education

12. Various citywide environmental educational programmes operate that could form an important component of promoting the options available for voluntary tree protection. They include the Green Network Sustainable Neighbourhoods programme and the Ranges Neighbourhood Restoration Initiative. To date, the emphasis of these programmes has been on weed control and restoration. Outcomes of these programmes include the improvement of the long term local environmental management and resilience of the programme areas, of which tree protection is a fundamental component. Local Area Plans will also provide an opportunity to educate residents on the range of available tree protection measures as well as discussing the Tree Conservation Covenants.
13. The removal of vegetation up to 1 January 2012 will continue to require a resource consent dependent on the provisions of the Waitakere District Plan. As part of the consenting process, Council officers should inform the applicants of changes to the Amendment Act and the voluntary options available to them to protect and manage trees on their property. This should be added as an advice note on tree consents.

Tree Conservation Covenants

14. Council staff have developed a Tree Conservation Covenant to be used by private landowners to allow protection of heritage trees within their properties. Tree Conservation Covenants will be managed through the Green Network Conservation Covenant Programme.
15. It is proposed that a more concise version of the Heritage Covenant can be developed, to protect individual trees or groups of trees on a property. These will differ from Heritage Covenants which aim to manage larger bush remnants and/or specific heritage features (as identified in the WRHAA). Council staff can visit the site and draw up a basic site plan, identifying the heritage trees for protection and produce a plan to be attached to the covenant. This will allow a Tree Conservation Covenant to be registered against the title without the need to survey the land, keeping costs and timing of registration to a minimum. It is expected that there will be little change to existing staff workloads as the majority of trees that are recommended as suitable for Tree Conservation Covenants will have been identified and assessed by Council staff employed to manage the regulatory response (as outlined in paragraph seven).

16. It is not proposed to prepare Covenant management plans for Tree Conservation Covenants as all tree protection guidance can be covered in covenant clauses. This will also reduce time and costs of preparing and registering the covenant.
17. It is difficult to predict the public response to a Tree Conservation Covenant programme. However, discussions with Council officers suggest a clearer understanding of resourcing requirements will be known once the public nominations for identifying individual trees for protection has closed in mid-February 2010. It is expected that the response will be similar to that of the Heritage Covenant programme for which all resourcing requirements have been met through current budgets and staff time.

STRATEGIC CONTEXT

18. The Resource Management Act 1991 recognises the importance of maintaining and enhancing amenity values and protecting significant vegetation. Trees make a significant contribution to the character, amenity, and ecology of the urban environment.
19. The protection of heritage trees is consistent with the objectives of the WRHAA in particular 8(a), (g), (h), and (l). The use of covenants to achieve protection of heritage features in the Waitakere Ranges Heritage Area is enabled under section 23 of the WRHAA.
20. Protection of the natural environment is a key element of the Council's strategic direction. In particular, the Green Network community outcome seeks to ensure that people live in harmony with the natural environment and exercise stewardship over it.
21. The protection of heritage trees will also support the goals of the Council's Environment Strategy, in particular the protection and enhancement of the Green Network and encouraging community stewardship of the Green Network.
22. Tree Conservation Covenants will support a number of objectives of the Council's Parks and Open Space Strategic Plan including the protection and enhancement of a resilient Waitakere ecosystem. In particular the strategic plan encourages policies that support the protection of the environment on private property and those that enhance highly valued and sensitive natural areas and landscapes.

CONSULTATION

23. Consultation has been undertaken between Parks Planning and Strategic Planning in order to develop options for non-regulatory tree protection. Consultation has also been undertaken with Consent Services regarding options for tree advice notes.
24. No consultation has been undertaken with external agencies or with Maori, including Te Taumata Runanga / iwi. This would be undertaken as part of the process in developing and promoting the covenant

RESOURCES

25. It is expected that the uptake for Tree Conservation Covenants will be greatest in the Waitakere Ranges Heritage Area where a number of environmental and planning programmes are currently underway. The work required to promote tree protection and develop Tree Conservation Covenants in the Waitakere Ranges Heritage Area can be met within current budgets of the Waitakere Ranges Project. \$10,000 of this budget is available for the promotion and development of Tree Conservation Covenants. Any applications for Tree Conservation Covenants that fall outside the Waitakere Ranges Heritage Area will be funded through the Green Network Covenant Programme.

26. As Tree Conservation Covenants do not require land surveying or management plans the costs of preparing Tree Conservation Covenant documents can be met through the existing Green Network Conservation Covenant programme; however the total number of covenants that can be processed and registered in a given year will be restricted by current staff resources and budget parameters. If the response to the project exceeds current budgets, additional funds may need to be made available from the Waitakere Ranges Project budget. If there is a significant uptake of the programme and current budgets are not sufficient, additional sources of funding will be sought.

IMPLEMENTATION ISSUES

27. Should Tree Conservation Covenants be well received by landowners there may be an inundation of requests to Council. The ability of Council officers to respond to those enquiries will depend on Council officer's resources at the time and funding.

AUCKLAND COUNCIL TRANSITION ISSUES

28. 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: Danielle Hancock, Parks Ecology and Policy Coordinator and Jane Andrews, Strategic Advisor: Sustainable Management.



PART C - DISTRICT PLAN / STRUCTURE PLANS

8 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

A17-A19

A Council officer will provide a verbal update to the Planning and Regulatory Committee on progress in dealing with the appeals on the Proposed District Plan as attached at pages A17 to A19.

An up-to-the-minute progress report will be brought to each meeting outlining the status of the appeals.

RECOMMENDATION

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

Receive the District Plan Appeals Update Table.

Report prepared by: Eryn Shields, Principal Planner.



9 PROPOSED PLAN CHANGE 28: HERITAGE

GLOSSARY

New Zealand Historic Places Trust	(NZHPT)
Auckland Regional Council	(ARC)
Auckland Regional Policy Statement	(ARPS)
Proposed Plan Change 28	(PPC28)
Waitakere District Plan	(WDP)
Resource Management Act 1991	(the Act)

EXECUTIVE SUMMARY

The purpose of this report is to seek approval from the Planning and Regulatory Committee to consider the submissions, and further submissions, relating to Proposed Plan Change 28 (PPC28).

PPC28 seeks to amend the Heritage Appendix in the Citywide Rules section of the Waitakere District Plan (WDP), to add four additional heritage buildings to the list. PPC28 has been prepared in response to specific requests from one landowner and a local historian from the West Auckland Historical Society.

RECOMMENDATIONS

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

1. **Receive** the Proposed Plan Change 28: Heritage report.
2. **Agree** that having considered Proposed Plan Change 28: Heritage against the relevant statutory criteria, and having regard to the submissions received, that subject to any contrary or additional evidence submitted at the hearing, Proposed Plan Change 28: Heritage be approved as attached at pages A20 to A23.
3. **Agree** that the exteriors of the following buildings for Proposed Plan Change 28; Heritage be listed in the Heritage Appendix of the Waitakere District Plan:
 - The Donner house and studio at 50 Kohu Road, Titirangi;
 - The Swanson Railway Station building (excluding the platform, and outdoor seating); and
 - The dwelling at 170 Hepburn Road, Glendene.
4. **Decline** to list the interiors of buildings or surroundings for Proposed Plan Change 28: Heritage in the Waitakere District Plan.

BACKGROUND

1. The Planning and Regulatory Committee approved PPC28 for notification in 2008. PPC28 was publicly notified on 19 June 2009 with five submissions being received. A summary of submissions was notified with further submissions closing on 28 August 2009. A total of three further submissions were received. A fully copy of the submissions are attached at pages A24 to A41.
2. The issues raised in submissions related to the following matters:
 - Various submissions opposing or supporting the listing of the Donner House and studio(s) at 50 Kohu Road;
 - Submissions seeking to list the interiors of buildings;
 - Submissions supporting PPC28;

- A submission seeking clarification on the extent of heritage listing for the Swanson Railway Station; and
 - A submission requesting that another site should have a heritage listing.
3. The submissions were evenly divided between support and opposition to PPC28. The New Zealand Historic Places Trust (NZHPT) and the Auckland Regional Council (ARC) supported the PPC28 but sought protection of interiors of buildings and their entire sites.

DECISION MAKING

Issues

Land affected by the Proposed Plan Change

4. PPC28 applies to specific sites around the City as follows:
- Brick Villa, 170B Hepburn Road, Glendene, legally described as Lot 1 DP 89599, Category II;
 - Donner House (Category I) and studio (Category II) at 50 Kohu Road, Titirangi, legally described as Lot 46 DP 19360; and
 - Swanson Railway Station building (Category II) at 760 Swanson Road, legally described as Lot 1 DP 188043.
5. There are no other sites that are proposed to be listed in the PPC28.

Waitakere District Plan

6. The WDP provides for protection of heritage buildings, trees and archaeological sites/waahi tapu. The WDP provides protection for the specific item listed in the Plan and does not limit the ability of the landowner to subdivide a property or otherwise develop it. This is an important consideration, as many buildings in the City that are listed are located in urban areas that are earmarked for future growth. The Waitakere response is different to some other councils in the Auckland region where there are heritage character areas that have specific density controls. Broader protection of heritage buildings and sites is possible in suburbs of Auckland City and parts of North Shore City because entire precincts were built at the same time and there is a defined neighbourhood character.
7. The WDP does not generally list the interiors of heritage buildings because the majority of them are residential dwellings where flexibility is desirable. There are a few notable exceptions such as Lopdell House, the Sextons House at Waikumete Cemetery and two of the water filter stations. The distinction that can be drawn is that those buildings where the interiors are protected are in public ownership (Council or Watercare Services).
8. Waitakere's heritage has been mostly rural (orchards, vineyards, gum-diggers camps, forestry and farming, brickworks) or bach type settlement in coastal villages. Therefore, the buildings tend to be spread out or nestled amongst later post-war suburbs. A general protection of entire sites is not considered appropriate as this would have the effect of limiting development potential of sites with an historic building on it. Therefore, it would be a financial disadvantage to a landowner to own such a site. The Council has also established non-regulatory support for landowners through its heritage fund that complements the regulatory controls under the WDP.

Auckland Regional Policy Statement

9. The Auckland Regional Policy Statement (ARPS) seeks to maintain a quality environment for the Auckland region and at the same time, maintain and enhance opportunities for the region's future growth. The ARPS comprises four parts: Regional Overview and Strategic Direction; Resource Management Matters of Significance to Iwi; Transport and Energy; and Environmental Protection. Each part identifies issues, objectives, policies, methods, reasons and the environmental results anticipated as a result of implementation of the ARPS. It is considered that PPC28 will give effect to the ARPS by protecting historic heritage.

Statutory Requirements and Planning Framework – Resource Management Act 1991

10. The purpose of the Resource Management Act 1991 (the Act) as outlined in Part II is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Councils' functions are outlined in section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.
11. The Act provides a statutory framework for the management of natural and physical resources. The purpose of the Act is *'to promote the sustainable management of natural and physical resources'*.
12. Section 5(2) defines the purpose of the Act, sustainable management as:
- "managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*
- i. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - ii. Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
 - iii. Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*
13. Section 6 of the Act outlines matters of national importance that must be recognised and provided for:

"6. Matters of National Importance-

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*

- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
 - (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
 - (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, site, waahi tapu and other taonga:*
 - (f) *The protection of historic heritage from inappropriate subdivision, use and development.”*
14. Section 7 of the Act sets out other matters that must be given particular regard including:
- “(a) *Kaitiakitanga;*
 - (b) *The efficient use and development of natural and physical resources;*
 - (c) *The maintenance and enhancement of amenity values;*
 - (d) *Intrinsic values of ecosystems;*
 - (e) *Maintenance and enhancement of the quality of the environment;...”*
15. Section 8 of the Act requires that managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.
16. Part IV of the Act relates to functions, powers and duties of Central and Local Government.
17. Section 31 of the Act sets out functions of territorial local authorities for giving effect to the Act within its boundaries. These functions include the integrated management of the natural and physical resources of the district and the control of the effects of the use or development of land.
18. Section 32 of the Act imposes a statutory responsibility to evaluate the options available to achieve the Council’s particular objectives or policies.
19. Part V of the Act relates to Standards, Policy Statements and Plans. Section 73 of the Act provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.
20. Section 74 of the Act states the matters Council must have regard to when changing its District Plan and includes its functions under the Act and any ARPS. Under section 75 a District Plan must not be inconsistent with the ARPS.
21. Section 76 of the Act requires that when making a rule that Council must have regard to the actual or potential effect on the environment including adverse effects of that rule.
22. Section 35 of the Act requires that a local authority monitor the suitability and effectiveness of its plan in managing the City’s environment. Council therefore has a duty to ensure that the WDP remains relevant in order to achieve integrated management of its natural and physical resources.

Current Waitakere District Plan Provisions – Policies and Rules

23. The WDP provides for protection of heritage resources, archaeological sites/waahi tapu, buildings and trees. The WDP, in Part 3: The City’s Environment identifies a range of places, objects, buildings and other structures, which the City’s residents value to the degree that they would like to see them passed on to future generations.

24. Part 5: Objectives, Policies and Methods specifically examines effects on heritage. Objective 12 aims:

“To manage the effects of activities on the City’s valued heritage in a way that:

- *Maintains its variety and complexity;*
- *Recognises and protects its national, regional and local significance;*
- *Protects the links between particular heritage objects and the surrounding context;*
- *Integrates that heritage with people’s everyday lives; where possible and appropriate.”*

25. The remaining policies relate to vegetation, demolition or partial demolition of buildings, additions and alterations to buildings, activities on sites containing heritage items and adjacent site, archaeological sites, earthworks and subdivision. The objectives and policies are supported by rules relating to heritage items in the Citywide Rules Heritage Appendix. It should be noted that this Proposed Plan Change does not alter or change any objectives, policies or rules relating to heritage management, it only aims to add four items to the Heritage Appendix. However, the listing of those items means that the existing rules will apply to items that were not previously recognised as being of heritage value.

Section 32 Considerations

26. Section 32 of the Act requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted.
27. Council’s obligations under section 32(3) are divided into five parts that comprise the following:
- Examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
 - Examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
 - Taking into account the benefits and costs of the policies, rules or other methods;
 - Taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
 - Summarising the evaluation and providing reasons for that evaluation.
28. The section 32 analysis completed prior to notification identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act. That section 32 analysis has been updated in this report where recommendations are made in response to submissions that would amend the PPC28.

Analysis of Submissions

A24-A41

29. A total of five submissions and three further submissions were received in respect of the PPC28. A full copy of the submissions is attached at pages A24 to A41. A summary of the submissions are as follows:

Submissions from H Faesenkloet (submission 28/1) and Eanna Doyle (submission 28/2), further submissions P Jenkin (28/1/1 and 28/2/2)

30. The submitters oppose listing the Donner House and studio at 50 Kohu Road in the Heritage Appendix of the WDP on the basis that:

- the experimental studios have no historic value;
 - the house is in poor condition and has been altered;
 - the management of the house by the owner has made it an issue of ridicule;
 - the house is similar to a few thousand other houses of that age in Waitakere ;
and
 - the studios/sheds are in a dangerous condition and have no historic or other value.
31. The further submissions by the owner of the house oppose the submissions and support the heritage listing.

Discussion

32. The Donner House and studios at 50 Kohu Road, Titirangi have been assessed by a heritage architect. The architect was a noted modernist architect in mid-twentieth century Auckland and the designs are well regarded. The architect left his mark on Auckland's landscape with a range of designs such as the Savage Memorial, the Ellen Melville Hall, the Civic Administration Building in Auckland City and the Parnell Baths re-development.
33. The Council has inspected one of the two studios on site and has issued a notice pursuant to sections 124 and 125 of the Building Act 2004 deeming it to be a dangerous building. This studio is not the one that is subject to a heritage listing. The Council's heritage assessment indicates that the house and the remaining studio should be protected through a heritage listing. The studio and house are highly regarded amongst architects. The Donner house is carefully detailed to provide subtle visual effects and is a distinctive and very good example of a mid-century modern house. Like other notable modern houses, it is experimental in nature. The house and studio meet the WDP criteria for listing.

It is recommended that:

34. The submissions of H Faesenkloet and Eanna Doyle be **rejected**.
35. The further submissions of P Jenkin be **accepted** to the extent that the exteriors only of the house and studio are listed.

Submissions from ARC (submission 28/3/3), (NZHPT) (submission 23/5/2 and 28/5/3), further submissions from P Jenkins

36. These submitters and further submitters support the listing of the Donner House and studio but request that Council should also list the second studio and protect the interiors of the buildings. These were supported by P Jenkins, although subsequently withdrawn by correspondence.

Discussion

37. The WDP does not generally seek to protect the interiors of residential dwellings because landowners require the flexibility to be able to renovate houses for changing trends in interior decorating, or changes in family circumstances without the requirement to apply for resource consents. Applications for resource consents require scale drawings detailing the proposed modifications, building materials to be used and other matters. It is considered that residential dwellings in private ownership should not be subjected to this level of assessment by Council. The main public benefit to listing buildings is that they continue to contribute to the amenity of the area and future changes are in keeping with the exterior design. However, the public would only ever generally view a building in private ownership from the exterior because a heritage listing does not imply public access.

38. Similarly, the Council does not list entire sites/surrounds with heritage buildings because landowners may wish to subdivide or have another use on the land. A heritage listing over the entire land would become an economic impediment and may potentially lead to landowners resisting listing rather than the preferred method of protecting the heritage feature itself.
39. The second studio has not been listed at 50 Kohu Road because it is known to be a dangerous building and Council cannot issue consents to repair it. However, the other studio is in good condition and clearly has heritage value and significance.

It is recommended that:

40. The submissions of ARC (submission 28/3) and NZHPT (submission 28/5) and the further submission of P Jenkins **be rejected** in so far as the interiors and entire sites of the nominated heritage items are included in the Heritage Appendix.

Submission from NZHPT (submission 28/5/1) and ARC (submission 28/3/2)

41. The submitters seek that the property at 172 Hepburn Road should be added to the Heritage Appendix.

Discussion

42. When the Planning and Regulatory Committee considered a report on PPC28, it recommended that Council officers should consult with landowners to obtain their approval prior to publicly notifying PPC28. Council staff contacted Delegats Wines and explained the proposed listing and its implications. Delegats Wines advised Council officers that whilst they had undertaken a restoration of the villa, they did not wish to preclude future development on the site and did not support a heritage listing of the building. On the basis of that advice from the landowner, Council did not proceed with listing the building.
43. It is considered that it would be inappropriate at this stage to list the building as a result of the submissions from ARC and NZHPT as the landowner would be unable to challenge the listing through the Environment Court or be heard at this hearing. The Council must operate in accordance with the principles of natural justice enabling a landowner to be heard in relation to a matter concerning their land.

It is recommended that:

44. The submissions of the ARC (28/3/2) and NZHPT (28/5/1) **be rejected**.

Submission from ONTRACK trading as Kiwirail (submission 28/4)

45. The submitter supports the proposal to register the Swanson Station as a Category II building but seeks clarification on the extent of the external area to be listed. The submitter seeks the following outcomes:
- That Council specifically schedules the exterior of the station building and canopy only. The station platform and outdoor seating should be excluded; and
 - That Council accurately defines the extent of the historic site.
46. The submitter seeks confirmation that PPC28 will not impact on its ability to operate, access, maintain and renew the station platform at Swanson station.

Discussion

47. The heritage listing is intended to only apply to the exterior of the building and canopy. It is suggested that wording can be added to the description to clarify that matter. The heritage assessment clarifies that the building, whilst developed as a part of the Auckland rail line, was originally built at Avondale. Its history in Swanson is relatively recent. The station platform and any respective seating is not listed. The platform has been altered over time with re-surfacing occurring as part of ongoing maintenance. Any street furniture is non-original and therefore should not be included. The heritage listing does not interfere with the designation for rail purposes. The designation acts as a form of “spot zoning” that overrides other District Plan matters.

It is recommended that:

48. The submission from Kiwirail (28/4) should **be accepted** and the description in the Heritage Appendix should be amended to state:
49. The Swanson railway Station was relocated from Avondale. The exterior of the building is listed excluding the seats and surrounding platform. The original design was as a Class 4 station (designed by Julius Vogel). Significance attributed to historical and architectural values.

Submission of the NZHPT relating to Swanson Railway Station (23/5/3)

50. NZHPT has requested that not only the station but the site surrounds should have a heritage listing.

Discussion

51. NZHPT plays a significant role in heritage advocacy, provides authorities to alter historic sites and manages a portfolio of heritage buildings and sites across the country. Those sites that are owned and administered by NZHPT are generally open to the public and the interiors and entire sites are offered protection. NZHPT also has a schedule of buildings that it lists throughout the country, however, those listings do not carry any statutory weight. ONTRACK trading as Kiwirail has a designation that enables it to operate its business efficiently and it acts as a “spot zoning” for rail purposes. It is considered that a heritage listing over the station surrounds would create confusion as to the extent of that listing and the range of activities that could occur in that area without resource consent. It is considered that the heritage listing should only apply to the building and specifically exclude the platform, seating and surrounds.

It is recommended that:

52. The submission of NZHPT **be accepted in part** in so far as the station is listed but excluding surrounds.

Submissions of NZHPT (25/5/3) and ARC (28/3/4) relating to listing the interior of the brick villa at 170B Hepburn Road

53. Both submitters request that Council should list the interior of the brick villa at 170B Hepburn Road.

Discussion

54. The interior of 170B Hepburn Road has not been scheduled as this is consistent with the rest of the Waitakere District Plan. It is considered too restrictive on private landowners to list the interiors of dwellings. The only buildings with interiors that are protected are in public ownership.

It is recommended that:

55. The submission of NZHPT and the ARC be **rejected**.

Consideration of Community Views

56. The community has been consulted through the public notification of PPC28 culminating in this hearing report to consider submissions.

Preferred Option

57. The preferred option is to approve PPC28 with minor amendments included in the Table of Changes.

STRATEGIC CONTEXT

58. Historic heritage is a matter of national importance under section 6(f) of the Act. ARC and Council have specific duties and functions to protect historic heritage in accordance with the Act. NZHPT also has duties to protect heritage through the provisions of the Historic Places Act 1993.

CONSULTATION

59. Consultation has been with the Resource Management and Planning department of the Council.

RESOURCES

60. There are no resources required other than staff time.

IMPLEMENTATION ISSUES

61. There are no issues involved in implementing the recommendation in this report

AUCKLAND COUNCIL TRANSITION ISSUES

62. 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: Alina Wimmer, Principal Advisor: Heritage.



10 **WAITAKERE DISTRICT PLAN DESIGNATION: CLARK STREET LOW LEVEL BRIDGE, NEW LYNN**

GLOSSARY

Notice of Requirement (NOR)
Clark Street Low Level Bridge New Lynn Designation (the designation)

EXECUTIVE SUMMARY

The purpose of this report is to seek confirmation from the Planning and Regulatory Committee of the Clark Street Low Level Bridge New Lynn Designation (the designation).

A42-A62

The Notice of Requirement (NOR) for the designation was considered by an independent commissioner at the hearing held on 15 December 2009, who has recommended in a subsequent report, attached at pages A42 to A62, that the Council confirm the designation. As a result of matters that arose during the hearing, the commissioner's recommendation includes several new/amended conditions.

Confirmation of this designation by the Planning and Regulatory Committee will enable the designation to be included in the Waitakere District Plan.

RECOMMENDATIONS

It is recommended that Planning and Regulatory Committee resolve to:

1. **Receive** the Waitakere District Plan Designation: Clark Street Low Level Bridge, New Lynn report.
2. **Agree** that pursuant to section 172 of the Resource Management Act 1991, the Council, in its role as the requiring authority, accept the commissioner's recommendation that the designation of the land for the Clark Street Low Level Bridge, New Lynn be confirmed with the land identified as being:
 - Todd Triangle : Pt Allot 256 PSH OF Waikomiti Gazette 1965 p625
 - Lot 15 DP 42203 NA137B/298
 - Lot 16 DP 42203 NA 137B/298
 - Lot 17 DP 42203 NA137B/298
 - Lot 3 DP 58386 NA13D/869
 - Lot 2 DP 161309 NA978A/66
 - Lot 1 DP 161309NA97A/65
 - Lot 1 DP 209280NA137B/298
 - Lot 2 DP 209280 NA137B/299
 - Lot 1 DP 199076NA127D/557
 - New Zealand Rail Corporation North Auckland Line
 - Lot 1 DP164120 NZ98D831
 - Lot 1 DP115005
 - Great North Road, Legal Road between street numbers 3075-3119, and 3094-8108
 - Legal Road of all of Todd Avenue
 - Legal road of Totara Avenue between street nos 1-29 inclusive.
3. **Note** that the implementation of the works related to the Waitakere District Plan Designation: Clark Street Low Level Bridge will not commence until such time as the related resource consents and permission/s from ONTRACK has been obtained.

BACKGROUND

1. The NOR for the designation was publicly notified on Friday, 2 October 2009. It was considered that the site to which the NOR applies is the best location for the new alignment and extension of Clark Street as a low level bridge. This is particularly so given the proposed commercial and residential intensification of the town centre through Plan Change 17 and the need to better integrate the New Lynn town centre with transport options. The realignment of Clark Street to the edge of the commercial area of the town centre will allow for the desired intensification and integration to occur, with enhanced functioning of the roading, bus and pedestrian network.

DECISION MAKING

Issues

New/Amended Conditions

2. As a result of the hearing process, a minor modification has been recommended by the independent commissioner to general condition (1) to ensure the correct wall treatments and screen trees are installed.
3. A new condition (15) has been included relating to the trees that are proposed to screen the bridge. This condition recognises that future opportunities may arise to build up to the face of the Clark St Low Level Bridge. As the new buildings will perform the same screening function as the trees, condition (15) will allow for the removal of the screen trees.
4. The land is identified as that which is legally described as:
 - Todd Triangle : Pt Allot 256 PSH OF Waikomiti Gazette 1965 p625
 - Lot 15 DP 42203 NA137B/298
 - Lot 16 DP 42203 NA 137B/298
 - Lot 17 DP 42203 NA137B/298
 - Lot 3 DP 58386 NA13D/869
 - Lot 2 DP 161309 NA978A/66
 - Lot 1 DP 161309NA97A/65
 - Lot 1 DP 209280NA137B/298
 - Lot 2 DP 209280 NA137B/299
 - Lot 1 DP 199076NA127D/557
 - New Zealand Rail Corporation North Auckland Line
 - Lot 1 DP164120 NZ98D831
 - Lot 1 DP115005
 - Great North Road, Legal Road between street numbers 3075-3119, and 3094-8108
 - Legal Road of all of Todd Avenue
 - Legal road of Totara Avenue between street nos 1-29 inclusive.
5. The preferred option for the designation, as notified in the NOR, was the option that satisfactorily achieved the objectives of the requiring authority (Waitakere City Council) being; the protection of strategic road links between west Auckland and the rest of the Auckland region, support of the New Lynn Transit Orientated Development within the New Lynn town centre and accommodating the future growth of New Lynn.

STRATEGIC CONTEXT

6. The establishment, operation and maintenance of the Clark Street Low Level Bridge and associated works, subject to the recommended conditions, is consistent with the Council's Strategic direction as set out in Plan Change 17 and the Draft Growth Management Strategy, and the Long Term Council Community Plan 2009 - 2019, in particular contributing towards the Urban and Rural Villages, and Integrated Transport and Communication strategies.

CONSULTATION

7. An extensive consultation process was undertaken by the Council during the development process for the NOR and this was discussed as part of the application. The NOR was publicly notified attracting nine submissions. One submitter (Mr Berryman) appeared at the hearing. Another submitter (The Historic Places Trust) advised the hearing, via faxed letter, given the recommendations of the planner's report (which are contained within the independent commissioner's recommendations) that they would withdraw their objection to the NOR.

RESOURCES

8. The inclusion of the designation into the Waitakere District Plan will be achieved through current staff resources, which have been included in existing budgets.

IMPLEMENTATION ISSUES

9. There are no issues including the notation of the designation into the Waitakere District Plan. However as noted in the recommendations, various resource consents related to access issues (between Ambrico Place and housing units currently using Rankin Ave as an access point) and permissions from ONTRACK, will have to be in place before the project can be physically implemented.

AUCKLAND COUNCIL TRANSITION ISSUES

10. 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: Carolyn McAlley, Senior Planner, Policy Implementation.



PART D - ENVIRONMENTAL MANAGEMENT

11 UPDATE ON GENETIC ENGINEERING POLL UNDERTAKEN BY NORTHLAND AND AUCKLAND COUNCILS

GLOSSARY

Genetically Modified Organisms	(GMOs)
Hazardous Substance and New Organisms Act	(HSNO)
Inter-council Working Party on GMO Risk Evaluation and Management Options	(the Working Party)
Local Government Act 2002	(LGA)
Resource Management Act 1991	(RMA)
Environmental Risk Management Authority	(ERMA)

EXECUTIVE SUMMARY

The purpose of the report is to present to the Planning and Regulatory Committee the results from the recent Colmar Brunton Poll of almost 2,500 people in Auckland and Northland about Genetically Modified Organisms (GMOs). The results vary from council area to council area, however, just over half of respondents support some type of council intervention to regulate the use of GMOs in field trials and via commercial release. It is recommended that the Committee adopt the recommendations made by the Inter-council Working Party on GMO Risk Evaluation and Management Options (the Working Party). Council is a member of this Working Party.

RECOMMENDATIONS

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

1. **Receive** the Update On Genetic Engineering Poll Undertaken by Northland and Auckland Councils report.
2. **Agree** that the recommendations from the 17 November 2009 meeting of the Inter-Council Working Party on Genetically Modified Organisms Risk Evaluation and Management Options be adopted by Council.
3. **Agree** that the Council will collaborate with other councils to approach the Government to convey the local concerns over genetically modified organisms.
4. **Direct** the Council's elected representative on the Inter-Council Working Party on Genetically Modified Organisms Risk Evaluation and Management Options to convey the Committee's thanks to the Working Party for its progress on this matter.

BACKGROUND

1. At a special meeting of Council, held on 14 November 2001, a presentation on genetic engineering was received from Dr Peter Maddison. A second presentation, accompanying a report from His Worship the Mayor on the principle of Waitakere being GE-free, was received from Ms Lisa Er. Ms Er presented a vision for an organics industry cluster in Waitakere City. At this Special Meeting, the Council resolved:

“That Waitakere City Council declares Waitakere City GE-free in field and food.”

2. The City has confined its reservations regarding genetic engineering to the use of genetically modified products in food and the use of genetically modified plants and animals in the environment (agriculture and horticulture). GE-Free for Waitakere does not mean that the City opposes the use of genetic modification for medical purposes and for research confined to the laboratory situation. The Council also resolved at the same meeting:

“That there be further investigation to identify the most effective ways of advancing Council’s aspirations for Waitakere City to be “GE-free”, without compromising medical research or currently permitted activities but discouraging in every way possible any form of field trials.”

2636/2001

3. Subsequently at the meeting of Council held on 19 December 2001, it was resolved:

“2. That a survey (on community opinion on the GE issue) not be undertaken at this point in time.

3. That Council work with local businesses to develop an organics cluster and that this work be reflected in the Economic Development Strategy.”

2954/2001

4. In 2003, local government sought changes to the Hazardous Substance and New Organisms Act (HSNO). These changes would allow it to meet its responsibilities under other statutes, such as the Local Government Act 2002 (LGA) and the Resource Management Act 1991 (RMA), when dealing with GMOs. At the same time, a range of community groups submitted seeking various additional safeguards and protections.
5. The role local government should take in the regulation of GMOs was a focal point of submissions to the New Organisms and Other Matters Bill. Local Government New Zealand and a number of local authorities presented submissions to Parliament that, at very least, there was a lack of clarity as to the roles and responsibilities of local government with respect to GMO regulation. In particular, it was argued that the responsibilities placed on local government were not matched by provisions that would allow local government to influence GMO activities.
6. Parliament’s Select Committee reviewed these submissions and determined that no material change was required to the Bill. The effect of the subsequent changes to HSNO was to assess the release of GMOs while leaving local government with no more influence on decisions by the national regulator, the Environmental Risk Management Authority, than any other submitter or individual with respect to a particular application (beyond assured notification of the proposed activity).
7. In April 2004, Mr Simon Terry, of Simon Terry Associates, gave a presentation to the Environmental Management Committee regarding options available for community management of genetically modified organisms under the RMA. This presentation was based on a report commissioned by local councils of the Northland region. The Committee resolved:

“That Council hold a workshop to consider options for giving effect to the Council policy on GE-free food and field with a view to:

- a) *Setting the direction and scope of the approach Council wishes to take;*
- b) *Establishing processes that are robust and meet statutory requirements including the Resource Management Act, the Local Government Act 2002 and the Hazardous Substances and New Organisms Act;*
- c) *Learning from the experience of the councils in the Northland region;*
- d) *Determining when Council should seek a range of advice on potential options and strategies for community management of genetically modified organisms/events/risks.”*

605/2004

8. A workshop was held on 17 May 2004 with Council officers, Elected Members and representatives from the Environmental Risk Management Authority (ERMA). The Authority confirmed that the Council is registered as an interested party and would be advised, and comments sought, on any GMO release applications of interest to Waitakere. On consideration of the outcomes from the workshop, the Council at its meeting held on, 25 August 2004 resolved:

“That Council agrees to contribute \$8,350 to jointly fund with the northern councils a Risk Evaluation and Options Report as outlined in the proposal attached at pages A34 to A35 to the Agenda report of the Environmental Management Committee meeting held on 10 August 2004.”

1567/2004

9. Local authorities in the Northland and Auckland region have been subject to significant and continuous lobbying since the moratorium on general releases of GMOs to the environment was lifted in 2003. This has resulted in submissions to Annual Plans, Long Term Council Community Plans, and District Plans, together with petitions to councils, lobbying of councillors, and on-going communication with Council officers.
10. Local authorities in the Northland/Auckland region have responded to these community concerns by forming the Working Party. The Working Party currently comprises: Far North District Council, Kaipara District Council, Rodney District Council, Whangarei District Council, Waitakere City Council, Northland Regional Council and Auckland Regional Council. Auckland City Council and North Shore City Council are presently observers on the Working Party.
11. The Working Party is charged with evaluating risks to local bodies and their communities in the Northland/Auckland region from outdoor uses of genetic modification, together with response options to those risks, including regulation of GMO land uses under the RMA. The Working Party is only concerned with outdoor uses of GMOs, including field trials and releases to the environment.
12. All councils on the Working Party (except for the Northland Regional Council) agreed to jointly commission and finance a telephone survey. Tenders were called and received from three polling companies. Colmar Brunton was chosen as the preferred provider. After extensive consultation between members of the Technical Group of the Working Party (council officers) and Colmar Brunton, a survey questionnaire was developed and agreed upon. Fieldwork was undertaken between 21 July and 18 August 2009. The sample size was 400 for each participating local council and 500 for the Auckland Regional Council, giving a total of around 2,500 responses. The results have a maximum error of 4.9% at the 95% confidence level.

DECISION MAKING

A63-A143

13. The results of the telephone poll were finalised with Colmar Brunton in November 2009. They were subsequently discussed at a meeting of the Working Party on 17 November 2009. Each of the councils participating in the survey has received a report of results for its jurisdiction, and the results were also aggregated to regional levels, i.e. for the Auckland region and for the Northland region. The Colmar Brunton report for Waitakere is attached at pages A63 to A79, the Auckland region report at pages A80 to A120, and Northland region report at pages A121 to A143. Reports for other councils on the Working Party are available on request.

Issues

14. The main points arising from the results for the Council are as follows.

Waitakere Results

	Actual Poll Question	Waitakere City Response	Northland Councils Aggregated Response	Auckland Councils Aggregated Response
1.	Should or Should Not Councils set rules for the use of GM Plants and Animals in the City?	Yes – 47% No - 36% No Preference /Don't know – 18%	Yes – 46% No - 37% No Preference /Don't know – 16%	Yes – 40% No - 40% No Preference /Don't know – 19%
2.	For those who want to set rules, what level of rules should be set?	All prohibited – 46% User legally responsible for harm – 34% Food production prohibited, but other uses allowed – 19%	All prohibited – 55% User legally responsible for harm – 26% Food production prohibited, but other uses allowed – 18%	All prohibited – 39% User legally responsible for harm – 32% Food production prohibited, but other uses allowed – 27%
3.	Those who do not want rules or have no preference, should Council lobby government regarding regulation of GMO Plants and Animals?	Communities (via Council) ability to reject use of GM Yes - 54% No – 29% Lobby so that users of GM Plants and animals are legally responsible for any harm Yes – 60%	Communities (via Council) ability to reject use of GM Yes - 54% No – 36% Lobby so that users of GM Plants and animals are legally responsible for any harm Yes – 59%	Communities (via Council) ability to reject use of GM Yes - 49% No – 40% Lobby so that users of GM Plants and animals are legally responsible for any harm Yes – 62%

		No – 23%	No – 29%	No – 24%
4.	Residents want Council to have a role in regulating the use of GM Plants and Animals?	Yes – 75%	Yes – 74%	Yes – 68%
5.	Believe Council should have right to prohibit GM Plants and Animals?	Yes – 50%	Yes – 53%	Yes – 44%
6.	Favour regulation to make users of GM Plants and Animals legally responsibly for environmental / economic harm?	Yes – 69%	Yes – 67%	Yes – 64%

Options Identified

15. The main points arising from the results for Waitakere are:
 - (a) The poll indicates (in Line 4 above) that around 75% of residents favour the Council having a role in regulating GMOs, either directly through setting rules or when ERMA is processing GMO applications.
 - (b) Of those who support Council having a role in regulating GMOs, prohibition is the most favoured level of regulation (64%) with strict liability provisions next favoured (34%). (in Line 2 above)
 - (c) Of those who do not support Council having a role in regulating GMOs, 60% support the Council lobbying Government to amend the legislation to make users of GMOs legally responsible for economic or environmental harm. (in Line 3 above)
 - (d) 62% of respondents favour regulation (locally or nationally) of at least the strength of making users of GMOs legally responsible for economic or environmental harm. (in Line 6 above)

16. Generally, support for councils having a regulatory role is stronger in Northland than in the Auckland region. Northland councils are also more supportive of producing GMO free food, more likely to believe GMO will harm the local tourism and food industries, and less likely to believe that GMOs will provide economic benefits for the region.

17. The results also show that Maori are more concerned about GMO than other ethnicities, particularly in the Northland region. Maori show stronger support for councils setting rules, for prohibiting GMOs from the region, for producing GMO free food, and are more likely to believe that GMO will harm the local tourism and food industries.

18. Support for setting rules is strongest amongst semi-rural and rural residents in both regions while urban views vary - supportive in Northland (and Whangarei) and not in Auckland. Rural residents are more likely to favour prohibiting GMOs in both Northland and Auckland regions than are semi-rural or urban residents. Females are more likely to support setting rules than are males and support is greatest amongst 18-39 year olds than older age groups.

19. The most common reasons for supporting local regulation were that there was not enough known about the consequences of GMO, that users of GMOs should be held accountable if something goes wrong, and that people "...shouldn't mess with nature...". Reasons for not supporting local regulation included being pro-GMO, that central Government should set rules, and that ERMA should make the final decisions over GMOs.

Assessment of Options

20. The results of the telephone survey were discussed by the Working Party at its 17 November 2009 meeting, including the implications for local and regional authorities on the Working Party, and implications for the present and future functions of the Working Party. The following options and recommendations were discussed and adopted by those members of the Working Party that were present.
- (a) That the Convenor of the Working Party write to the Government to convey the Colmar Brunton findings indicating community concern in the Northland Peninsula that current national regulation is deficient (particularly in regard to liability) and does not adequately provide for local community involvement in decisions which affect their areas, and request a formal response to address the social, economic, cultural and environmental risks associated with the field trialling and release of GMOs.
 - (b) That all Working Party councils receive and review the Colmar Brunton findings for their respective jurisdictions, and for the Northland Peninsula, and consider making a direct high level political approach to Government seeking a formal response to local concerns regarding social, economic, cultural and environmental risks associated with the field trialling and release of GMOs.
 - (c) That the Working Party continues the steps of investigation required to protect local community interests including preventing or minimising risk of social, economic, cultural or environmental harm. The investigation will include the option of making a community response through local regulation, including the formulation and analysis of potential rules for consideration at the regional and local level.
 - (d) That the Working Party continues to monitor developments and precedents, including international precedents to help ensure that all councils are well positioned to respond to applications which may have significance for their communities.
 - (e) That recommendations (a), (b), (c) and (d) above be reported to all Working Party councils for their consideration together with the Colmar Brunton findings.
 - (f) That the Working Party acknowledge and thank Kerry Grundy Convenor of the Working Party, Simon Terry of Simon Terry and Associates, and Colmar Brunton for their work and contribution in support of the Working Party.
21. It is considered that all of the recommendations promulgated by the Working Party are reasonable and measured. The key action is the communication of the poll results to the government, and the subsequent response from the government.

Consideration of Community Views

22. In the short term the community are unlikely to be affected by the decision being considered in this report. Once the Convenor of the Working Party has written to the Government and received a response, that response will be reported back to this Committee. Actions arising from the government's response and how those responses are likely to affect the community will be considered at that time.

Preferred Option

23. The preferred option arising from this report is that the Committee adopt the recommendations of the Working Party. Following a response from the Government, next steps by all councils in the Working Party will need to be considered. It is possible that the progress of this issue will fall to the new Auckland Council to consider.

STRATEGIC CONTEXT

24. This matter contributes to the Green Network, Strong Environment and Whaiora Community Outcomes for the City. It helps to deliver on the Council's Environment strategic direction, as outlined in the Strategic Platforms and Strategic Priorities. This matter affects the HSNO Act, and potentially the RMA, in terms of some councils potentially initiating regulatory responses to GMOs over and above the Environmental Risk Management Authority processes. As this matter is being progressed in a collective manner via the Working Party, this Council's position on this matter will assist the Working Party to complete its next set of tasks.

CONSULTATION

25. This report has been prepared in consultation with the various council officers that support the Working Group, and with staff across Council, in particular those providing advice on the delivery of the Council's Environment strategic direction.

RESOURCES

26. The budgetary implications of the Working Group recommendations have been discussed by the Working Party. Most councils have no further funds committed to additional work on this issue during this financial year. It is envisaged that any work arising from implementing the Working Group recommendations would largely be undertaken at officer level, and that is provided for within existing budgets.

IMPLEMENTATION ISSUES

27. There are no issues associated with implementation, other than the continued attendance at the Working Party by Council elected members and staff. Any additional implementation issues will be considered once the government's response to the poll is known. This will be considered by the Committee at that time.

AUCKLAND COUNCIL TRANSITION ISSUES

28. 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: Eryn Shields, Principal Planner.



PART E - REPORT OF THE SUBCOMMITTEE

12 SWIMMING POOL EXEMPTION SUBCOMMITTEE

THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 10 DECEMBER 2009

MATTERS CONSIDERED

A144-149

The Swimming Pool Exemption Subcommittee dealt with a number of items for which it has delegated powers to act and a copy of the minutes of the meeting is attached at pages A144 to A149.

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

Receive the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 10 December 2009.

WW Flaunty, QSM, JP

CHAIRMAN

