

I hereby give notice that an ordinary meeting of the Regulatory and Community Safety Committee will be held on:

Date: Tuesday, 4 June 2024
Time: 10.00am
Meeting Room: Room 1, Level 26
Venue: 135 Albert Street
Auckland

Komiti mō te Waeture me te Haumarū ā-Hapori / Regulatory and Community Safety Committee

OPEN AGENDA

MEMBERSHIP

Chairperson	Cr Josephine Bartley
Deputy Chairperson	Cr Ken Turner
Members	Houkura Member Edward Ashby Houkura Member Ngarimu Blair Cr Julie Fairey Cr Alf Filipaina, MNZM Cr Mike Lee Cr Kerrin Leoni Cr Sharon Stewart, QSM
Ex-officio	Mayor Wayne Brown Deputy Mayor Desley Simpson, JP

(Quorum 5 members)

Phoebe Chiquet-Kaan
Governance Advisor

28 May 2024

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- 1 **Ngā Tamōtanga | Apologies**

- 2 **Te Whakapuaki i te Whai Pānga | Declaration of Interest**

- 3 **Te Whakaū i ngā Āmiki | Confirmation of Minutes**

Click the meeting date below to access the minutes.

That the Regulatory and Community Safety Committee:

 - a) whakaū / confirm the ordinary minutes of its meeting, held on [Tuesday, 9 April 2024](#), including the confidential section, as a true and correct record.

- 4 **Ngā Petihana | Petitions**

- 5 **Ngā Kōrero a te Marea | Public Input**

- 6 **Ngā Kōrero a te Poari ā-Rohe Pātata | Local Board Input**

- 7 **Ngā Pakihi Autaia | Extraordinary Business**

The Realities and the Needs of People without a Home in Central Auckland. . . and How we Might Best Respond

File No.: CP2024/06683

Item 8

Te take mō te pūrongo

Purpose of the report

1. To provide the committee with more insight on the realities and needs of people without a home in Central Auckland and how we might best respond.

Whakarāpopototanga matua

Executive summary

2. Helen Robinson and Jacqui Dillon from Auckland City Mission will give a presentation titled "Homeless not Hopeless".

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whakamihi / thank Helen Robinson and Jacqui Dillon for their presentation.

Ngā tāpirihanga

Attachments

No.	Title	Page
A⇒	"Homeless Not Hopeless" - Auckland City Mission Presentation	

Ngā kaihaina

Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services

Council homelessness work programme update

File No.: CP2024/06911

Te take mō te pūrongo

Purpose of the report

1. To provide the Regulatory and Safety Committee with a Community Impact Unit homelessness work programme update.

Whakarāpopototanga matua

Executive summary

2. In August 2012, Council resolved to contribute to improving, ending, and preventing homelessness in Auckland with the vision that homelessness be 'rare, brief and non-recurring' (ENV2017/118). Council also agreed to develop a strategic leadership plan for a regional, cross-sectoral approach and to strengthen established levers.
3. In 2020, the Parks, Arts, Community and Events Committee endorsed Kia Whai Kāinga Tātou Katoa, Auckland's regional cross-sectoral homelessness plan, a monitoring and reporting framework and approved the Auckland Council Implementation Plan.
4. Council plays a regional, and in some cases local, role in the homelessness sector, addressing homelessness through policy, advocacy, economic and social development activities, strategic partnerships, investments, and initiatives.
5. The homelessness sector delivers front line responses. Council works with community housing providers and stakeholders to facilitate regional pilots, trials, and evaluations.
6. The mayoral proposal for the 2021-2031 Long-term Plan (LTP) embedded funding for homelessness into the first three years of the plan. The LTP 2024 – 2034 continues this commitment.
7. This memorandum (Attachment A) provides the Regulatory and Community Safety committee with a homelessness work programme update.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the Community Impact Unit homelessness work programme update memorandum.

Ngā tāpirihanga

Attachments

No.	Title	Page
A⇒	Council homelessness work programme update memo	

Ngā kaihaina

Signatories

Author	Dickie Humphries – Head of Community Impact
Authorisers	Claudia Wyss – Director Customer & Community Services Craig Hobbs - Director Regulatory Services

Proactive Boarding House Inspection Programme

File No.: CP2024/06725

Te take mō te pūrongo Purpose of the report

1. To update the committee on the Proactive Boarding House Inspection Programme.

Whakarāpopototanga matua Executive summary

2. This report covers activity over the last 12 months in relation to the ongoing inspections of unauthorised or illegal boarding houses across the Auckland Region.
3. The responsibility for arranging and managing such visits currently lies with the Compliance Unit within Licensing and Regulatory Compliance. Prior to 2021 visits were carried out by the Targeted Initiatives Team within the former Regulatory Compliance Unit.
4. The programme aims to visit at least three boarding houses each month using a multi-agency approach. As well as compliance staff from the Compliance Unit the visits are coordinated to include Fire and Emergency New Zealand (FENZ) officers, Environmental Health Inspectors and inspectors from the Tenancy Compliance & Investigations Team of Ministry of Business, Innovation & Employment (MBIE).
5. Rather than random inspections of known boarding houses officers have focused on those premises identified through the gathering of intelligence from all the agencies involved. A risk-based approach is then adopted to prioritise visits.
6. Over the last 12 months 44 inspections have been carried out.
7. Breaches observed primarily related to unauthorised use and alterations to buildings to accommodate more people. The use and alterations significantly affect safety as well as sanitation. The general standard of the accommodation was poor in most of the properties visited, although not all could be regarded as unfit from a health perspective.
8. Enforcement action was taken in almost all cases with owners being required to take remedial action. Appeals to MBIE for determinations to resolve differing interpretation(s) of the Building Act and Building Code performance requirements have become more prevalent. Four cases (involving two operators) are currently with MBIE for determination. We believe a fifth application is imminent.
9. In most cases staff are working with the owners to improve the standard of accommodation and achieve compliance with the various regulations. The closure of boarding houses is avoided due to the lack of alternative accommodation for tenants.
10. This work compliments audits of approved 'transient accommodation' (including boarding houses, backpackers, and hostels) that the Building Consents Building Warrant of Fitness team conducts. There are approximately 160 buildings within this category.

Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the report on the Proactive Boarding House Inspection Programme.

Horopaki Context

11. The programme continues to deliver improved standards for residents as a result of the proactive intervention by the relevant agencies.
12. The legislation for boarding houses comes from the Building Act 2004, the Building Code 1992, the Health Act 1956, the Housing Improvement Regulations 1947, the Resource Management Act 1991 (RMA), the Auckland Unitary Plan and the Residential Tenancies Act 1986.

Tātaritanga me ngā tohutohu Analysis and advice

Methodology

13. A list of boarding houses to be visited has been determined based on intelligence held by Auckland Council and MBIE, with input from other agencies. A total of 72 properties were visited in the last 24 months.
14. There are currently 99 properties on the active follow-up list for ongoing monitoring. Once properties have become compliant, a slippage in standards has been observed when no ongoing monitoring is maintained.
15. Inspection notification letters are sent to all boarding houses visited to encourage the operators to take measures to ensure compliance with existing legislation.
16. The boarding houses to be inspected are sent letters 5-10 days prior to the inspection. Where intelligence suggest there is an imminent risk to residents an immediate inspection is arranged.
17. One senior project specialist runs the programme and is supported by the wider compliance team when visiting properties. Where serious breaches are found that can't be resolved, assistance is given in relation to escalated enforcement.

Multi Agency Approach

18. Coordinating inspections with other agencies is challenging in terms of availability and resourcing. However, the approach is impactful with landlords having to account for all aspects of their business. Invariably, if a landlord is lacking in one area of compliance this is reflected in other areas as well.

Results

19. It was found that 40 of the 44 properties inspected were shown to be operating unauthorised transient accommodation or boarding houses.
20. Several properties visited were illegally established boarding houses that house residents referred by Work and Income New Zealand (WINZ) or the Department of Corrections. Due to the shortage of bed space these agencies struggle to find appropriate accommodation at short notice. With no official register of boarding houses, agencies find it difficult to know whether a property is legal or compliant. We have established relationships with several stakeholders such as Police and the Department of Corrections around housing individuals that may pose a risk to a community. Most agencies try to use established premises that they know, but the shortage of such premises is a challenge.
21. Several properties were found to be large, converted houses or multi-unit complexes ranging from five to 27 rooms. Whilst the living conditions were satisfactory, the buildings themselves did not meet the required building standards for sleeping accommodation. Primarily this relates to fire safety and building performance requirements.

22. An increasing number of accommodation providers are involved with a portfolio of properties. These are typically run as a business or commercial enterprise.
23. One accommodation-provider operates from at least three separate residential addresses whilst marketing individual rooms as a hotel. They have been notified that an unauthorised change-of-use has occurred and to take corrective action.
24. Another trend has seen larger residential houses being used as live-in rehabilitation clinics or centres. This type of operation is difficult to detect and relies on complaints generally related to overcrowding and parking being reported by the community.
25. We have encountered increased resistance from these larger-scale operators. This has ranged from refusal to permit entry or challenging the basis of our assessments, findings, or legislative interpretation. More often these cases are resulting in applications (initiated by the operator) for determination from MBIE. Determinations are currently taking many months to decide.
26. We have 14 cases under investigation or that require further corrective action from the property owners / operators.

Tauākī whakaaweawe āhuarangi

Climate impact statement

27. There are no climate impacts from this programme.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

28. This programme focuses on regulatory matters managed within Licensing and Regulatory Compliance. Whilst the Regulatory Committee has a keen interest in the progress of the programme, the Planning, Environment and Parks Committee also have a community interest and will receive a copy of the report.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

29. The boarding house proactive programme aims to address non-compliance across the region and ultimately improve living conditions and uphold the rights of tenants.
30. Most local board areas have boarding houses of some kind, the central and southern areas have a disproportionately large proportion of those known to council. These tend to be in low socio-economic areas where tenants are more vulnerable.

Tauākī whakaaweawe Māori

Māori impact statement

31. This proactive compliance programme aims to improve living conditions and protect the rights of all tenants. Ensuring greater compliance with relevant statutes and regulations will improve living conditions for all tenants, including Māori.

Ngā ritenga ā-pūtea

Financial implications

32. There are no direct financial implications as these inspections have been undertaken as part of Licensing and Regulatory Compliance's programme run by the Compliance Unit. The only revenue generated from these activities comes from the billing of time for ongoing investigations and infringements issued under the Building Act and the RMA.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

33. By adopting a risk-based, intelligence led approach the programme focuses on properties that are more likely to have poor standards and therefore be non-compliant. In almost all cases, living conditions and safety are improved.
34. A general inspection regime of all boarding houses would be extremely resource intensive and costly. Adopting a risk-based approach makes best use of staff time and that of other agencies involved in the programme.
35. The list of boarding houses to be inspected has expanded and are prioritised according to the information provided and the relevant concerns of the agencies.
36. The increasing number of boarding houses with gang affiliated occupants or associates remains a concern from a staff safety perspective. This poses a risk to staff which is mitigated by arranging for Police to accompany staff on inspections. This is similar to the approach adopted when visiting bail type hostels.

Ngā koringa ā-muri Next steps

37. All agencies are committed to ongoing collaboration on the programme and meet regularly to share information and plan operations.

Ngā tāpirihanga Attachments

There are no attachments for this report.

Ngā kaihaina Signatories

Author	Adrian Wilson - Manager Compliance
Authorisers	James Hassall - General Manager, Licensing and Regulatory Compliance Craig Hobbs - Director Regulatory Services

Resource Consent Appeals: Status Report 4 June 2024

File No.: CP2024/06351

Item 11

Te take mō te pūrongo

Purpose of the report

1. To provide an update of all current resource consent appeals lodged with the Environment Court.

Whakarāpopototanga matua

Executive summary

2. This report provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates the report to the Regulatory and Community Safety Committee on 9 April 2024.
3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 09 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the Resource Consents Appeals: Status Report 4 June 2024

Horopaki

Context

4. As at 17 May 2024, there are 38 resource consent appeals to which Auckland Council is a party. These are grouped by Local Board Area geographically from north to south, as set out in **Attachment A**. Changes since the last report and new appeals received are shown in bold italic text.
5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report on 25 March 2024, there have been six new appeals lodged and none resolved.
6. The new appeal from Dennis Loxton opposes council's decline of consent for the subdivision of two lots into six lots and vary a consent notice at 55 and 61 Gordon Francis Drive, Paerata. The two lots are balance lots following a 2016 subdivision of the former property, into 32 lots. The appellant considers the consent notice is not a bar to limiting further subdivision and now does not appeal the refusal to vary the consent notice. The appellant now seeks a lesser number of lots arguing that such is not contrary to the relevant AUP objectives and policies for the Runciman Precinct.
7. Te Ākitai Waiohua Waka Taua Incorporated were a submitter to the application for a new marae complex, and associated infrastructure, accessways and parking areas, earthworks, landscaping and discharge consents at Te Motu A Hiaroa (also known as Puketutu Island), 600 Island Road, Mangere. The site lies within an Open Space Conservation Zone, and the Outstanding Natural Feature (ONF) and Sites and Places of Significance to Mana Whenua overlays within the Auckland Unitary Plan. Their appeal notes a lack of consultation and korero between local iwi, hapū and existing marae to ensure tikanga relating to the intention, use and protocols of the new marae are addressed.

8. Keith Sinclair Trust appeal the council's decline of consent for two large detached accessory buildings located within an Outstanding Natural Landscape overlay. The site at 202i Ingram Road, Bombay has a Rural - Countryside Living zoning. Council determined that the proposed positioning, scale and design of the sheds and mitigation, does not retain an appropriate open and spacious rural character, including when viewed from submitters properties across the applicant's site to the wider countryside. The appellant considers the effects to be less than minor and too greater emphasis has been given to neighbours' amenity.
9. Papatoetoe Civil Limited appeal a decision to decline a retrospective discretionary consent to establish a depot for the operations of a civil contracting company undertaking civil works at 60 Sim Road, Papakura. The council determined the application to be contrary to AUP and NPS policies seeking to avoid urban use of highly productive land. The appellant's state that no weight was given to a proposed covenant protecting the balance of the site for productive potential and consider the NPS HPL does not preclude land being used for multiple functions.
10. Herne Bay Residents Association appeal against particular consent conditions of a land use, and water and discharge consents granted to Watercare Services Limited. The consent provides for a 1.5km trunk sewer and associated access shafts and pipe connections in properties and road reserves in Ponsonby and Herne Bay. The appealed conditions relate to noise (in particular works in Salisbury Park) and replacement street tree management. The appeal has since been resolved by direct discussion between the applicant and appellant.
11. The Trustees of DOKAD Trust, Successors and Nominees including Peter Mawhinney seek to appeal a resource consent application that was returned as being incomplete. The council believes this appeal has no merit and the applicant has no appeal right until council makes a decision on the s357 objection to their application being returned.

Tātaritanga me ngā tohutohu Analysis and advice

12. To receive the report as provided.

Tauākī whakaaweawe āhuarangi Climate impact statement

13. The report provides an update of consent appeals and seeks no resolution or consideration of the merits associated with them.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

14. Not applicable.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

15. Not applicable.

Tauākī whakaaweawe Māori Māori impact statement

16. The decision requested of the Regulatory and Community Safety Committee is to receive this progress report rather than to consider the relevance to Māori associated with each of the appeals at this time.

17. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Maori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga. These matters where relevant are considered with the resolution of the resource consent appeals.

Ngā ritenga ā-pūtea Financial implications

18. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses. Informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

19. Not applicable.

Ngā koringa ā-muri Next steps

20. Not applicable.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Current Resource Consent Appeals as 17 May 2024	

Ngā kaihaina Signatories

Author	Robert Andrews - Principal Specialist Planning
Authoriser	Craig Hobbs - Director Regulatory Services

Status Update on Action Decisions from Regulatory and Community Safety Committee 9 April 2024

File No.: CP2024/05254

Item 12

Te take mō te pūrongo

Purpose of the report

1. To update the Regulatory and Community Safety Committee on action decisions made at the last meeting.

Whakarāpopototanga matua

Executive summary

2. The information provided below is a status update on action decisions only that were made at the Regulatory and Community Safety Committee meeting on 9 April 2024:

Resolution Number	Item	Status
RSCCC/2024/25	Public Safety and Nuisance By-Law Enforcement	Data is currently being collected on breaches of the various sections of the bylaw based on both reported complaints and proactive patrols. An update will be provided at the next committee meeting on 2 July 2024 as requested.
RSCCC/2024/27	Decision to adopt dangerous dams policy	The report and its attachments were sent to the local boards. All 65 submitters have been informed in writing of the adoption of the updated dangerous dams policy. The summary of feedback, written feedback report and copy of the adopted dangerous dams policy were uploaded on the AKHYS page. The dangerous dams policy went live on 13 May 2024, when the dam safety regulations came into force. The policy is publicly available on the council website. A copy of the adopted dangerous dam policy will be sent to the Chief Executive of MBIE under Sec.162(3) of the Building Act. A letter from the Mayor was sent to the Minister of Building and Construction regarding policy concerns on 24 April 2024.
RSCCC/2024/28	Appointment of an independent commissioner to consider submissions made under s.24 of the Reserves Act 1977	Eke Panuku is currently in the process of identifying an independent commissioner to appoint with the necessary Reserves Act knowledge and experience. They are not yet in a position to seek Committee approval for a specified commissioner, however, they aim to be able to further advise the committee on this in July 2024.

Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) tuhi ā-taipitopito / note the status of decisions made at the 9 April 2024 meeting.

Ngā tāpirihanga Attachments

There are no attachments for this report.

Ngā kaihaina Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services

Summary of Regulatory and Community Safety Committee information memoranda, workshops, and briefings (including the Forward Work Programme) - 4 June 2024

File No.: CP2024/04064

Item 13

Te take mō te pūrongo Purpose of the report

1. To receive a summary and provide a public record of memoranda or briefing papers that have been distributed to the Regulatory and Community Safety Committee.
2. To note the progress on the forward work programme appended as Attachment A

Whakarāpopototanga matua Executive summary

3. This is a regular information-only report which aims to provide greater visibility of information circulated to Regulatory and Community Safety Committee members via memoranda/briefings, where no decisions are required.
4. The following information items have been distributed:

Date	Subject
10/04/2024	Hearings held, hearing panels and hearing outcomes April 2023 – March 2024
26/03/2024	Response to vaping request from Hon Dr Ayesha Verrall (Labour List MP based in Wellington)
09/05/2024	Response to vaping request from Hon Casey Costello – Associate Minister of Health
20/04/2024	Letter from Mayor Wayne Brown to Hon Chris Penk - Minister of Building and Construction: MBIE Policy

5. Note that, unlike an agenda report, **staff will not be present to answer questions about the items referred to in this summary.** Committee members should direct any questions to the relevant staff.

Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the Summary of Regulatory and Community Safety Committee information memoranda and briefings – 4 June 2024
- b) tuhi ā-taipitopito / note the progress on the forward work programme appended as Attachment A of the agenda report.

Item 13

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Regulatory and Community Safety Committee Forward Work Programme - 4 June 2024	
B⇒	Hearings held, hearing panels and hearing outcomes April 2023 – March 2024	
C⇒	Hon Dr Ayesha Verrall Vaping Response 26.03.2024	
D⇒	Hon Casey Costello - Associate Minister of Health - Vaping response 09.05.2024	
E⇒	Letter from Mayor Wayne Brown to Hon Chris Penk - Minister of Building and Construction: MBIE Policy	

Ngā kaihaina Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services

Objection to wastewater works at 339 and 341 West Tamaki Road

File No.: CP2024/06461

Item 14

Te take mō te pūrongo

Purpose of the report

1. To hear and determine an objection to proposed wastewater works at 339 and 341 West Tamaki Road, Wai O Taiki Bay, pursuant to section 181 of the Local Government Act 2002.

Whakarāpopototanga matua

Executive summary

2. A developer has obtained approval from the council to connect a new development at 331 West Tamaki Road to the public wastewater manhole that is located on the neighbouring property at 341 and 339 West Tamaki Road.
3. The proposed works involve the construction of a 25-metre long 150-mm diameter pipe below the shared driveway of 339 and 341 West Tamaki Road, see Attachment A – Engineering Planning Approval. Once constructed, this pipe will be vested in the council as a public wastewater asset.
4. The owners of 339 and 341 West Tamaki Road have refused the developer access to their property for this purpose. Council-led efforts to facilitate an agreement have been unsuccessful.
5. A site inspection and assessment for the pipe considered the following alternative options:
 - **option one:** extending the public network from 341 West Tamaki Road (**recommended option**)
 - **option two:** extending the public network from 339 West Tamaki Road accessway
 - **option three:** extending the public network from 341 West Tamaki Road, (northern corner)
 - **option four:** extending the public network from 339 West Tamaki Road, northern corner)
 - **option five:** extending the public network from 337 West Tamaki Road
 - **option six:** do nothing.
6. The council has determined that the works constitute necessary public wastewater works. It has issued a notice under section 181(2) of the Local Government Act 2002 informing the landowners of its intention to construct the works as a council project.
7. The landowners have lodged a written objection to the works, on the grounds that the proposed works are not “necessary” because they believe there are other alternative alignments for the pipe connection, see Attachment B objection letters.
8. This report recommends that the Regulatory and Community Safety Committee endorse the proposed public wastewater works at 341 and 339 West Tamaki Road (**option 1**) – extending the public network for 341 West Tamaki Road - to manage the wastewater effects of the approved development at 331 West Tamaki Road. Staff recommend option 1 as it scores best against the assessment criteria against all other options. Specifically, it does not interfere with existing services or houses, is the least disruptive to landowners as it can be constructed via trenchless method with minimal impact on 338 and 341 West Tamaki Road and is a practical route which provides the most optimal outcome for the public network.

9. If the Regulatory and Community Safety Committee determines that the works should proceed, construction will begin within three months (weather dependent). It is proposed that the pipe will be installed by horizontal directional drilling, which is a trenchless methodology designed to minimise disruption caused by construction. The works will take approximately 10 days to complete.
10. It has been explained to all the affected property owners that they have the right to claim injurious affection (if established) under the Public Works Act 1981.

Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) hear and determine the objections by the owners of 339 and 341 West Tamaki Road, according to clause 1(e) of Schedule 12 of the Local Government Act 2002.
- b) whakaae / agree resolve that the council will proceed with the extension of the public wastewater network from 331 West Tamaki Road via 339 and 341 West Tamaki Road as shown in Attachment A – approved engineering plans, according to clause 1(e) of Schedule 12 of the Local Government Act 2002.

Horopaki Context

11. Auckland Council is responsible for managing and maintaining the public wastewater network in Auckland, much of which is located on private land.
 12. Section 181(2) of the Local Government Act 2002 empowers the council to ‘construct works on or under private land or under a building on private land that it considers necessary for sewage and wastewater drainage’.
 13. Such works require either the prior written consent of the owner of the land, or that the council follows the process set out in Schedule 12 of the Local Government Act 2002.
 14. Schedule 12 requires that affected owners and occupiers are provided with a description of the proposed works, including plans, and are given the opportunity to object to the works within one month of notification.
 15. If an objection is made, a hearing must be arranged. After hearing objections, the council must then determine to either abandon the works proposed, or proceed with the works proposed, with or without any alterations that the council thinks fit.
- a) Enabling wastewater management on 331 West Tamaki Road**
16. A developer has been granted resource consent by Auckland Council’s regulatory department to subdivide a property at 331 West Tamaki Road. A condition of that resource consent is that the new development connects to the public wastewater system.
 17. The developer has obtained engineering approval to connect the subdivision to the existing public wastewater manhole located within 341 West Tamaki Road, see Attachment A. The connecting pipe will cross under the shared driveways of 339 and 341 West Tamaki Road and along the fence-line of 341 West Tamaki Road.
 18. It is proposed that a 26 metre long / 150 mm diameter wastewater pipe is constructed using directional drilling, a trenchless method which involves drilling a small hole from 331 West Tamaki Drive and pushing the pipe underground through to the manhole located on 341 West Tamaki Drive. This method does not involve digging up the shared accessway of 339 and 341 West.
 19. Minor excavation works can be undertaken around the outside of the existing manhole. All excavation and removal of any vegetation or landscaping will be fully re-instated upon completion of the works.

20. The new pipe will be vested in Auckland Council as a public wastewater asset to be owned and maintained by Watercare once it is connected to the wastewater network.

Objections received from landowners at 339 and 341 West Tamaki Road

21. Negotiations between the developer and the landowner to start the works begun in 2018. However, the owners of 339 and 341 West Tamaki Road have refused to allow the developer to connect to the wastewater network via these properties.
22. The developer applied to council to provide facilitation services to help reach an agreement with the landowner which commenced in June 2023. However, no agreement was reached.
23. The council then assessed the developer's works and determined that the works are necessary public works and qualify as a council project under the powers of the Local Government Act 2002. This enables public works to be undertaken on private land without the owner's consent, provided the requirements of the Act are met.
24. The council issued notices to the affected landowners of its intention to carry out the works under section 181 of the Local Government Act 2002, dated 27 February 2024.
25. Following the issue of this notice, the council has continued to communicate with the landowners, however an agreement has not been reached.
26. Pursuant to schedule 12 of the Local Government Act 2002, the landowners had until 27 March 2024 to formally object to the section 181 notice. The owners of 339 West Tamaki Road lodged their objection on 25 March 2024. A further objection was lodged on the 27 of March 2024 from the owners of 341 West Tamaki Road.

Tātaritanga me ngā tohutohu

Analysis and advice

27. The council is empowered to construct works on private land that it considers necessary for wastewater drainage. When determining the best option, the council looks at a range of possible options to achieve the required wastewater outcomes for the public good, and at the same time, to carefully balance any impacts on individual property owners.
28. The council analysed five alternative alignments for connecting the development at 331 West Tamaki Road to the public wastewater system (see Attachment C). These options were:
- **option one:** extending the public network from 341 West Tamaki Road (southern corner) (**recommended option**)
 - **option two:** extending the public network from 339 West Tamaki Roads accessway
 - **option three:** extending the public network from 341 West Tamaki Road (northern corner)
 - **option four:** extending the public network from 339 West Tamaki Road (northern corner)
 - **option five:** extending the public network from 337 West Tamaki Road
 - **option six:** do nothing.

The six options were analysed against relevant criteria as shown below in Table 1.

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Table 1. Analysis of alignment options against various criteria

	Option one (Yellow in Attachment C) Recommended	Option two (Pink in Attachment C)	Option three (Blue in Attachment C)	Option four (Orange in Attachment C)	Option five (Purple in Attachment C)	Option six Do nothing
Interference with existing services	Minor	Minor	Minor	Minor	Medium	NA
Disruption to property owners	Minor	Medium	Medium	Medium	Medium	NA
Cost	\$	\$	\$\$	\$	\$\$\$	NA
Route to existing wastewater network	Direct 3m (No 339) Direct 23m (No 341)	Direct 29m (No 339)	Direct 14m (No 339) Direct 1m (No 341)	Indirect (pump) 1m (No 339)	Indirect (pump) 1m (No 337)	NA
Ability for third-party properties to connect to proposed infrastructure	Poor	Poor	Poor	Poor	Poor	Poor
Access for future maintenance	Medium	Medium	Medium	Medium	Medium	NA
Duplication of Existing Wastewater Infrastructure	0%	0%	0%	0%	50%	NA

Key

Most positive
 Moderately positive
 Moderately negative
 Most negative

Analysing options for wastewater management on 331 West Tamaki Road

29. **Option two** considered the trenchless installation of wastewater pipe across the accessway of 339 West Tamaki Road to a new manhole on 341 West Tamaki Road. This option allows for gravity flow and minor excavation and comes with minimal risk. Option two is the second preferred method, however it would involve the disruption of the shared accessway of 339/341 West Tamaki Drive, longer piping and full driveway re-instatement.
30. **Option three** considered the trenchless installation, of a wastewater pipe from 331 West Tamaki Road under the accessway at 339 West Tamaki Road to the manhole at 341 West Tamaki Road. This option includes minor excavation for a new manhole and removal and reinstatement of vegetation by a swimming pool. The installation risks remain minor but impacts on the third-party properties are considered medium. Option 3 is viable but not preferred due to the higher risk of disruption compared to option 1 and 2, to third-party properties.

31. **Option four** considered the trenchless installation of a wastewater pipe from 331 West Tamaki Road into the manhole at 339 West Tamaki Road. This option includes minor excavation for a new manhole and removal and reinstatement of vegetation. This option requires the use of a wastewater tank and pump which is considered substandard and high risk. Disruption to the third-party properties is considered medium due to the excavation requirements. Option four is not recommended due to substandard infrastructure required and high risk of disruption to third-party properties.
32. **Option five** considered the trenchless installation of wastewater pipe under the accessway at 331 West Tamaki Road to the manhole at 337 West Tamaki Road. Minor excavations would be required around the manhole. This option involves the longest length of piping and a wastewater tank and pumpstation, which are substandard. The installation risks for this are medium due to services in the road. Impacts on the third-party properties are considered minor as the connecting manhole is readily accessible from the road. This option is not recommended due to having the highest combined risk of all options.
33. **Option six** considered doing nothing. This involves leaving the developer to continue to negotiate with the owner alone. This option is not supported, as it means the developer will pursue substandard options for extending the wastewater network that do not comply with the Wastewater Code of Practice. It also increases the likelihood of infrastructure failure which would impact third party properties.
34. As demonstrated by the assessment set out in Table 1 above, option one is the preferred option for the following reasons:
- the route does not interfere with any existing services
 - the route is the least disruptive to landowners
 - the location of the works does not affect any existing structures on the landowners' properties, resulting in minimal disturbance
 - the land proposed to be crossed is a driveway and along a fence boundary and not land that could be developed for housing or other structures
 - the pipe route is the practical and direct and provides the most optimal outcome for the public network
 - the route does not duplicate existing wastewater infrastructure
 - can be constructed with a trenchless method, with minimal impact on 339 and 341 West Tamaki Road.

Negotiating with the landowners

35. Negotiations with the landowners have been ongoing since April 2018. Initially negotiations were held directly between the developer and the landowners, with the council becoming involved from December 2022 onwards.
36. The council has attempted to engage with the landowners to offer advice on the proposed works and broker an agreement, refer to facilitation log attachment D.

Summary of objections received

37. Table 2 below details the grounds upon which the landowners objects to the works and Healthy Waters response, see Attachment B Objection letters.

Table 2. Summary of objections

Objection points	Response from Healthy Waters
<p>Wastewater connection through 339 and 341 West Tamaki Road is not “Necessary” because they believe there are other alternative alignments.</p>	<p>The proposed connection has been deemed necessary for any further development on the section at 331 West Tamaki Road. As per the approved EPA (ENG60363768) a connection is required. Auckland Council has assessed and recommended the most optimal route for all parties involved.</p>
<p>Points raised in the objections which refer to the affected landowners requesting the owner of 331 West Tamaki Road to relinquish his easement over the shared driveway of 339 and 341 West Tamaki Road.</p>	<p>This issue is considered a civil matter and is not a consideration for assessment by Auckland Council’s assessment and/or the decision to approve the works under the Local Government Act.</p>

Recommended wastewater management option

- 38. Staff recommend that construction of the proposed wastewater works proceed at 339 and 341 West Tamaki Road as per option one in this report.
- 39. The works are necessary to enable development at 331 West Tamaki Road and to meet the Watercare wastewater standards. Works are expected to take up to 10 days to complete and staff will work with the landowners to ensure minimal disruption occurs.

**Tauākī whakaaweawe āhuarangi
Climate impact statement**

- 40. Auckland Council adopted Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan on 21 July 2020. Some of the key elements of the plan include how we will adapt to climate change, taking a precautionary approach and preparing for our current emissions pathway and the prospect of a 3.5 degrees warmer region.
- 41. One of the expected consequences of rising global temperatures is increased and more intense rainfall. To contribute to increasing Auckland’s resilience to climate change, the Auckland Council Wastewater Code of Practice requires all new infrastructure to be designed to deal with these expected impacts and severe weather events. The recommended option will contribute to maintaining wastewater network capacity, reducing the impact of the development on wastewater flows into the environment.

**Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views**

- 42. No other services will be impacted by the preferred option, Watercare has approved the preferred option.
- 43. The pipe once constructed will be vested in the council and will form part of the public wastewater network to be maintained by Watercare.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

44. The Maungakiekie-Tāmaki Local Board has not been consulted on the proposed wastewater works, as the pipe will be constructed on private land and the decision is a regulatory one.

Tauākī whakaaweawe Māori

Māori impact statement

45. The developer has not consulted local iwi on the proposed wastewater works outlined in this report.
46. Improved water quality for Tāmaki Makaurau is a priority for mana whenua. The recommended option will contribute to a better functioning wastewater management system, reducing the impact of the development on water quality.

Ngā ritenga ā-pūtea

Financial implications

47. If approved, the pipe will be constructed by the council, with the costs of the works to be paid for by the developer upfront. The recommended option is the most cost effective for the council, as it involves the shortest and most direct pipe alignment to operate, maintain and renew.
48. The council will be responsible for any proven injurious affection to private land pursuant to section 181(6) of the Local Government Act 2002, and the Public Works Act 1981. The likelihood of an injurious affection claim being brought is considered low, see Table 3. As part of the works costs the developer will be required to supply to the council a bond to cover damage to the property if not reinstated, which will remain in place for two years following completion of the works. This bond will cover any potential claim by the landowners for injurious affection.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

49. Staff have undertaken a systematic risk assessment during a thorough investigation of the six different options proposed for the wastewater connection at 331 West Tamaki Road. Through this assessment, a preferred method has been recommended which poses the least risk for Auckland Council and the neighbouring third-party properties and provides the most optimal wastewater solution for 331 West Tamaki Road.
50. Staff have undertaken a systematic risk assessment. Key risks and proposed mitigations relating to the endorsement of option one is shown in Table 3 below:

Table 3. Risks and mitigations arising from Option one: crossing land at 339 and 341 West Tamaki Road

Risk	Likelihood and consequence	Mitigation
Legal risk – objectors argue that this is in fact a private pipe and Auckland Council ought to use section 460 of the Local Government Act 1974 instead of section 181 Local Government Act 2002.	Likelihood: Low Consequence: Medium	The pipe will be vested in the council once constructed and will form part of the public wastewater system which the council is responsible for maintaining. It is being built to the council's standards for public wastewater infrastructure and will serve a wider catchment as the area develops further.

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Risk	Likelihood and consequence	Mitigation
<p>Financial risk – if the landowner appeals the Regulatory and Community Safety Committee’s decision, the council may become liable for the cost of defending a District Court case.</p>	<p>Likelihood: Low Consequence: Medium</p>	<p>Given that the Regulatory and Community Safety Committee and District Court’s decision-making discretion is limited only to questions of the works being necessary and compliance with legal process, and not matters of compensation, it is considered unlikely that an appeal would be brought. Even if it was, the risk of the council losing on appeal is considered low, due to the works being necessary, and the section 181 process being followed correctly.</p> <p>If the landowners are unsuccessful in any legal challenge, they may be liable to pay court costs.</p>
<p>Compensation – the landowners could seek injurious affection (if evidenced) through the Land Valuation Tribunal, arguing that the public works have reduced the value of their property.</p>	<p>Likelihood: Low Consequence: Low</p>	<p>The potential for an injurious affection claim is considered low. The anticipated value of any such claim is considered low for the following reasons:</p> <ul style="list-style-type: none"> • The proposed pipe does not involve the taking of any land. • The house is sufficiently distant from the works. The pipe predominantly follows the grassed boundary of the affected property. • The proposed methodology will result in minimal excavation around the manhole and pipe resulting in a small area being impacted by the works that will be reinstated to its current condition. • The applicant will be required to provide to council a bond sufficient to cover any potential claim for injurious affection prior to the works commencing. <p>If the landowners are unsuccessful with any claim, they will be liable to pay court costs.</p>
<p>Infrastructure risk – low quality assets being vested to the council.</p>	<p>Likelihood: Low Consequence: Medium</p>	<p>The work will be undertaken by an approved council contractor who will have in place sufficient insurance to cover the risk of failure and in compliance with the engineering consent.</p>

Ngā koringa ā-muri

Next steps

51. If the Regulatory Committee determines to proceed with the project (under Schedule 12 clause 1(e)(ii)), the next step will be to notify the Landowner in writing of the council’s intention to proceed with the works. The work is proposed to be undertaken in June 2021.

52. The Landowner has up to 14 days to lodge a further appeal to the District Court. If this occurs, then the council's Legal Services team will support this process. If no appeal is lodged, the council would look to proceed with the works in late 2021.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Engineering planning approval	
B⇒	Objection letters	
C⇒	Alternative alignments	
D⇒	Facilitation log	

Ngā kaihaina Signatories

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