



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, 13 April 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.

7 April 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, 13 APRIL 2010, COMMENCING AT 9.30 AM**

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**TABLE OF CONTENTS**

<b><u>ITEM</u></b>	<b><u>PAGE NO.</u></b>
<b><u>PART A - OPENING OF MEETING</u></b>	<b>1</b>
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFLICTS OF INTEREST	1
4 CONFIRMATION OF MINUTES	1
<b><u>PART B - REGULATORY / ENFORCEMENT</u></b>	<b>2</b>
5 LEGAL UPDATE (AS AT 31 MARCH 2010)	2
<b><u>PART C - DISTRICT PLAN / STRUCTURE PLANS</u></b>	<b>17</b>
6 ALTERATION TO CLARK STREET EXTENSION LOW LEVEL BRIDGE DESIGNATION IN NEW LYNN TOWN CENTRE	17
<b><u>PART D - ENVIRONMENTAL MANAGEMENT</u></b>	<b>20</b>
7 WAITAKERE SUBMISSION ON THE CONSULTATION PAPER ON AMENDMENTS TO THE ADVANCED METERING INFRASTRUCTURE GUIDELINES	20
8 SUBMISSION ON PROPOSED NATIONAL ENVIRONMENTAL STANDARD ON SOIL CONTAMINATION	25
<b><u>PART E - REPORT OF THE SUBCOMMITTEE</u></b>	<b>32</b>
9 SWIMMING POOL EXEMPTION SUBCOMMITTEE	32
<b><u>PART F - RECONVENED HEARING</u></b>	<b>32</b>
10 PROPOSED PLAN CHANGE 28: HERITAGE	32

**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, 13 APRIL 2010, COMMENCING AT 9.30 AM**

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**PART A - OPENING OF MEETING**

**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

**NOTE:** Urgent Business need not be dealt with now and may be delayed until later in the meeting.



**3 CONFLICTS OF INTEREST**

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



**4 CONFIRMATION OF MINUTES**

Meeting Minutes - Tuesday, 9 March 2010

**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, 9 March 2010, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 31 MARCH 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.)
Swanson Structure Plan	(SSP)
Building Act 2004	(Building Act)
Public Works Act 1981	(PWA)
Sentencing Act 2002	(Sentencing Act)
Summary Proceedings Act 1957	(Summary Proceedings Act)
Networth Developments Limited	(Networth)
National Trading Company	(NTC)
metres squared	(m <sup>2</sup> )

#### **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 March 2010) report.

#### **HIGH COURT**

*(Changed)*

#### **T Muir v Rodney DC, Waitakere CC, Auckland Regional Council (January 2010)**

1. This was an application to judicially review a decision of the Rodney District Council to grant consent jointly to Rodney, Waitakere City Council (Council) Auckland Regional Council (ARC) and Department of Conservation for the removal of a species of willow trees in Bethells/Te Henga which is considered to be a weed. The works are adjacent to private property; the property owners were in support of the application. No ARC consent was required because the spraying is a permitted activity under the Auckland Regional Air, Land and Water Plan. Land use consent was required from Rodney District Council as Rodney was concerned as to the area of clearance, being 23 hectares. No other rules were infringed. The consent was granted to the joint councils by an independent commissioner without the application being notified.

2. The Applicant, Mr Muir, had sought to review the decision of the Rodney District Council on the basis that he should have been notified of the application because he was affected. After discussions between the parties, Mr Muir has agreed not to pursue the matter and the councils can undertake the spraying from February 2010.

**(Changed)**

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

3. Council 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.
4. 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.
5. 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).
6. 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. The High Court has advised the appellant to file and serve submissions by 26 April 2010 or the appeal will be dismissed. To ensure this matter is dealt with or disposed of the Court has set it down for a hearing on 3 May 2010.

**(Unchanged)**

**Waitakere City Council v Network Developments Limited (November 2008)**

7. The Council commenced liquidation proceedings against Network Developments Limited (Network) for failing to comply with a statutory demand. Network owes Council \$11,138.58 for unpaid consent application fees. This matter was called on 19 December 2008 and Network was put into liquidation. The liquidators, Jollands Callander, have advised in their 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)**

8. The Council was served with seven sets of proceedings under the Public Works Act 1981 (PWA) in the High Court claiming the Council breached its duty to offer back land on Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that: the events which triggered an obligation under the PWA occurred prior to the offer back obligation coming into force, and the PWA should not apply retrospectively.
9. 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.

10. Statements of Defence on all seven proceedings have now been served. 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. Discovery of documents is currently in progress.

**Substantive hearings involving Mr Mawhinney**

*(Unchanged)*

**Mawhinney & Others v Waitakere City Council (May 2008)**

11. 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.
12. 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.
13. Following service of the bankruptcy notices, Mr Mawhinney has applied to the High Court to set aside the notices on the basis of alleged counterclaims or set offs against Council. This application has been opposed and affidavit evidence filed with the Court. There was a callover of the setting aside application on 11 February 2010 during which Mr Mawhinney filed further evidence in reply. A defended hearing has been set down for 10 May 2010.

**ENVIRONMENT COURT**

*(Unchanged)*

**Laidlaw College of New Zealand v Waitakere City Council (February 2010)  
Canam Construction v Waitakere City Council (February 2010)  
New Zealand Retail Property Group Management Limited v Waitakere City Council (February 2010)  
New Zealand Transport Agency v Waitakere City Council (February 2010)  
Mitre 10 Mega v Waitakere City Council (February 2010)**

14. These appeals relate to the Council's decision to grant consent to a Mitre 10 Mega on Lincoln Road, Henderson. The appellants oppose the consent because they consider the scale of the proposal is inappropriate for the area. The consent holder has also appealed the decision on the basis that the consent conditions need to be amended to better reflect the intentions of the applicants.
15. The appeal period has now closed. However, the period for s. 274 parties to lodge their interest is now open. This period closes in mid-April 2010, given the varying dates during which the appeals were lodged.
16. The Council has to report to the Court by 27 April 2010 as to its position and the position of the other parties.

*(Changed)*

**Titirangi Residents and Ratepayers Association v Waitakere City Council (January 2010)**

17. The Titirangi Residents and Ratepayers Association ('the Appellants') have appealed the decision of the Council to grant consent to Rotcol Enterprises Ltd to develop a parcel of land being 408 – 416 Titirangi Road, Titirangi into a three storey mixed use facility with retail, commercial and apartment units.

18. The Appellants would like to see the scope of the proposal reduced from three storeys to two storeys. The Appellants do not consider that the proposed development is able to be integrated into Titirangi. The Court granted the evidence exchange timetable sought by the Council. The evidence exchange timetable has the matter ready for mediation / hearing by mid-June 2010. The Council exchanges its evidence on 26 April 2010.

**(Changed)**

**Kane Holdings Limited v Waitakere City Council (January 2010)**

19. This appeal relates to the Council's decision to decline consent to the appellant for a retrospective consent to enlarge the existing business of cutting and supplying firewood from a site along State Highway 16. There are three s. 274 parties, the Herald Island Residents and Ratepayers Association, John Tabak and Nevan Barbour. The Council put forward an evidence exchange timetable which has been granted by the Court. The matter is likely to proceed to a hearing sometime in the third quarter of 2010.

**(Changed)**

**Waitakere City Council v Neil Milbank (November 2009)**

20. 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 Citywide rules relating to Maintenance and Condition of Land and Buildings rules. 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.
21. 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. At a pre-hearing conference on 28 January 2010 the defendant was not in attendance. At the hearing of the matter on 24 February 2010, Judge Smith granted the enforcement orders subject to some minor modifications. The order was granted on 26 February 2010 and requires Mr Milbank to remove the inorganic materials and unregistered cars from the property within 3 weeks of the service of the order. Costs were reserved. Once the materials/vehicles are removed the matter will be at an end.

**(Changed)**

**Duaphorma Pacific v Waitakere City Council (August 2009)**

22. 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 eight 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.
23. 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 was put to the parties at the mediation on 12 October 2009. The appellant has now provided further information on the reduced scale proposal. If all parties to the mediation accept that the reduced scale proposal, the matter will be brought back to the Committee for determination on any consent order agreed, or any other option that is proposed to resolve the appeal. Mediation will resume on 3 May 2010 to consider the reduced scale proposal.

**(Unchanged) Swanson Structure Plan Decisions (October 2008)**

24. 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.

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

25. 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 (the Applicant), 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. PPHS Inc had until 14 April 2009 to respond to the costs applications filed by the Council and the Applicant.
26. PPHS Inc 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. 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. The debt will continue to be pursued.

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

27. 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.
28. 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**

29. There are a number of matters being dealt with currently relating to Mr Mawhinney's companies. The matters are addressed below at paragraphs 31-39 of this report. The current status of Mr Mawhinney's companies referred to is as follows:

- London and Greenwich Trading Company Limited - Struck off;
- Perceptus Limited - Struck off; and
- Waitakere Resource Consents Limited - Struck off.

*(Unchanged)*

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

30. This was a proceeding lodged in the Environment Court by three companies associated with Mr Mawhinney on 25 August 2008. The 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.

31. 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.

32. 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)**

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

34. Mr Mawhinney advised the Court on 16 January 2009 that he has no further evidence to file other than that which was originally filed, namely submissions and affidavit evidence. Council served legal submissions and an affidavit from Philip Brown on 17 February 2009. Mr Mawhinney has not replied within the specified timeframe (16 March 2009). Waitakere Resource Consents Limited, the sole remaining corporate appellant, has now been struck off the register. 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.

35. The Court has made the same orders in this proceeding as in the London and 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)**

36. 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*

37. 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.
38. 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 ARC in respect of Change 6 to the Auckland Regional Policy Statement (ARPS). The Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with the Council's appeal.
39. 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 ARC is working through the process of announcing 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.
40. 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 Family 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 2009. 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. They agreed to the consent order with some minor amendments.
- 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 are 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**

**(New)**

#### **Jin Ling Chen 'D H Supermarket' – 2/3 Edsel Street, Henderson (March 2010)**

41. Council's Environmental Health Officer inspected 'D H Supermarket' on 27 January 2010 in response to concerns raised by members of the public in relation to hygiene issues at the supermarket. The inspection revealed that the butchery section of the supermarket was in a very poor state of cleanliness that compromised the safety of products sold to the public. The floor and walls of the cool room were coated with meat/blood debris and emitted a foul odour. The customer service area was also very dirty with display cabinets smeared with blood and rotting meat present. The remainder of the supermarket did not have any significant hygiene issues.

42. The manager agreed to voluntarily close the butchery section to enable cleaning to occur. On 28 January 2010 the butchery was re-inspected by the Officer who considered that it had been cleaned to a reasonable standard. The supermarket was issued a 'D grading'. It was previously given a 'D grading' in June 2008. A charge was laid against the owner/occupier on 10 March 2010 for breach of section 239 of the Local Government Act 2002 for contravention of Council's Food Bylaw 2005 which carries a maximum penalty of \$20,000.

**(New)**

**Sarah Emily Scanlon – 14 Oreil Avenue, West Harbour (December 2009)**

43. Onyx Group Limited is contracted to the Council to undertake rubbish collection services in the City. On 30 October 2009 a runner employed by Onyx was seriously injured while undertaking his regular duties. The runner collected a rubbish bag from outside 14 Oreil Avenue and was badly cut by a piece of glass protruding from the bag as he attempted to deposit the bag in the rubbish truck. The glass severed an artery in the runner's leg; he suffered significant loss of blood and had to be taken to hospital. As a result of the injury the runner was off work for a period of time and once he returned to work he was limited to part time work due to the injury.
44. Council's waste minimisation officer interviewed Ms Scanlon who is the occupier of the property where the rubbish bag was collected on 2 November 2009. Ms Scanlon admitted placing some uncontained broken shards of glass in the bag but was remorseful for the resulting injury. Placing broken glass in a rubbish bag without ensuring that it is sufficiently contained is a breach of Council's Waste Bylaw 2005 and carries a maximum penalty of \$20,000. The prosecution has been brought to alert the public to the requirements of the Waste Bylaw and to reduce the likelihood of a similar incident in the future. Ms Scanlon appeared at the Waitakere District Court on 26 March 2010 and entered a guilty plea to the charge. At the sentencing of the matter on 23 April 2010, Counsel will seek that any fine be paid as reparations to the victim.

**(Changed)**

**Philip Tamahori – 2 Aio Wira Road, Te Henga (December 2009)**

45. On 15 September 2009, a Council Environmental Monitoring Officer lodged a customer service request alleging that a dwelling had been constructed at the site without building consent. Council's Building Enforcement Officer inspected the property on 21 September 2009 and noticed a number of structures at the site that had been constructed without building consent. These structures included a dwelling (116 metres squared (m<sup>2</sup>), a carport (40m<sup>2</sup>), a water tank structure (2 metres high) and conversion works to a consented shed at the property. RMA compliance issues at the site were also investigated by Council officers. However, the owner has largely addressed these issues by way of a retrospective resource consent application. On 16 December 2009, Council laid an information against the owner for carrying out unauthorised building works at the property. On 26 March 2010 Counsel applied to the Court to strike out reference to the water tank structure on the charge particulars. After the amendment was made, Mr Tamahori entered a guilty plea to the charge through his lawyer. The matter has been set down for sentencing on 29 June 2010 at 10am.

**(Changed)**

**Adrian Leaney / Gordan Brkic / Michael Fahey / Michael Sullivan / D & H Steel Construction Limited / D & H Assets Limited / A J Russell Bricklayers Limited / Clearwater Construction Limited / DHC Consulting Limited – 42 Brick Street, Henderson (December 2009)**

46. The owners of the property (D & H Assets Limited) applied for a two stage building consent to construct a large workshop/office at the property in 2007-2008. The project was significant with gross floor area under the consents measuring approximately 12,000m<sup>2</sup>. The workshop was to be occupied by D & H Steel Construction Limited. On 18 August 2009, a Council building inspector was asked to inspect grids 16-19 of the workshop/office, a part of the building site which was not authorised by building consent. The inspector issued a written stop work notice to the site manager requiring that all unauthorised building works at the site cease.

47. On 28 August 2009, Council's Building Enforcement Officer inspected the extension and met the project manager, Mr Leaney and the General Manager of Clearwater Construction Limited Mr Fahey. He instructed the men to stop all work on the unauthorised section of the workshop. He was advised that the unauthorised extension has a building coverage of approximately 1200m<sup>2</sup>. On the same day Council issued a Notice to Fix to Clearwater Construction Limited and D & H Assets Limited requiring all unauthorised works to cease, and requiring compliance with the Building Act 2004.
48. On 8 September 2009, Council's Building Inspector observed building works continuing on the unauthorised section of the workshop. He notified the Council's Building Enforcement Officer who immediately went to the site. The Building Enforcement Officer advised the acting site manager to stop all unauthorised building works at the site as required by the Notice to Fix. The manager advised that he was under instruction from Mr Fahey to proceed regardless and so the officer left the site.
49. On 9 September 2009 Council's Building Enforcement Officer returned to the site with a second Notice to Fix requiring all unauthorised building works to cease. He hand delivered a copy to the acting site manager and re-stated the requirement to stop unauthorised building works. Again the site manager advised he was under instruction from Mr Fahey to continue working. The officer also encountered workers from AJ Russell Bricklayers installing blockwork on the unauthorised part of the workshop. He instructed one of the workers to stop work but he refused on the grounds that he was under instructions from Clearwater Construction Limited.
50. As a result of a meeting later that day, Clearwater Construction Limited agreed to stop working on the unauthorised part of the building and to apply for a Certificate of Acceptance/Building Consent to complete the works. On 15 September 2009, Council's Building Inspector observed the installation of a beam on the unauthorised part of the workshop.
51. On 18 December 2009 the Council laid charges under s. 40, 168 and 365 of the Building Act against the construction company, the owners of the property, the owners of the building, engineering contractors and the blocklayer contractors as well as a number of individual defendants who had an involvement in the offending. The prosecution file has been disclosed to the defendants and the matter will be called on 23 April 2010.

**(Changed)**

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

52. 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 30m<sup>2</sup> household unit at the site. In addition, an existing 45m<sup>2</sup> "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.
53. 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 has been adjourned to 23 April 2010 for a defended hearing fixture to be allocated.

**(Changed)**

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

54. 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.
55. 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.
56. 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.
57. Information has come to light which indicates that the unauthorised building works were first observed by a Council officer in October 2008. As a result of this new information, it is arguable that the charge under the Building Act 2004 was statutorily barred. At the callover on 2 February 2010, the defendant entered a guilty plea to the RMA charge and the Building Act charge was withdrawn by leave of the Court. The sentencing date has been moved to 28 April 2010.

**(Changed)**

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

58. 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.
59. 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.
60. On 12 August 2009 informations were laid against the defendant for failing to comply with a Dangerous Building Notice. 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 was set down for formal proof on 22 February 2010. The defendant attended Court on 22 February 2010 and advised that he wished to defend the charge. The Court adjourned the matter until 23 April 2010 in order for a defended hearing date to be set.

**(Changed)**

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

61. 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 and 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.
62. 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.
63. 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.
64. 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.
65. On 22 February 2010 Mr Green attended Court and entered a guilty plea to the charge. Mr Green met with Council's building officer on 22 March 2010 and agreed to a remedial works plan to complete the works required by the unsanitary building notice. Sentencing was adjourned to 23 April 2010 to enable Mr Green's lawyer to file submissions.

**(Unchanged)**

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

66. 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.
67. 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.
68. Charges 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.

69. 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.
70. 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 file all written statements and exhibits by 12 March 2010. The next call of the matter will be the post-committal conference on 16 April 2010.

**(Changed)**

### **Leaky Building Claims**

#### **Current Claims**

71. Claim statistics are as follows:
- (a) There are 17 unresolved leaky building claims being handled by Council's lawyers. The 17 claims represent 333 units, with 8 multi unit claims representing 324 units:
- High and District Court: 9 (including 4 multi unit claims)
  - Weathertight Home Resolution Service (WHRS) 1
  - Weathertight Homes Tribunal (WHT) 7 (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 as at 28 February 2010 was 185. The total number of properties affected was 358. 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. However, the WHRS figures do not capture court claims.

#### **Claims Settled**

72. To date the total amount paid by Council to Claimants to settle claims, inclusive of contributions by Riskpool, is \$995,000 This does not now include an amount of \$25,000 in respect of the 1/175A Titirangi Road claim (see November 2009 below). There remain four claims, including one multi unit, with the Council's lawyers which are not covered by RiskPool.

#### **March 2010**

73. The contribution to settlement of 15 Vinograd Drive (an 8 unit claim) has been agreed, but the settlement agreement remains to be signed. The Council's RiskPool excess of \$15,000 was consumed in settling the claim.

### **February 2010**

74. 20 Belvedere Court settled at mediation on the 23 February 2010, 29C Kamara Road failed to settle at mediation, but appears subsequently to have settled with an assignment of the claim being taken against the builder, who would not contribute a sufficient share to settle the claim at mediation. Settlement consumed the Council's \$50,000 RiskPool excess in both matters.

### **January 2010**

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

### **December 2009**

76. 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**

77. 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.
78. 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**

79. No claims settled during October 2009.

### **September 2009**

80. 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**

81. No claims were settled during August 2009.

### **July 2009**

82. No claims were settled during July 2009.

### **June 2009**

83. No claims were settled during June 2009.

### **May 2009**

84. 49A Don Buck Road settled on 21 May 2009 at mediation. The Council contributed \$49,500.00 to the settlement.

## Claims Received

### March 2010

85. An application for an assessors report was accepted by the WHRS in relation to 11 Woontons Lane, Titirangi on the 18 March 2010.

### February 2010

86. Applications for assessor's reports were accepted by the WHRS in relation to 121A, 129C and 131 Hobsonville Road.

### January 2010

87. No claims were received during January 2010.

### December 2009

88. 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.
89. 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

90. 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 Limited 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.
91. 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

92. 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.
93. 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

94. 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.

95. 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 Wakaroa Avenue, Te Atatu Peninsula. The property is one of two free-standing units built under a single consent.

#### **August 2009**

96. 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.
97. 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**

98. 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.
99. 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**

100. 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.



## **PART C - DISTRICT PLAN / STRUCTURE PLANS**

### **6 ALTERATION TO CLARK STREET EXTENSION LOW LEVEL BRIDGE DESIGNATION IN NEW LYNN TOWN CENTRE**

#### **GLOSSARY**

Resource Management Act 1991 (RMA)  
Waitakere City Council (the Council)

#### **EXECUTIVE SUMMARY**

A4-A5

The purpose of this report is to seek approval from the Planning and Regulatory Committee to an alteration of the current roading and park designation, WCCAOS1 (attached at page A4), in the New Lynn Town Centre. The alteration (attached at page A5) will reduce the current designation to recognise the planned road alignment on Waitakere City Council (the Council) land, a portion of which will be acquired in a land swap with Cambridge Clothing Ltd.

The report outlines that approval is sought by the Council as the requiring authority under section 181(3) of the Resource Management Act 1991 (RMA), and as the alteration to the designation is considered to be minor, has relevant land owner approvals and can be approved to proceed on a non notified basis.

### **RECOMMENDATIONS**

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

1. **Receive** the Alteration to Clark Street Extension Low Level Bridge Designation in New Lynn Town Centre report.
- A5 2. **Agree** that the Roding and Parks designation, WCCAOS1 within the District Plan be amended, in accordance with the plans attached at page A5 of this report, being Proposed Alterations to WCCAOS1.

### **BACKGROUND**

1. Council is a requiring authority under the RMA which gives it the power to 'designate' land for public works.
- A5 2. The existing designation, WCCAOS1, extends from Clark Street westward over the western rail line, with pedestrian links to the adjacent Gardner Reserve, and then the road turns north to connect with Great North Road. This designation is part of the Council's programme of works related to the redevelopment of the New Lynn Town Centre into a mixed use town centre. The Clark Street extension will assist to facilitate this redevelopment process by drawing the through traffic out of the town centre. The proposed amendment to the current designation will reduce the designation area within the New Lynn Town Centre, as per the attachment at page A5.

### **DECISION MAKING**

3. The Clark Street realignment and extension is part of the New Lynn Transit Oriented Development that is moving the rail track and train station below ground level. This will improve transport and pedestrian movement through the town centre, provide development opportunities, and improve train services.
4. The proposed alteration (reduction) to the designation will result in the designation becoming closely aligned with the anticipated final (built) location of the Clark Street extension. The reduction will recognise a land swap that will take place between Council owned land and land owned by Cambridge Clothing which will result in the designation being on the Council owned land.
5. The designation conditions require that landscaping is undertaken around the built form of the new road. The reduction in the designation in the subject location will not include the area for landscaping as this would require the designation to be located on Cambridge Clothing land. However to ensure that the landscaping will be undertaken it is proposed that an easement of sufficient size (1.2 metre wide) to accommodate the landscaping will be located on the Cambridge Clothing land in favour of the Council.

### **Issues**

#### **Statutory Process**

6. Once a designation is in place, the RMA provides a procedure for making minor alterations. Section 181(3) of the RMA states as follows:

*“181(3)A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if–*

- (a) The alteration–
  - (i) Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
  - (ii) Involves only minor changes or adjustments to the boundaries of the designation or requirement; and**
- (b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and*
- (c) Both the territorial authority and the requiring authority agree with the alteration–  
and sections 168 to 179 shall not apply to any such alteration.”*

7. Provided that the proposed alteration complies with the matters set out in section 181 (3) (a), (b) and (c), the designation in the District Plan can be amended without further formality. The information provided by the Council, addresses all the relevant issues. Council staff are satisfied that the correct procedure has been followed in relation to the proposal.
8. The alteration is minor in terms of its environmental effects for the following reasons:

#### **The Extent of the Alteration of the Designation**

9. The approved version of the designation, as is typical with most designation processes, was larger than the land considered to be the final required area for the Clark Street extension. This process allowed for variants that may arise during building and /or additional area required to implement the project such as a storage area for goods or services such as cranes.
10. The Council is undertaking a land acquisition process with Cambridge Clothing to take the land required for the Clark Street extension. This acquisition process recognises the most likely location of the Clark Street extension in the vicinity of Great North Road and it is this revised location to which the designation will be reduced to. The area of the reduction (665m<sup>2</sup>) to the designation is minor when compared to the area of the existing designation of 30,353m<sup>2</sup>. The alteration of the designation will not affect the development and operation of the Clark Street extension or the operation of the Cambridge Clothing business.

#### **Character and Amenity**

11. The subject site that is covered by the current designation includes part of the front lawn of Cambridge Clothing and some of the vehicle access areas of the Cambridge Clothing operation. Access will continue to be facilitated for Cambridge Clothing with a separate access from the Clark Street extension. The reduction of the designation will allow the lawn to remain, albeit with additional landscaped areas in the easement when the construction of the road is complete. Therefore the reduction of the designation will not detract from the existing amenity and character of the area.

#### **Landowner approvals**

12. Cambridge Clothing is the owner of the land, at whose request the designation is proposed to be reduced. The reduction ensures that the designation will not be located on Cambridge Clothing Ltd land following the land swap.
13. Accordingly the proposed alteration will comply with all three matters set out in section 181 (3) (a), (b) and (c).

## STRATEGIC CONTEXT

14. The Council's Transport Strategy has a vision of "a sustainable multi model transport system that is integrated with land use and contributes to Waitakere as an eco city". The proposed reduction of the current designation will still allow for the efficient functioning of the Clark Street extension and its anticipated contribution to the multi model transport system and the redevelopment of the New Lynn Town Centre within the Waitakere area.

## CONSULTATION

15. Cambridge Clothing owns the land that is the subject of this section 181 (3) alteration to the designation application. The land swap process on which the designation reduction has been based has the agreement of the Council (resolution 1219/2009). It is considered that the consultation process is ongoing between staff and the project control group participants.

## RESOURCES

16. No resources are required other than staff time involved in amending the map sheet of the plan and distributing copies to District Plan holders.

## IMPLEMENTATION ISSUES

17. The Process for reducing the designation will result in a number of steps to be incorporated into the work programme of the Resource Management Unit.

## AUCKLAND COUNCIL TRANSITION ISSUES

18. 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 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

### 7 WAITAKERE SUBMISSION ON THE CONSULTATION PAPER ON AMENDMENTS TO THE ADVANCED METERING INFRASTRUCTURE GUIDELINES

#### GLOSSARY

Advanced Metering Infrastructure	(AMI)
Advanced Metering Infrastructure Guidelines	(the Guidelines)
Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines	(Consultation Paper)
Planning and Regulatory Committee	(the Committee)

#### EXECUTIVE SUMMARY

This report draws the Planning and Regulatory Committee's (the Committee) attention to the Electricity Commission's 'Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines' (Consultation Paper), and seeks the Committee's approval for the lodgement of a Council submission.

The objective of the Consultation Paper is for the Electricity Commission to consult with participants and persons that are representative of the interests of persons likely to be substantially affected by the proposed amendments to the 'Advanced Metering Infrastructure Guidelines' (the Guidelines).

It is recommended that Council makes a submission on the Consultation Paper, generally in support of the amendments with recommendations to grow the capability for shared Advanced Metering Infrastructure (AMI) for electricity, gas and water.

Submissions are due on 30 April 2010, and an internal cross-council working group has been set up to review the Consultation Paper and identify issues of interest or concern, not covered by the proposed amendments. Approval is sought for the final version of Waitakere's submission on the Consultation Paper to be delegated to the Chairman of this Committee.

### **RECOMMENDATIONS**

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

1. **Receive** the Waitakere Submission on the Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines report.
2. **Agree** that Waitakere City Council make a submission to the Electricity Commission on the Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines.
3. **Agree** to delegate to the Chairman of the Planning and Regulatory Committee approval of the final version of Waitakere City Council's submission to the Electricity Commission on the Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines.

### **BACKGROUND**

1. The Council has been investigating opportunities to reduce the Council's corporate greenhouse gas emissions associated with electricity and gas use through utilising the EnergyPro energy monitoring system to gather historical data. Stream Information electricity meters for half hourly sites with internet-based reports to gain time-zone electricity usage information accessible on a daily, weekly or monthly basis have been installed at major Council sites. The Council is preparing to install sub-metering for electricity, gas and water at West Wave to break down the electricity load into smaller load categories and enable access to live internet-based information for electricity, gas and water to improve energy and water management processes.
2. The most significant issue for energy management programmes for small sites for councils, businesses and households is access to information on electricity, gas or water usage. Current energy monitoring systems provide access to historical data for medium – long term trend analysis, reporting and invoice monitoring. For many businesses and homes the electricity, gas or water invoice information provides a monthly total figure useful only for measuring actual impact from changes in behaviour or installation of new equipment. Invoice information does not show the time zone the electricity, gas or water that was consumed for comparison of changes.
3. Another significant issue for electricity, gas and water retailers and the end customer is the regularity of actual readings of electricity meters, currently undertaken by a contractor physically visiting the meter to take a reading. If the meter reader cannot access the meter for any reason, the usage is estimated. This can mean that utility costs are paid based on calculated estimated usage rather than actual usage. Many businesses and houses only have their electricity meters read every two/three months. Such timings make it difficult to encourage energy efficiency in businesses and households through changes in behaviour or installation of more efficient equipment when the results are delayed until two or three months later.

## Advanced Metering Infrastructure (AMI)

4. The Electricity Commission has provided the following background to AMI:
  - 2.1.1 *Electricity meters measure the flow of electricity, and are the primary source of information used in the settlement of the wholesale electricity market and in the monthly invoicing of nearly two million electricity consumer connections.*
  - 2.1.2 *Advanced meters are electronic electricity meters that measure and record electricity consumption within programmable time periods (for example how much electricity has been consumed in each half hour, rather than just measuring the total consumed over a month). Advanced meters transmit this information (as well as other useful information) back to the users of the AMI systems.*
  - 2.1.3 *In addition to being able to transmit information to retailers, advanced meters are also capable of receiving information, upgrades and instructions that are sent remotely by the retailer.*
  - 2.1.4 *Advanced meters are only part of the technology currently being rolled out. The two-way transfer of information is possible because advanced meters are connected to back-office systems by way of a communications network. Advanced meters and the communication system that accompanies them are generally known collectively as advanced metering infrastructure (AMI).*
  - 2.1.5 *Developments in AMI have the potential to allow additional peak demand to be managed, delaying the need for investment in new generation, transmission, and distribution. This could create cost savings for consumers, and may reduce the environmental impact of electricity generation. This was recognised in the New Zealand Energy Efficiency and Conservation Strategy (NZECS) published in October 2007, which acknowledged that advanced meters can help manage electricity usage and, when coupled with appropriate tariffs, can enable greater consumer participation in the electricity market."*
5. In summary the introduction of AMI will address a number of issues for both the electricity retailer and customer, including:
  - Consistent monthly actual readings;
  - Remote communication for readings (ie no site visit required); and
  - Profile of electricity usage over time zones.
6. There are other advantages of AMI that are still being identified by AMI developers and electricity retailers and not yet offered to the end customers, including:
  - Internet-based access to profile of electricity usage over time zones;
  - Time-zone based pricing (ie lower prices for off-peak times);
  - In-home display units;
  - Connection of Home Area Networks; and
  - Load shedding or shifting to reduce on-peak electricity usage.

7. The above features and benefits of the advance meters currently being piloted and installed for electricity in New Zealand are also for the most part capable of providing compatible communications infrastructure for gas and water utilities.

#### **Consultation Paper on Amendments to the Advanced Metering Infrastructure Guidelines**

8. In February 2008, the Electricity Commission published the Guidelines, which set out recommendations relating to the introduction of new technology for metering and the supporting infrastructure. The Guidelines also outlined participants' obligations for situations where new meters are installed for new and existing consumers.
9. New metering technology is developing rapidly, and systems with advanced features are becoming increasingly available. As electricity industry participants consider making investments in these new metering systems, the Electricity Commission believes that attention must be given to supporting New Zealand's wider national energy objectives and consumer interests, along with those of the electricity sector.
10. The Electricity Commission is proposing to amend the Guidelines to reflect:
  - (a) Developments in AMI technology; and
  - (b) The results of the monitoring that was carried out in relation to the Guidelines in September 2009.
11. There are a number of risks with the introduction of the first generation of AMI that could occur if the industry standards are not amended, including:
  - (a) Addressing the needs of the electricity retailers but not the end customer;
  - (b) Being only able to communicate with a single/limited number of electricity retailers communication protocols; and
  - (c) Only being installed to communicate electricity usage, not other utilities such as gas or water.

#### **DECISION MAKING**

12. The changes to the Guidelines as proposed could have significant impacts on the manner in which Council implements its' corporate and community energy efficiency programmes and EcoWater (soon to be WaterCare) further develops water metering solutions in the future, so the Council ought to make a submission.

#### **Issues**

13. The Consultation Paper is seeking submissions on issues as summarised below:
  - (a) Capability of AMI systems to share infrastructure (electricity, gas, water);
  - (b) Capability be made available for distributors to make use of information from AMI system under user pays;
  - (c) Installed AMI system should meet all potential users' requirements;
  - (d) Replacement of advanced meters;
  - (e) AMI systems have half-hourly data capability as well as programmable time of use registers;
  - (f) Who should operate the AMI system (one party versus multiple parties);
  - (g) Service access interface security and access provisions;
  - (h) Memory and processing capability;
  - (i) Interoperability with other utility devices;
  - (j) Measurement data recording;

- (k) Hot water load control;
- (l) Ripple receiver built into device;
- (m) Management of general demand response;
- (n) Access over the services be via standardised formats for all users of AMI system;
- (o) Provision for Home Area Network interface;
- (p) Provision for customer displays;
- (q) Premises disconnections and reconnections; and
- (r) Real time event notification functionality for voltage or current alerts.

#### **Submission**

14. The cross-Council working group will review the Consultation Paper and identify issues of interest or concern, not covered by the proposed amendments. The review will examine the Consultation Paper to identify possible impacts on corporate energy management programmes, community energy and water programmes (Retrofit the City, Eco Design Adviser services) and EcoWater (soon to be WaterCare) water metering opportunities.

#### **Options Identified**

15. There are two options:
  - (a) Do Nothing: do not make a submission; or
  - (b) Make a written submission identifying support for and/or issues of concern and provide recommendations on wording.

#### **Assessment of Options**

16. To some extent each of the identified options is reasonable, with advantages and disadvantages.
17. Option 1 Do Nothing: represents a missed opportunity to suggest reasonable improvements to the Guidelines that could achieve outcomes compatible with the Council's corporate and community energy efficiency objectives as well as EcoWater (WaterCare) water metering services.
18. Option 2 involves making a submission that recommends wording to encourage the wider application of the Guidelines to support access to useful information for the Council's corporate and community energy efficiency objectives as well as EcoWater (WaterCare) water metering services. The cost of this option will be in terms of staff time only.

#### **Consideration of Community Views**

19. The role of the Electricity Commission is to receive and consider the interests of the participants and persons the Electricity Commission thinks are representative of the interests likely to be substantially affected by the proposed amendments to the Guidelines.

#### **Preferred Option**

20. The preferred option is Option 2 - making a written submission.

## STRATEGIC CONTEXT

21. The submission will be developed in light of existing Council policies and strategies, most of which have been developed in conjunction with the community, including the Long Term Council Community Plan 2009-2019, the Waitakere Action Plan on Climate Change and Energy and Water Demand Management Action Plan and Environment Strategy.

## CONSULTATION

22. Consultation with the Eco Design Advisor, Cleaner Production, EcoWater and Strategic Planning staff will lead to the development of the submission.

## RESOURCES

23. Making a submission involves officer time.
24. Any future additional costs in adopting AMI technologies would be supported by a business case to be considered by the Council for inclusion in the budget.

## IMPLEMENTATION ISSUES

25. Making a submission does not raise any implementation issues, as this will allow improvement to the Guidelines with little to no risk or cost other than budgeted staff time.

## AUCKLAND COUNCIL TRANSITION ISSUES

26. 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:** Michelle Dawson, Corporate Sustainability Manager.



## 8 SUBMISSION ON PROPOSED NATIONAL ENVIRONMENTAL STANDARD ON SOIL CONTAMINATION

### GLOSSARY

Ministry for the Environment	(MfE)
National Environmental Standard/s	(NES)
Planning and Regulatory Committee	(the Committee)
Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil	(Discussion Document)
Resource Management Act 1991	(RMA)
Soil Guideline Values protective of Human Health	(SGVs <sub>(Health)</sub> )

## EXECUTIVE SUMMARY

The purpose of this report is to:

- Inform the Planning and Regulatory Committee (the Committee) of the Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil (Discussion Document); and
- Seek approval from the Committee for the lodgement of a Council submission to the Ministry for the Environment (MfE).

National Environmental Standards (NES) are legally enforceable regulations under the Resource Management Act 1991 (RMA) that are effectively environmental bottom lines that can override any existing district or regional plan rules. A rule or a resource consent may be more stringent than a NES (if the NES states that it can be), but a rule or a resource consent may not be more lenient.

A14-A37

The Ministry for the Environment (MfE) released a Discussion Document and supporting technical information. These documents are over 500 pages in length, and only an abridged summary including highlights of interest to the Council from the Discussion Document is attached at pages A14 to A37.

The proposed NES seeks to “*ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed and if necessary remediated, or the contaminants contained, to make the land safe for human use.*”

It is recommended that Council makes a submission on the proposed NES, generally in support of the promulgation of clear and consistent standards and procedures. The submission should also seek to ensure (amongst other matters) that the proposed standard is efficient and effective, particularly from the perspective of the ‘average applicant’.

Submissions are due on 20 April 2010 and an internal cross-council working group was set up to review the proposed NES and identify issues of interest or concern, not covered by the proposed NES. Approval is sought for the final version of Waitakere’s submission on the Discussion Document to be delegated to the Chairman of this Committee.

A38-A46

A draft Council submission based on comments of the intra-Council working group is attached at pages A38 to A46.

## RECOMMENDATIONS

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

1. **Receive** the Submission on Proposed National Environmental Standard on Soil Contamination report.
2. **Agree** that Waitakere City Council make a submission to the Ministry for the Environment on the Proposed National Environmental Standards for Assessing and Managing Contaminants in Soil to the Ministry for the Environment.
3. **Agree** to delegate to the Chairman of the Planning and Regulatory Committee approval of the final version of a Waitakere submission to the Ministry for the Environment on the Proposed National Environmental Standards for Assessing and Managing Contaminants in Soil.

## BACKGROUND

1. NES are legally enforceable regulations under the RMA that are effectively environmental bottom lines, that override any existing district or regional plan rules. A rule or a resource consent may be more stringent than a NES (if the NES says that it can be), but a rule or a resource consent may not be more lenient.
2. Soil contamination is a significant environmental and economic issue in Waitakere, mainly due to the long horticultural history of the City, which was at its peak during the time when the most persistent chemicals (used mainly as pesticides, herbicides or fungicides) were in common usage, many of which are now banned. Many other agricultural, industrial and even common household activities have occurred across the City that have potentially discharged contaminants into the soil and groundwater. These may affect human health and/or the local and wider receiving environment.
3. Waitakere's current practice is to identify the past use (where known) on the property file and on Land Information Memoranda. This also includes past intensive horticultural use (such as orchards, vineyards and glasshouses), which have, since 2004, been identified following a joint Auckland Regional Council/Waitakere City Council project using historic aerial photos. This is continuously updated through a process of noting many other sites on the Hazardous Activities and Industries List, such as those used for petrol stations, timber treatment, automobile wreckers and many other activities. This occurs as the information comes to hand, and these property files are now stored electronically.
4. At the time of purchase, liability for contaminated land passes to the new owner. Some current landowners have expressed concern that their property values could be adversely affected by notations relating to past activities on their land. This matter was considered by the Land Valuation Tribunal, but no effect on property values was established. It is nevertheless important that property information (where known) is accurately categorised and passed on to interested parties. The land tenure system is dependent on public confidence in the management of land information, and that potential risks are identified if known. Where a soil report for land in the city is received by Council, and it confirms that the soil is not contaminated, (either post-remediation, or that its past use did not result in contamination) then this information is also noted on and made available with the property file.
5. Currently soil contamination in Waitakere is managed by way of City Wide Rule 2 Hazardous Facilities and Contaminated Sites, where "*any activity involving the development, redevelopment or use of a contaminated site known to the Council*" is a discretionary activity. Remediation and restoration of a contaminated site is a controlled activity (always processed on a non-notified basis, and it must be granted subject to conditions). The definition of contaminated site in the District Plan "means a site which is known to the Council to contain contaminants above background levels, and where assessment indicates an immediate or long term hazard to human health or the environment".

6. The Waitakere District Plan definition of *contaminant* refers to the definition in Section 2 of the RMA. Other relevant definitions from the RMA and the Hazardous Substances and New Organisms Act 1996 are also listed below:

**contaminant** includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or
- (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged

**contaminated land** means land that has a hazardous substance in or on it that—

- (a) has significant adverse effects on the environment; or
- (b) is reasonably likely to have significant adverse effects on the environment

**hazardous substance** includes, but is not limited to, any substance defined in [section 2](#) of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance

From section 2 of the Hazardous Substances and New Organisms Act 1996:

**hazardous substance** means, unless expressly provided otherwise by regulations, any substance—

- (a) With one or more of the following intrinsic properties:
  - (i) Explosiveness:
  - (ii) Flammability:
  - (iii) A capacity to oxidise:
  - (iv) Corrosiveness:
  - (v) Toxicity (including chronic toxicity):
  - (vi) Ecotoxicity, with or without bioaccumulation; or
- (b) Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition.

7. The Waitakere District Plan definition refers to sites known to Council containing *contaminants* above background levels which, following assessment, will have any effect on human health or the environment. The RMA definition of contaminated sites refers to land containing *hazardous substances* that will have or are likely to have a “significant” adverse effect on the environment (which includes human health) – this significant effect test is a much higher threshold than “any effect”.
8. This definition issue is further compounded by the existence of a number of MfE published guidelines (not currently statutorily binding) about assessment, measurement and remediation of contaminated sites. Further to this, the Auckland Regional Council has published guidelines associated with their responsibilities for managing contaminant discharges, contaminated land, clean-fills and land-fills under the Auckland Regional Plan: Air Land and Water.
9. A plethora of other published national and international guidelines on acceptable levels of contaminants (used to determine the ‘effect on human health or environment’) are also available. They are used locally, with various consultants favouring various methodologies, measurements, and safe levels. This has caused issues for applicants.

10. Presently, there is no nationally or regionally consistent or binding approach to the management of soil contamination. This results in greater costs and uncertainties, without necessarily improving human health or the environment. It also does not enable the efficient management of contaminated sites and soils.

### DECISION MAKING

11. It is recommended that the Waitakere submission supports the promulgation of an NES, but that the submission also seeks to ensure that the NES are workable, easy to use and efficient, both for local authorities and landowners.
12. Council is not the final decision maker with respect to the NES, and will have the status of a submitter to MfE, who will make recommendations to the Minister for the Environment. Once the NES is promulgated into regulations, compliance is compulsory.
13. Making a submission to the NES requires only staff time and will potentially result in improvements to the proposed regulations that will eventually impact on the management of land in Waitakere.

### Issues

#### Summary of NES

14. The discussion document (refer Appendix AXX, Section 7) outlines how the proposed NES would work. Full versions of the discussion document, and technical appendices (Draft Methodology for Deriving Soil Guideline Values protective of Human Health, and Draft Toxicological Intake Values for Priority Contaminants in Soil) as well as a large amount of other technical information, is freely available from <http://www.mfe.govt.nz/laws/standards/contaminants-in-soil/>
- A47-A48 15. The proposed consenting process under the NES is simple, and generally mirrors and codifies existing practice at Council and is summarised in the attachments at pages A47 to A48.
16. The reference to existing MfE Management of Contaminated Land guidelines is useful, as most councils and practitioners are at least familiar with them, and the NES does confirm that existing practice at Waitakere City Council (as outlined in the Background above) is generally suitable, given the similarities between the two processes.
- A38-A46 17. Concerns are related to the detail of the process, and outlined below and in the draft submission at pages A38 to A46.

#### Submission Points

- A38-A46 18. The following issues or questions have been addressed in the draft submission on the NES (attached at pages A38 to A46). Addressing these matters seeks to improve the NES and address issues of importance in managing contaminated soil issues.
  - a. Complexity of proposed process – process could be improved for ‘simple’ applications, with the option to proceed on a more nuanced assessment if required.
  - b. Proposed scope of NES and potential for confusion and frustration; Limited to protection of human health, with environmental protection remaining subject to variation and uncertainty.
  - c. Definition of use and development: where to draw line and exclusions to avoid requirement to obtain consent or investigate unnecessarily.

- d. Reduction in post development disputes and/or remediation; potential to improve this aspect of the NES.
  - e. Managing land use change on 'consented' sites over time; The NES proposes local authorities will consent and monitor indefinitely such matters as vegetable gardens and cropping.
  - f. Cost recovery; for Councils in monitoring and peer reviewing received soil investigations without a cost recovery mechanism, particularly for 'permitted activities'.
  - g. Incentives for remediation.
  - h. No SGVs for hydrocarbons or asbestos in the NES; The NES Soil Guideline Values could be expanded to include other common contaminants.
  - i. Potential for perverse outcomes: the NES SGVs as a "pollute up to" value; Could promote the movement of contaminated soil to 'clean' sites under different land use assumptions with higher thresholds.
  - j. The status of Soil contamination (for human health) thresholds from other countries.
  - k. What will be the status of contamination values in soil if the particular contaminant is not included in the NES?
  - l. Soil guideline values for recreation areas; particularly the issue of muddy sports fields and community gardens.
  - m. Dispute and liability issues; who pays and what is the Councils risk in case of dispute, particularly in the case of 'permitted activity' investigations later found to be wanting.
  - n. Certified practitioner scheme: what is 'appropriately experienced'?
  - o. Recommendation for a Soil Contamination Advisory Panel.
19. Due to the nature of the NES submission process (only a written submission is made, there is no opportunity to speak to it, or appeal to the Environment Court should the result not be desirable) the proposed submission is to the point, but thorough. It focuses on improving the practical workings of the proposed NES, rather than the technical contamination science behind it, which is assumed to be sound.
20. The submission is an opportunity to pose questions to MfE and their technical advisors, and where possible suggest possible answers, that will hopefully result in better regulations.

### STRATEGIC CONTEXT

21. The management of contaminated soil is a contentious issue within the City, and has had, and will continue to have impacts on human health and the environment, and the community's social, cultural and economic wellbeing.
22. As a proposed regulation under the RMA, compliance would be compulsory – it will change the way contaminated soil is managed in the City irrespective of the current strategic direction.
23. Contaminated soil is closely linked to the objectives of the Growth Management and Economic Wellbeing Strategies (land suitability for various uses, and the economic cost of investigations and remediation) and the Environment Strategy (the continued leaching of contaminants into soils and waterways, impacting on biodiversity, and suitability for food gathering).

24. Contaminated soil management also links to the Community Outcomes which include *Green Network* and *Sustainable Environment* priorities in particular.

### CONSULTATION

25. Consultation on the proposed NES is being undertaken by MfE on behalf of the Minister for the Environment in accordance with the provisions of the RMA 1991. Any person or party may make a submission.
26. The draft Council submission has been developed in light of existing Council policies and strategies, most of which have been developed in conjunction with the community, including the Long Term Council Community Plan 2009-2019 and the District Plan.
27. Within the context of developing a submission a cross-council working group of officers has discussed aspects of the NES, including staff from Resource Consents (planners and Environmental Monitoring Officers), Resource Management (including staff involved in the policy and technical advisory groups) and Strategic Planning.
28. It is anticipated that formal and informal discussions will occur via Local Government New Zealand (who will also be making a submission), and other territorial and regional authorities.
29. A key focus of the draft submission is to ensure that the NES is simple to use and administer for applicants, and local authorities, while also improving certainty, efficiency, and the outcomes for both human health and the environment.

### RESOURCES

30. The development of the submission does not require resources other than staff time. Any implications the proposed NES presents for Council will be discussed at the Committee meeting.
31. Advocacy and liaison with other territorial authorities and central government on policy and regulation is part of the budgeted work programme of the Strategic Planning Unit.

### IMPLEMENTATION ISSUES

32. There are no implementation issues anticipated with the proposed recommendation, being the making of a submission.
33. Implementation of any subsequently approved NES (such as District Plan changes, as well as policy and procedure changes) that is passed into regulation will be required as per the timeline outlined in the regulation, which is yet to be confirmed. It is currently anticipated, based on past NES processes, and as a result of submissions on the matter, that the NES will neither be passed into regulation, nor be required to be implemented, prior to the establishment of the Auckland Council in November 2010, which will be developing new RMA regulatory plans.

### AUCKLAND COUNCIL TRANSITION ISSUES

34. 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: Kyle Balderston, Strategic Advisor: Sustainable Management.



**PART E - REPORT OF THE SUBCOMMITTEE**

**9 SWIMMING POOL EXEMPTION SUBCOMMITTEE**

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 25 FEBRUARY 2010**

**1 APPLICATIONS FOR SPECIAL EXEMPTIONS – FENCING OF SWIMMING POOLS ACT 1987**

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

**Agree** that requests for a fee waiver only be considered upon a recommendation from Council officers and only in exceptional circumstances.

**2 OTHER MATTERS CONSIDERED**

A49-A56

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 A49 to A56.

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

**Receive** the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 25 February 2010.

WW Flaunty, QSM, JP  
**CHAIRMAN**



**PART F - RECONVENED HEARING**

**10 PROPOSED PLAN CHANGE 28: HERITAGE**

The Proposed Plan Change 28: Heritage Hearing was adjourned at the 9 March 2010 meeting to enable a site visit of the Donner House property to be undertaken by the Planning and Regulatory Committee.

The Hearing will reconvene for the Planning and Regulatory Committee to make a decision on Proposed Plan Change 28: Heritage.

