



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, 8 June 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.

2 June 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, 8 JUNE 2010,  
COMMENCING AT 9.30 AM**

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**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 8 JUNE 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, 13 April 2010

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, 13 April 2010, as circulated, and that they be taken as read and now be confirmed.



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

### **5 LEGAL UPDATE (AS AT 31 MAY 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)
Metropolitan Urban Limit	(MUL)
metres squared	(m <sup>2</sup> )
Rodney District Council	(Rodney)

#### **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 May 2010) report.

#### **HIGH COURT**

**(Changed)**

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

1. This is an application for judicial review of the Rodney District Council's decision to grant consent jointly to Rodney District, Waitakere City Council (Council) the Auckland Regional Council (ARC) and the 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 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, has 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. The Council is involved because it is one of the bodies that now cannot exercise its right under the consent.
3. Mr Muir has withdrawn his application for judicial review and the matter is no longer active. Council can commence works in the summer of 2011.

**(Changed)**

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

4. 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.
5. 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.
6. 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).
7. We have now received notice that the appeal has been abandoned. This matter is now at an end.

**(Unchanged)**

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

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

**(Changed)**

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

9. 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.
10. 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.

11. 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**

**(Changed)**

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

12. Costs of \$19,350.50 were awarded to Council following appeals by Mr Mawhinney against the Environment Court's decision (issued in April 2008) to strike out three related appeals regarding purported applications for certificates of compliance and subdivision consents. The overall purpose of the application was seeking to establish 77 dwellings on the subject site in the foothills environment. Mr Mawhinney failed to pay the costs awards. Bankruptcy notices were issued and a substituted service application was necessary to serve Mr Mawhinney with the notices. Mr Mawhinney applied to set aside the bankruptcy notices alleging various counterclaims and set-offs against Council which were without merit. The matter was allocated a defended hearing on 10 May 2010.
13. Before the defended hearing, a settlement was reached with Mr Mawhinney. It was agreed that Mr Mawhinney's application to set aside bankruptcy notices would be dismissed and that Mr Mawhinney would pay Council the outstanding costs of \$19,350.50, plus further costs of \$14,649.50 (a substantial contribution to Council's costs of the application), \$34,000 in total on or before 9 July 2010. The case has been adjourned until 13 July 2010 to allow payment. If Mr Mawhinney does not pay the debt the proceeding will be dismissed and Mr Mawhinney will commit an act of bankruptcy. If this occurs, Council will be able file an application asking the Court to adjudge Mr Mawhinney bankrupt.

**ENVIRONMENT COURT**

**(New)**

**Trustees of the George Easton Family Trust v Waitakere City Council (April 2010)**

14. This an objection to the taking of land under the Public Works Act 1981. The property is situated at 19 Totara Ave, New Lynn. The property being acquired is in New Lynn and is part of the strategic acquisitions in New Lynn. The objections were required by the Court to provide further particulars of objection by 27 May 2010.

**(New)**

**Choong Huat Lai and Luan Joo Tan v Waitakere City Council (April 2010)**

15. This an objection to the taking of land under the Public Works Act 1981. The property is situated at 30 Totara Ave, New Lynn. The property being acquired is in New Lynn and is part of the strategic acquisitions in New Lynn. The Council required to file reply to the objection by 7 June 2010

**(Changed)**

**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)**

16. These appeals relate to the Council's decision to grant consent for a Mitre 10 Mega on Lincoln Road, Henderson. The appellants oppose the consent because they development 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.

17. 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.
18. The Council reported to the Court on 27 April 2010 as to its position and the position of the other parties. The matter is being set down for mediation, although no date has been allocated at this stage.

**(Unchanged)**

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

19. 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.
20. 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 Council and the applicant (Rotcol) exchanged evidence on 26 April 2010.
21. On 24 May 2010 the appellants wrote to the parties to state that they will be withdrawing their appeal. They are filing the relevant information with the Court. This matter is now at an end.

**(Changed)**

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

22. 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 two s. 274 parties, the Herald Island Residents and Ratepayers Association and John Tabak. The Court has stipulated an evidence exchange timetable requiring the appellant to file evidence by 28 May 2010, which it has now done and the respondents/s. 274 parties to file their evidence by 18 June 2010.

**(Changed)**

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

23. 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.
24. The appellant has put forward through mediation a reduced scale development of five levels (four residential, one, ground floor, retail) with more landscaping and reduced overall height. This proposal was put to the parties at the mediation on 3 May 2010. The parties to the mediation in part accepted that the reduced scale proposal is acceptable. A full report as recommendations on how the Council can proceed on this matter will be brought back to the Planning and Regulatory Committee for determination in July.

*(Unchanged)*

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

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

*(Changed)*

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

26. See the separate report on this agenda relating to this matter.

*(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. 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**

**(Changed)**

#### **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. The matter has been adjourned until 9 July 2010.

**(Changed)**

#### **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, Judge Recordan recognised that a deterrent was appropriate and ordered the defendant to complete 40 hours community service. The matter will be recalled on 4 June 2010 where matters related to costs/reparations will be finalised.

**(Unchanged)**

**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 m 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 manger, 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 block work 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 defendants have requested a further adjournment to consider disclosure. The matter will be recalled on 11 June 2010.

**(Changed)**

**Sabri 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 set down for a defended hearing on 13 August 2010.

**(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.
58. At sentencing, Judge Smith acknowledged the ordinary principles of deterrence/denunciation of offending and considered that an offence of this scale warranted a starting point fine of \$10,000. His honour considered that a substantial discount was appropriate given Mr Chai's poor financial circumstances, physical disability, and the costs he had incurred to rectify the contraventions. Mr Chai's fine was reduced to \$6,000 on the basis of these circumstances plus a further 1/3 discount for guilty plea. Mr Chai was ordered to pay \$4,000 (90% to Council) plus \$130 Court Costs and \$113 Solicitor's Costs. This matter is now at an end.

**(Changed)**

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

59. 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.
60. 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.
61. 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 matter has been set down for a defended hearing on 13 August 2010.

**(Changed)**

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

62. 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.
63. 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.

64. 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.
65. 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 insanitary 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.
66. 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 insanitary building notice. Sentencing was adjourned to 23 April 2010 to enable Mr Green's lawyer to file submissions.
67. Mr Green was sentenced on 23 April 2010 before Judge Everett. Mr Green applied through his lawyer for a discharge without conviction on the basis of his personal circumstances. His honour declined the application and in his decision noted that Mr Green had had a long period of time to comply, had been fundamentally unco-operative, and had allowed a very serious insanitary building problem to continue unaddressed at the property. His honour was also critical of the fact that Mr Green had not applied for a benefit, and had not arranged with his solicitor to value the property to facilitate a loan to get a builder onsite to commence the remedial work. Taking into account Mr Green's poor financial circumstances and personal circumstances, he was convicted and fined \$3,000 plus \$130 Court Costs and \$226 Solicitor's Costs. This matter is now at an end.

**(Changed)**

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

68. 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.
69. 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.
70. Informations were laid on 8 April 2009 and the first call of the matter was heard by Judge Tremewan at Waitakere District Court on 25 May 2009. Mr Comer entered a plea of not guilty and indicated that he would have legal representation at the substantive hearing. Judge Tremewan agreed to counsel's request to transfer the matter to Auckland District Court to be heard by a judge with an Environment Court warrant. The matter was set down for a status hearing at Auckland District Court on 10 August 2009.

71. 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.
72. 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. Mr Comer was committed on 16 April 2010 and the matter is remanded until 6 July 2010. An indictment was filed on 28 May 2010.

**(Changed)**

### **Leaky Building Claims**

#### **Current Claims**

73. Claim statistics are as follows:
- (a) There are 15 unresolved leaky building claims being handled by Council's lawyers. The 15 claims represent 332 units, with 9 multi unit claims representing 326 units:
- High and District Court: 9 (including 5 multi unit claims)
  - Weathertight Homes Tribunal (WHT) 6 (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 the 30 April was 185. The total number of properties affected was 359. 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**

##### **June 2010**

74. To date the total amount paid by Council to Claimants to settle claims, inclusive of contributions by Riskpool, is \$1,145,000. 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.

##### **May 2010**

75. The claim in respect of 40 Danica Esplanade, Te Atatu Peninsula was settled at mediation on 17 May 2010. The Council's and Waitakere Properties Ltd combined RiskPool excess of \$100,000 was consumed in settling the claim.

**April 2010**

76. The claim in respect of 192B Cliff View Drive, Green Bay was settled at mediation on 27 April 2010. The Council's RiskPool excess of \$50,000 was consumed in settling the claim.

**March 2010**

77. 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**

78. 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**

79. No claims were settled during January 2010.

**Claims Received**

**June 2010**

80. No claims received.

**May 2010**

81. Applications for Assessor reports were accepted by the WHRS in relation to 18 Chettle Court, New Lynn, and 29 Roy Maloney Drive, Henderson on the 7 May 2010 and in respect of 7 Kona Crescent, Henderson on the 11 May 2010.

**April 2010**

82. Applications for Assessor reports were accepted by the WHRS in relation to 11 Exotic Court, Massey on the 15 April 2010 and 23 Stephen Avenue, Henderson on the 19 April 2010.

**March 2010**

83. An application for an Assessor's report was accepted by the WHRS in relation to 11 Woontons Lane, Titirangi on the 18 March 2010.

**February 2010**

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

**January 2010**

85. No claims were received during January 2010.

**Report prepared by:** David Collins, Contract Solicitor.



## 6 PROTECT PIHA HERITAGE SOCIETY INC – PAYMENT OF COSTS

### GLOSSARY

Protect Piha Heritage Society Inc. (PPHS)

### EXECUTIVE SUMMARY

This report informs the committee of contact between the Chief Executive Officer and Protect Piha Heritage Society Inc. (PPHS) following the direction given by the Planning and Regulatory Committee (the Committee) on 13 April 2010 to the Chief Executive Officer to pursue payment of the unpaid costs order of the Environment Court.

### RECOMMENDATION

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

**Receive** the Protect Piha Heritage Society Inc. - Payment of Costs report.

### BACKGROUND

1. The Council and the Auckland Regional Council agreed to grant the resource consents necessary to establish a new café at Piha. The application for those consents had been opposed by PPHS and it appealed against the councils decisions. The matter went to mediation but did not settle its mediation. On appeal the Environment Court supported the decisions of councils.
2. Following the decision of the Environment Court, a decision was made that this was an appropriate case for the Council to make an application for costs against the unsuccessful appellant. The consent holder also made an application for costs. The applications were opposed by PPHS. Notwithstanding that opposition, and the general rule that costs will not be awarded against a community organisation, the court ordered that costs be paid by PPHS to the consent holder in the sum of \$10,000 and to the Council in the sum of \$5000. PPHS did not appeal against these orders.
3. The consent holder has issued proceedings in the District Court to enforce payment. To date the Council has not issued proceedings.
- A4-A5 4. Representatives of PPHS met with Councillors Hulse and Neeson to discuss the cost issues in 2009. They were referred to the Manager: Legal Services. Correspondence between PPHS followed and culminated in a letter dated 9 February 2010, copy attached at pages A4 to A5, which invited a proposal. No proposal, beyond a further request to meet, was received.
5. At its meeting on 30 April 2010 the Committee resolved to "agree that the Chief Executive Officer be requested to actively pursue the issue of costs awarded by the court to the Council in respect of the Piha café decision" (459/2010). On learning of that resolution representatives of PPHS made contact with the Chief Executive Officer who agreed to meet with them and to take no steps to implement the committee's decision until that meeting had occurred. The Chief Executive Officer met with representatives of PPHS on 18 May 2010. At that meeting it was agreed that a report would be taken to the Committee.
- A6-A7 6. The points made by PPHS in support of its position that Council should not further pursue payment of costs is set out in an e-mail dated 19 May 2010, copy attached at pages A6 to A7. The cheque for \$500 referred to at the end of that letter has been received and banked, as a payment on account. A balance of \$4500 therefore remains owing.

## DECISION MAKING

### Issues and Options

7. The issues for decision by the Council are relatively narrowly constrained. The Environment Court has exercised its judicial discretion and made an order for payment of costs. The Council now has the benefit of an order which it can enforce. There are only four options open to the Council:
  - a) enforce payment in full;
  - b) agree to an arrangement where the debt is paid in full over time, with or without interest;
  - c) waive payment on agreed terms; or
  - d) write off the balance of the debt on the grounds that the debtor is insolvent.
8. The requirement to enforce payment flows from s44(1)(d) of the Local Government Act 2002. Under that section, the Auditor-General may recommend recovery of money against elected members (subject to a range of statutory defences) in their personal capacity in circumstances where a local authority "has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive". This provision does not, however, prevent a local authority from agreeing to accept a lesser sum in settlement of a debt due and to write off any balance payable if it is satisfied that the debtor is insolvent and there is no realistic prospect of a cost-effective recovery. Any agreement to compromise and/or to write off part of the debt may be made subject to conditions.
- A6-A9 9. PPHS has supplied Council with a copy of its financial accounts at 31 October 2009, copy attached at pages A8 to A9. These accounts confirm the insolvent financial position of PPHS. The e-mail attached at pages A6 to A7, confirms that PPHS remains insolvent and is presently unable to pay its debts in full. It is understood that the \$500 payment of on account left \$100 in PPHS' bank account.
10. The e-mail confirms that there is no enthusiasm amongst the members of PPHS for fundraising to satisfy the debt owing to the Council. It is not clear from the e-mail what, if any, proposals PPHS might have for settlement with its other creditors. Council would not wish to be treated less favourably than other creditors of PPHS. In this regard, it is usual in these circumstances for a debtor to compound with all of its creditors on the same terms, on an even-handed and equal basis.
11. An incorporated society which has no assets or liabilities and is no longer operating may be dissolved by informal process involving a simple application to the Registrar of Incorporated Societies. Where an incorporated society is insolvent the process is more complex and involves the appointment of a liquidator. If a liquidator is appointed by resolution of the incorporated society then the liquidator is likely to require an indemnity for fees of \$3000 - \$5000. Alternatively the incorporated society may be placed into liquidation by order of the High Court on the application of a creditor. In that case the Official Assignee would most likely be appointed liquidator and obtaining an order to place the incorporated society in liquidation is likely to incur legal costs and disbursements in the order of \$2500 - \$3500 (more if the application is opposed).
12. If therefore the Committee was minded to agree to compromise the debt owing by PPHS in some way further thought is required to ascertain an appropriate basis (if any) for such a compromise. Consideration of any such proposal is made more difficult by the fact that there is not a formal proposal from PPHS in that regard. Alternatively, the Committee might be prepared to accept the advice received as to the poor financial state of PPHS and agree to all or part of the balance of the debt. This action can be taken, with or without the imposition of conditions.

13. Possible approaches in relation to the options outlined at paragraph 7 (c) and (d) include:
  - a) An arrangement that would place an obligation on PPHS to pay the balance of the costs owing if it wished to become involved in new court proceedings against the Council in relation to any Resource Management Act related matter. This could be achieved through an agreement by Council not to enforce payment so long as PPHS is not an appellant or s274 party in the Environment Court, or making a challenge by way of judicial review in the High Court, to a resource consent, district plan or plan change decision made by this Council or its successor.
  - b) As an alternative (or additional) arrangement to that in (a) Council could seek to obtain an undertaking from PPHS that it would not oppose any application for costs that Council might make in future court proceedings that PPHS may become involved in with the Council or its successor.
  - c) In return for agreement by the Council to write off the balance of the debt, an arrangement whereby PPHS, if it is able to compound with all of its creditors, undertakes to dissolve at the first opportunity to do so
14. This report does not make a recommendation in respect of the options available to the Council and leaves that as matter for debate and decision at the meeting.

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

15. The views of those members of the community connected with PPHS are reflected in the correspondence with this report. In addition to this there has been correspondence from other members of the Piha community who support the stance previously taken by the committee and who are in regular contact to see what progress has been made over payment of the outstanding costs.

#### **CONSULTATION, RESOURCES and IMPLEMENTATION**

16. There is no consultation, resources or implementation issues raised by this report.

#### **AUCKLAND COUNCIL TRANSITION ISSUES**

17. 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:** Denis Sheard, Manager: Legal Services.



**PART C - REPORT OF THE SUBCOMMITTEE**

**7 SWIMMING POOL EXEMPTION SUBCOMMITTEE**

**THE SWIMMING POOL EXEMPTION SUBCOMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON THURSDAY, 22 APRIL 2010**

**MATTERS CONSIDERED**

A10-A15

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 A10 to A15.

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

**Receive** the meeting report of the Swimming Pool Exemption Subcommittee held on Thursday, 22 April 2010.

WW Flaunty, QSM, JP

**CHAIRMAN**



**PART D - PUBLIC EXCLUDED MATTER**

**8 PROPOSED PLAN CHANGE 32: PENIHANA NORTH**

This item will be considered in the confidential supplement of the agenda, and has been circulated to members separately with this agenda.

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, namely Proposed Plan Change 32: Penihana North.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation the matters and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Proposed Plan Change 32: Penihana North	The withholding of information is necessary in order to: <ul style="list-style-type: none"> <li>• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The report contains information which if released could affect Council's negotiations.*

