

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE
TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON TUESDAY, 9 AUGUST 2005
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 Chairperson 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 CONFIRMATION OF MINUTES

Meeting Minutes - 12 July 2005

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 12 July 2005, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 27 JULY 2005)

INTRODUCTION

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 references to Council's District Plan, minor prosecutions for dogs, swimming pools, health, parking and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. The dates referred to in the headings are the dates on which appeals, information or proceedings were first filed in Court.

ENVIRONMENT COURT

Selak v Waitakere City Council (7 March 2002) Collett & Nye v Waitakere City Council (8 March 2002)

Appeals filed by the applicant Mr Selak and his neighbours, Mr Collett and Ms Nye. Both appeals relate to the operation of a go-kart track on Mr Selak's property at Kennedy's Road, Whenuapai. Mr Selak has appealed a condition disallowing use of the track on Sundays and public holidays. Mr Collett and Ms Nye have appealed Council's decision to allow the go-kart track. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impact of the go-kart track, which was considered by all parties at a Court assisted mediation held on 8 June 2005. The parties are currently preparing consent documentation in accordance with the agreement.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth structure plan proceedings (Resource Management Act 886/98) has been concluded.

Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming consent conditions regarding financial contributions payable in respect of a proposed subdivision. The parties attended a Court assisted mediation on 7 September 2004 but no resolution was reached. The matter has been set down for hearing (as backup fixture) in the week of 12 September 2005). An agreed evidence exchange timetable has been set.

Te Atatu Residents' & Ratepayers' Association Inc v Waitakere City Council (January 2004)

This matter relates to a reference against the Council's decision approving Plan Change 2. It makes changes to the zoning of land in Harbourview on the Te Atatu Peninsula. The Plan changes the Living Environment and Harbourview South Special Area to 'Open Space Environment' and 'Marae Special Area' respectively. A Court assisted mediation took place on 16 July 2004 and 20 October 2004. The Council has recently resolved to proceed with this plan change. A hearing date is to be allocated shortly although it is likely to be in November 2005.

I & Z Farac v Waitakere City Council

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It seeks to rezone all (or part) of the property as 'Living 2 Environment'. Discussions are to take place on the relief being sought. Settlement discussions are taking place in an attempt to refine the issues in dispute.

Auckland Regional Council v Waitakere City Council (September 2004)

An appeal by the Auckland Regional Council against a decision of the Council to grant approval to an application for subdivision by Mr P Lipsham, relating to a property situated at 146-148 Parker Road, Oratia. The Auckland Regional Council's appeal is based on fundamental concerns with the development being inconsistent with the Auckland Regional Policy Statement. A hearing took place over three days from 11 July 2005. Council presented evidence which supported grant of the consent on the basis that the proposal did not exhibit levels of uniqueness which may create a precedent for future applications. The Auckland Regional Council advocated for refusal on the basis that granting this application would encourage other applications which would in turn undermine the integrity of the Oratia Structure Plan. It is expected that the Court's decision will not be released for at least three months.

Trichon v Waitakere City Council (October 2004)

Mr Trichon had applied for an enforcement order against Council requiring remediation of minor erosion around a public stormwater drain on his property. There is also a separate matter involving a resource consent application made by Mr Trichon (partially retrospective regarding fill deposited on the property and in relation to future development). A Court-assisted mediation occurred on 17 November 2004 where it was agreed that Mr Trichon's consultants would provide further information in respect of the resource consent application and that Council would undertake the minor remedial work associated with the stormwater pipe. Mr Trichon has now withdrawn his enforcement order application. It is hoped that Mr Trichon's consent application can be progressed shortly, once details are finalised.

E A Haines v Waitakere City Council (December 2004)

This is an appeal against a decision of Council's Commissioner (John Childs). The Commissioner declined to grant consent to a golf driving range at a property owned by E A Haines. Some neighbouring property owners have confirmed an interest in the matter. There were originally issues relating to the property's use as a golf driving range. The appellant has now obtained engineering advice to confirm the facility can be used for such a purpose. Council is reviewing that advice. Once the Council's review is complete a timetable for the exchange of evidence will be determined.

Auckland Regional Council v Waitakere City Council (February 2005)

This is an appeal by the Auckland Regional Council against the Council's decision granting consent to Shefco Limited to establish a food processing facility at 76-78 State Highway 16. A notice of reply has been lodged and a timetable for the exchange of evidence has been agreed. The Auckland Regional Council has confirmed that it intends to continue to oppose the consent based on the allegation that the consent is inconsistent with the Auckland Regional Policy Statement, the Metropolitan Urban Limits and has a potential to create negative precedent effects.

While the parties have not yet been able to agree to resolve the matter, the points of law on appeal have been confined. The matter has been allocated a fixture for the week beginning 12 September 2005.

Waitakere City Council v Minister of Defence (February 2005)

Council filed a notice of appeal in relation to a proposal by the Ministry of Defence ("Defence") to remove St Marks Chapel from the Hobsonville Air Base to its Papakura base. The Chapel is listed as a heritage building and is protected under the Waitakere City District Plan ("District Plan"). The Minister of Defence has rejected the Council's recommendation that the Chapel remain at Hobsonville. Defence is of the opinion that the Chapel is to be used by defence personnel and this use is best served at Papakura where the Chapel will be more appropriately preserved.

The Council has also filed an application for a declaration in respect of the ambit of Defence's designation and whether the proposed removal of the chapel is a "public work". The parties are currently preparing evidence. The matter has been set down for hearing as a back-up fixture in the week of 12 September 2005.

South Kaipara Nominees Limited v Waitakere City Council (February 2005)

An appeal by the appellant company (Director: Peter Mawhinney) in respect of a decision by the Council to decline to grant a certificate of compliance regarding a proposed subdivision at Anzac Valley Road, for want of jurisdiction. The application sought to cancel an amalgamation condition that was imposed under subdivision consent; this could not be described as a permitted activity and accordingly did not meet the preconditions of the Resource Management Act 1991.

On 22 April 2005 the Council filed an application to strike out the appeal on the grounds that there was no jurisdiction to grant the relief sought or any right of appeal in respect of the Council's decision. Mr Mawhinney withdrew his appeal and the Council has been awarded costs of \$5,700.

T Whimp v Waitakere City Council (April 2005)

An appeal against an abatement notice issued by the Council in respect of a breach of the Transport Environment rules. The appellant has been using the carriageway, footpath and grass berm throughout the City for residential purposes. The Council and Mr Whimp entered into an agreement following Court assisted mediation on 22 April 2005. The parties reported to the Court on 30 June 2005 that no suitable accommodation was found that met both the needs of Mr Whimp and the Council. In the meantime, Mr Whimp has been in a fire and suffered some serious injuries. Council and a representative from the Ministry of Social Development are working together to relocate Mr Whimp into a Council pensioner's unit upon being discharged from the hospital. The appeal is 'on hold' pending Mr Whimp's condition upon discharge from the hospital. The Council is to report to the Court on or before 31 October 2005.

Auckland Regional Council v Waitakere City Council (May 2005)

Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc ("WRPS") against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. The Court is yet to deal with this appeal.

South Kaipara Nominees Limited and Others v Waitakere City Council (June 2005)

A further appeal by South Kaipara Nominees Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. There are two alternative proposals; (a) to widen access lots of the subdivision and make various other consequential changes to the surrounding lots; and (b) a sequenced series of 10% boundary adjustments. Council has filed a notice of reply to the appeal denying the relief sought and indicating that such boundary adjustments would require discretionary or non-complying consents. We have also suggested that this appeal should be adjourned pending the determination of reference appeals relating to the proposed Dilworth Structure Plan. We are awaiting further directions from the Court.

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

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under s 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a 7 lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society have lodged applications with the Court in support of the Council as s 274 parties. The Court has yet to deal with this appeal.

HIGH COURT

Waitakere City Council v Peter William Mawhinney (July 2005)

The Council has taken enforcement action against Mr Mawhinney to require payment in respect of an award for costs of \$75,000. Bankruptcy notices have been served on Mr Mawhinney who has applied to have these set aside. A notice of opposition and evidence opposing Mr Mawhinney's application were filed on 26 July and a hearing is set down for 10 August 2005. If Mr Mawhinney's application is unsuccessful he will commit an act of bankruptcy.

P W Mawhinney (substituted plaintiff) v Waitakere City Council (February 2002) (Civil Proceedings)

This claim is currently on hold pending the payment in of security for Waitakere City Council's costs of \$60,000 ordered by Associated Judge Sargisson on 2 May 2005. Mr Mawhinney must pay the security sum within six months (or no later than 16 November 2005) or we are able to apply to strike out his claims.

Waitakere City Council v Estate Homes Limited (28 March 2002) (Ranui Station Road)

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004 in Council's favour. The decision reversed the decision of the Environment Court. Since the release of the decision Estate Homes have been granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued). A hearing is set down to take place in the Court of Appeal, on 1 September 2005.

Estate Homes Limited v Waitakere City Council (Sturges Road) (May 2004)

As reported last month, we have now received the Arbitrator's decision in this case awarding \$152,687 (incl. GST) to Estate Homes. Estate Homes have queried whether there is a calculation error in the award which Council has opposed (both on substantive and jurisdictional grounds) and the Arbitrator will make a final award shortly. There are also outstanding issues over interest and costs which the parties are exchanging further submissions on. Council has made a payment on account so as keep the final interest amount as low as possible. There was a final hearing to determine these issues on 26 May 2005. We are still awaiting a decision.

DISTRICT COURT

Lance Olsen - Dovey Place, Massey (February 2004)

Charges were laid against the building contractor who undertook work on five houses without building consent. A pre-trial issue has been raised by Mr Olsen regarding the validity of information as his company has been struck off the register – the Council seeks to have the charges amended so that Mr Olsen is personally liable for the alleged offences. This matter is set down for hearing on 21 November 2005.

Contract Sealing Limited, Action Plumbing Gas & Drainage Limited & Others – 547 West Coast Road, Oratia (March 2004)

Charges have been laid alleging unauthorised building works. The defendants have entered not guilty pleas. A date for a defended hearing is yet to be set down by the Court.

I R Stanic - 11 Orchid Place, Henderson (May 2004)

Charges were laid under the Resource Management Act 1991 (“RMA”) regarding the contravention of District Plan Rules (as the property is being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent) and for contravention of an abatement notice. Mr Stanic pleaded guilty. A restorative justice conference was held on 13 May 2005, at which time the Council, affected neighbours and Mr Stanic discussed the situation. An agreement was reached that Council would assist the defendant to remove the vehicles from the property and that no further vehicle repair work would be undertaken at the property. The Council will seek an enforcement order to ensure that this occurs. Sentencing was scheduled for 7 June 2005 but Mr Stanic failed to appear. A new date is yet to be set.

L A Green - 9 Herrings Cove Lane, Titirangi (July 2004)

Charges were laid under the Resource Management Act alleging contravention of an abatement notice which required the installation of erosion/sediment control, removal of earth deposited at the site and revegetation works. The defendant entered a guilty plea. Sentencing occurred on 12 July 2005. The defendant was convicted and fined \$6,000 plus solicitors’ and Court costs. The defendant has applied for retrospective resource consent.

S & U Kumar - 24 Te Muri Place, Glendene (August 2004)

Charges laid under the Building Act for unauthorised building work (including extension to house and change of use of lower level of dwelling to create separate residential unit). The defendants have since undertaken remedial work under a building consent. The charges are to be withdrawn by leave on 29 July 2005.

Steven Lee - 2/7 Te Atatu Road (December 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work. Mr Lee is alleged to be the builder who undertook the works. The matter has been adjourned to 29 July 2005 without plea as Mr Lee has just been granted legal aid.

RA & HJ Offenbaker - 356 Forest Hill Road, Oratia (December 2004)

Charges were laid under the Building Act for unauthorised building work and under the Resource Management Act in respect of various District Plan rule breaches, including unauthorised vegetation clearance, building on land subject to slope instability, and building on a sensitive ridge. The defendants are seeking retrospective resource consent and the matter has been adjourned to 29 July 2005.

John Steed - Public Places Bylaw (March 2005)

An application for an order pursuant to section 162 of the Local Government Act 2002, requiring Mr Steed to cease breaching the Council's Public Places bylaw (Bylaw No. 4, Ch 2, clause 233.1(b)). Mr Steed has been living in his caravan on roadsides and road reserves in various locations in the City in breach of the bylaw and has refused to comply with Council officers' requests to cease doing so, has contravened an abatement notice, and is generally causing a nuisance in the locations where he resides in the caravan (e.g. by burning his household rubbish on the roadside and emptying wastewater from the caravan into the stormwater drainage system). Council officers have tried to assist him with alternative accommodation but he refuses to consider such options. The Court has granted an interim order restraining Mr Steed from breaching the bylaw. The final order is to be considered on 26 August 2005, if Mr Steed is able to be served notice before that date. It appears that Mr Steed is evading service.

D Thompson & Others - 10 Pohutukawa Road, Whenuapai (March 2005)

Charges laid under the Building Act for unauthorised building work undertaken to create two residential units within an existing warehouse building, and under the Resource Management Act for the use of those units in breach of the residential rules of the District Plan. This matter has been adjourned until 29 July 2005. The current owner has applied for resource consent.

M K Kasprzak - 27 Bedford Street, Te Atatu South (March 2005)

Charges were laid under the Building Act and Resource Management Act in respect of a second minor household unit constructed without the requisite building and resource consents. This matter has been adjourned to 29 July 2005.

Sher Mohammad and Abdul Hafeez - 73 Huia Road, Titirangi (May 2005)

Charges were laid under the Building Act for unauthorised building work (construction of a dwelling without consent) and under the Resource Management Act in respect of District Plan rule breaches relating to unauthorised vegetation clearance, and earthworks. This matter is likely to go to a defended hearing. The matter has been adjourned to 29 July 2005.

Restaurant Brands Limited: KFC New Lynn - 3052 Great North Road, New Lynn (June 2005)

The Council filed a notice of prosecution alleging contravention of 7 provisions of the Food Hygiene Regulations and 2 provisions of the Food Safety bylaw. These were filed against Restaurant Brands Limited which is the owner of KFC New Lynn. Restaurant Brands have pleaded guilty to all charges and have asked that their current "A" grade certificate be taken into account as a mitigating factor in the Judge's sentencing decision, which is to be made by a District Court Judge sitting alone in chambers.

A Mackinnon - 5 Armour Road, Parau (June 2005)

Charges were laid under the Resource Management Act for the clearance of at least 80 native trees including mānuka, kanuka, kahikatea, mahoe, and cabbage trees from a Protected Natural Area without resource consent. First call is set down for 29 July 2005.

R and P Chand - 16 Archibald Road, Kelston (June 2005)

Charges laid under the Building Act for unauthorised building work to create a residential unit by converting a downstairs garage, and under the Resource Management Act for the use of the unit in breach of the residential rules of the District Plan. First call is set down for 26 August 2005.

G Nicola, P Freeman, A Casey, and Eurovision Building Removals Limited - 4 Bowers Road (June 2005)

Charges laid under the Building Act for unauthorised building work done to construct pile foundations to support a relocated house which was relocated onto the foundations. No building consent was obtained for the construction of the foundation or the relocation. First call is set down for 26 August 2005.

RECOMMENDATION

That the Legal Update (As At 27 July 2005) report be received.

Report prepared by: Setareh Masoud-Ansari, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

5 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

The Acting District Plan Co-ordinator will provide a verbal update to the Planning and Regulatory Committee on progress in dealing with the appeals on the Proposed District Plan.

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

RECOMMENDATION

That the District Plan Appeal Update Table report be received.

Report prepared by: Owena Schuster, Committee Secretary.



PART D - ENVIRONMENTAL MANAGEMENT

6 WAITAKERE GROWTH & TRANSPORTATION INTEGRATION PROJECT - UPDATE ON SUBMISSIONS & JOINT HEARINGS PANEL

PURPOSE OF THE REPORT

The purpose of this report is to update the Planning and Regulatory Committee on the Plan Changes notified across the Auckland region under the Local Government (Auckland) Amendment Act 2004. The Waitakere component of this initiative is referred to as the Growth & Transportation Integration Programme. The public submission period has now closed and officers are able to report back on issues identified through this process.

The Committee is also required to formalise its decision on the composition and representation on the Joint Hearings Panel. This panel will make decisions on the various Plan Changes.

BACKGROUND

A report was presented to the Planning and Regulatory Committee 7 December 2004 which outlined the requirement that a Joint Hearings Panel be established by all Councils in the region to hear submissions on the Proposed Plan Changes to the various planning documents.

The Committee passed resolutions with respect to representation on the Joint Hearings Panel on the proviso that it would review these decisions once the statutory process for the Local Government (Auckland) Amendment Act (LG(A)AA 2004) Plan Changes were more advanced. At the meeting it was resolved:

- “2. That Council agrees in principle to appoint an independent commissioner to represent Waitakere City Council on the joint panel as established under the Local Government (Auckland) Amendment Act 2004.
3. That this position be reported to 8 December 2004 Regional Growth Forum meeting.
4. That a further report that identifies a list of potential candidates, the proposed selection process and criteria, be brought to a Council meeting early in 2005.
5. That Council reviews its position once the views of the other Territorial Local Authorities in the region are known.
6. That officers make preliminary investigations into the availability of potential commissioner candidates.”

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Now that the number of submissions received on all Plan Changes notified under the Local Government (Auckland) Amendment Act 2004 legislation, officers are now in a position to report back to Council on progress with respect to submissions received to Waitakere's Plan Changes and implications for the Council's representation on the Joint Hearings Panel. This is able to occur because the number and content of submissions received across all Plan Changes notified under the Local Government (Auckland) Amendment Act 2004 legislation is now known.

In total 15 different Plan Changes were notified covering the Auckland Regional Policy Statement, the Auckland, Franklin, Manukau, North Shore, Papakura, Rodney and Waitakere District Plans. Submissions closed on 31 May 2005.

STRATEGIC CONTEXT

Waitakere's Growth & Transportation Integration Programme contains the following changes to planning documents:

- Proposed changes to the Auckland Regional Policy Statement (ARPS) to move the Metropolitan Urban Limit; and
- Proposed changes to the Waitakere City District Plan - these proposed changes will give effect to Council's strategic objectives for urban consolidation (intensification), economic development and improve the transportation network and services.

The Plan Changes are part of the Local Government (Auckland) Amendment Act 2004 requirements to notify proposed changes that integrate land transport and land use provisions and that give effect to implementing the Auckland Regional Growth Strategy.

ISSUES - SUBMISSIONS

Submissions Received - All Plan Changes

Approximately 1,100 submitters lodged 2,180 submissions to the all the Local Government (Auckland) Amendment Act 2004 Plan Changes. The total approximate number of submissions to each change is as follows:

Change	Number of Submissions (approximate)
Auckland Regional Policy Statement Proposed Change 6 - Ch 2 & 4	730
Auckland Regional Policy Statement Proposed Change 7 - Metropolitan Urban Limited	100
Auckland City District Plan Operative Isthmus Section Proposed Plan Modification 175	600
Franklin District Plan Proposed Plan Change 20	35
Manukau City District Plan Proposed Plan Change 12	75
North Shore City District Plan Proposed Plan Change 12	30
Papakura District Plan Proposed Plan Change 10	35
Rodney District Plan Proposed Plan Variation 22	35
Rodney Operative Transitional District Plan 1993 Proposed Change 1997	20
Waitakere City District Plan Proposed Change 13 - Hobsonville Airbase	35
Waitakere City District Plan Proposed Change 14 - Hobsonville Village Centre	40
Waitakere City District Plan Proposed Change 15 - Massey North	100
Waitakere City District Plan Proposed Change 16 - Managing City Growth	270
Waitakere City District Plan Proposed Change 17 - New Lynn	45
Waitakere City District Plan Proposed Change 18 - City Wide Urban Design Rule	30
Total number of submissions	2,180

Further Submissions– Statutory Process

The Auckland Regional Council has engaged external consultants to summarise the submissions. When the summary of submissions has been prepared the further submission period will be publicly notified. The further submission process for all the various Plan Changes will occur at the same time, as this will ensure that further submitters can consider all of the original submissions together. It is anticipated that the further submission period will commence in late September or early October 2005. As a result of the number of submissions received and the range of proposed Plan Changes, it is considered that the further submission period will be no less than 30 working days. The Resource Management Act 1991 sets a minimum of 20 working days.

During the further submission period anyone may make further submissions in support of or in opposition to the original submissions.

Submissions - Waitakere Plan Changes

A summary of key issues raised through submissions received to Waitakere's Proposed Plan Changes 13-18 and the proposal to shift the Metropolitan Urban Limit (Auckland Regional Policy Statement Proposed Change 7 - Metropolitan Urban Limit) will be presented to the Committee meeting.

Late Submissions - Waitakere Plan Changes

Auckland Regional Council has advised that 23 submissions relating to Waitakere's Proposed Plan Changes were received after the submission period closed on 31 May 2005. The list of late submitters is set out in the table below.

Section 37 of the Resource Management Act allows a local authority to waive any failure to comply with a time period, and thus accept these late submissions.

The Resource Management Act specifies that when considering a waiver of time the local authority must take into account:

- The interests of any person affected by the waiver;
- The interests of the community in achieving adequate assessment of effects of the proposed plan; and
- Council's duty under section 21 of the Resource Management Act to avoid unreasonable delay.

It is recommended that the following submitters be granted a waiver from complying with the submission closing date:

NAME	PROPOSED PLAN CHANGE
Neon Limited and Boron Limited	WCC 15
Jennifer Doyle	WCC 15
Kenneth & Rae Wightman	WCC 15
Bradford Dibble	WCC 15
Judith Hildreth	WCC 15
Danielle Hows	WCC 15
David Hows	WCC 15
Sally Mitson	WCC 15
Stephen Holyer	WCC 15

NAME	PROPOSED PLAN CHANGE
Debra Burns	WCC 15
Land Sea Air Trust	WCC 15
Dianne and Graham Head and Family	WCC 15
RM and SA Hollands	WCC 16
CC Boyle & NS Brabant	WCC 16
Paul & Vicki Hooton	WCC 16
Sheryl Anne Hawkes	WCC 16
Brendan & Li-chen Hoare	WCC 16
Beverly Bayne	WCC 16
Peter Simons	WCC 16
Linda Hamilton	WCC 16
Stagecoach Auckland	WCC 17
Don Thomas	WCC 17
Edwin Simperingham	WCC 13 - 18

It is considered that no person is directly affected by undertaking this waiver, as the submissions relate to proposed Plan Changes to the District Plan rather than an individual's resource consent application. The interests of the community are not considered to be affected because submissions will pass through the further submission process, which enables the public further input. The acceptance of these late submissions will not compromise Council's ability to complete the summary of submissions in a timely manner.

ISSUES - HEARINGS PANEL

Implications for Hearing process

Until the submissions have been summarised the range of issues included in the submissions (and therefore the length of the hearing process) is difficult to anticipate. Based on previous hearing processes it is estimated that between 40 to 60 days will be required for hearings and deliberations.

Depending on Committee timetabling and Annual Plan processes, hearings could commence in February 2006 for between 5 to 8 days per month (usually in blocks of 2 to 4 days at a time). Such a scenario would see the hearing process taking between 7 to 10 months. At this point in time there has been no decision on how the Hearings process would be ordered, although it is likely the submissions related to the Regional Policy Statement Changes (Plan Change 6) would be heard first as these decisions will have implications for all District Plan Changes and Waitakere's proposal to shift the Metropolitan Urban Limits (Regional Policy Statement Plan Change 7).

This matter will be reported back to the Committee once the timetabling and extent of the Hearings process is determined.

Update on Joint Hearings Panel

When the Council considered its position with respect to Hearings Panel Composition in December 2004 there were several outstanding issues in terms of the nature and extent of the submissions, the composition of the Hearing Panel, and the timeframe for hearings. Officers were requested to report back and update the Committee in early 2005, so the Council's representation on the Joint Hearings Panel could be reviewed. There is now some clarity around the composition of the Hearings Panel with the following resolution being passed by the Auckland Regional Council (12 April 2005):

“Regional Policy Statement and District Plan Changes – joint hearing panel

RESOLVED

- a) That the report be received.*
- b) That the joint politicians group considering the matter of the composition of the single joint hearing panel be advised that the ARC would prefer three representatives, one of whom would chair the hearings panel.*
- c) That the joint politicians group also be advised that the ARC would prefer a Growth Forum model where the panel would be no larger than ten members.*
- d) That the joint politicians group be advised that the three ARC representatives consist of two councillors plus one independent commissioner, and that one of the three ARC representatives be the Chair of the Regional Strategy and Policy Committee who would chair the joint hearings panel.*
- e) That the Chair and Deputy Chair of the Regional Strategy and Policy Committee to determine the final make-up of the three ARC representatives for ultimate Council approval.”*

Essentially the Auckland Regional Council resolution proposes:

- Hearing Panel consist of a maximum of 10 members (as per the Growth Form Model);
- Of this three (3) are Auckland Regional Council members, specifically that two (2) are Councillors and one (1) an independent commissioner;
- Other Councils would have one (1) member each on the Hearing Panel (with ability for Council's to have shared Commissioners if desired).

All Councils are required to confirm whether they accept the recommendations from the Auckland Regional Council regarding the Hearings Panel composition. Given the proposed Growth Forum Model has worked in the past for a regional process, it is recommended that the council accept the recommendations from the Auckland Regional Council.

At the Committee's meeting on 7 December 2004, it resolved in principle to appoint an independent commissioner, and that was reported to the Regional Growth Forum. The Committee also resolved to review its position on this matter once the views of other territorial local authorities were known. The Committee may now wish to reconsider its position on whether to have an independent commissioner.

It is now known that the Joint Hearings Panel will comprise a combination of Councillors and Commissioners. At this stage, in addition to the Auckland Regional Council other Council's that have confirmed their representation are Manukau (Councillor) and Franklin (Commissioner – prepared to share rather than have specific vote).

Given the magnitude of proposed Plan Changes that Waitakere City has publicly notified to be considered as part of the Local Government (Auckland) Amendment Act 2004 process, it is recommended that Council retain specific Waitakere representation on the Joint Hearings Panel. This option is preferred over the Franklin approach of sharing representation on the Joint Hearings Panel.

All matters heard by the Joint Hearings Panel will be forwarded to the Council with recommendations on whether to accept, accept in part or decline the submissions made, and recommendations identifying amendments to Proposed Plan Changes 13-18. The Council will need to consider these recommendations, and determine whether it accepts, accepts in part, or declines these recommendations. It is likely that some of decisions made by the Council in the light of the recommendations will proceed to the Environment Court.

RESOURCES

The Growth & Transport Integration project has been budgeted within the 2005/2006 Annual Plan. It should be noted as part of the regional project there has been some budget allocated from central government (via the Ministry for the Environment (MfE)) to assist the Auckland Councils in the Local Government (Auckland) Amendment Act 2004 process. Ministry for the Environment has specifically identified that there could be budget to provide for up to three (3) independent commissioners to sit on the joint hearings panel, it was however specified that this budget is not to be used for the reimbursement of Councillors time - this would expected to be funded by individual local authorities.

CONCLUSION

The regional process to amend statutory planning documents across the Auckland Region to give effect to the Auckland Regional Growth Strategy has advanced through part of the statutory process. With submissions now received this gives all councils an understanding of what the substantive issues are, and specifically identifies matters raised in response to the Waitakere City Proposed Plan Changes 13-18 and Metropolitan Urban Limit Shift proposals (Auckland Regional Council Plan Change 7).

The number and range of topics raised in submissions also gives an indication of what the time and resource implications for the Joint Hearings Panel will be.

It is recommended that Council accepts late submissions lodged to Waitakere's Proposed Plan Changes. It is also recommended that the Committee formalise its acceptance of the Joint Hearings Panel Composition.

RECOMMENDATIONS

1. That the Waitakere Growth & Transportation Integration Project - Update on Submissions & Joint Hearings Panel report be received.
2. That the Planning and Regulatory Committee accepts the recommendations passed by the Auckland Regional Council (Regional Strategy and Planning Committee - Regional Policy Statement and District Plan Changes - Joint Hearing Panel) dated 12 April 2005 with respect to the recommended composition of the Joint Hearings Panel established under the Local Government (Auckland) Amendment Act 2004.
3. That Council retain specific membership on the Joint Hearing Panel.

4. That either:
 - (a) a Councillor or
 - (b) an independent commissioner
 - (c) be appointed to represent Waitakere City on the Joint Hearings Panel.
5. That in the event that the Planning and Regulatory Committee resolves to appoint a Councillor, this Committee nominate and confirm who that Councillor will be.
6. That in the event that the Planning and Regulatory Committee resolves to appoint an independent commissioner, a report be presented to this Committee identifying possible candidates for that role.
7. That in the event that the Planning and Regulatory Committee resolves to appoint an independent commissioner, and an appropriate independent commissioner cannot be identified, the Council reserves the right to appoint a Councillor to represent Waitakere City on the Joint Hearing Panel established under the Local Government (Auckland) Amendment Act 2004.
8. That a waiver for the failure to comply with the submission closing date for Proposed Plan Changes 13 - 18 be granted for the submitters listed in this report.
9. That the Planning and Regulatory Committee accept these late submissions as valid submissions to the Waitakere City District Plan Proposed Plan Changes 13 - 18.

Report prepared by: Vanita Ranchhod, Acting Principal Advisor: Urban Policy and Eryn Shields, Principal Planner.



7 FEEDBACK ON COMMERCIAL SEX STRATEGY

PURPOSE OF THE REPORT

The purpose of this report is to seek approval from the Planning and Regulatory Committee to proceed with proposed changes to be put in the Commercial Sex Strategy (the Strategy) to address negative environmental effects of prostitution in response to initial public feedback, and in particular, authorisation to seek public feedback on tightening of home occupation rules.

BACKGROUND

This report provides an update on the development of the Strategy that is a response to the enactment of the Prostitution Reform Act 2003, which decriminalised prostitution. The report summarises the initial feedback received from the public on the Strategy, and outlines the proposed regulatory options and approaches that are considered to be appropriate for inclusion in the Strategy, which largely involves proposed changes to the District Plan. A work programme outlining the key steps in finalising the Strategy is presented, with a target of early 2006 for completion.

This report is an addition to a series of reports previously presented to the Planning and Regulatory Committee about the development of the Strategy in response to the Prostitution Reform Act.

In December 2004, the Planning and Regulatory Committee resolved:

3. *“That officers report to the Committee on the proposed next steps regarding Council policy for the sex industry and regulatory options in light of the comments and feedback received.”*

2247/2004

STRATEGIC CONTEXT

The Council’s strategic objectives are to encourage social and economic activity in its urban and rural centres, to encourage the development of strong and safe communities and to provide a home for innovative economic activities. The Council has a range of regulatory mechanisms available to it for achieving its objectives and controlling the effects associated with activities. These mechanisms include the District Plan, bylaws and other non-statutory Council policies.

ISSUES

Update on the progress that has been made since December 2004

Feedback received from the public

A1-A2

A draft Strategy was approved by the Planning and Regulatory Committee in December 2004 and released for public feedback early in 2005 (from Monday, 31 January to Monday, 14 March 2005). For details about the submitters and the main issues and concerns raised are attached at pages A1 to A2.

There was a good deal of support from the public for the majority of the proposed options in the Strategy, such as controls on signage and on hygiene standards, and guidelines on the appearance of commercial sex premises. The most contentious issue was about the location of brothels. Some submitters, agreed with the Council’s practical approach of managing the adverse environmental effects that may arise from brothels, although the majority wanted brothels prohibited from residential areas or sensitive sites.

Those opposed to brothels in residential areas, perceived that brothels would adversely affect the character of neighbourhoods and reduce feelings of safety amongst residents, particularly families. For these reasons, there was a desire amongst some submitters for the Council to take a ‘hardline’ approach and prohibit all brothels in residential areas. There was not a great deal of support for the proposal in the Strategy that restricted the location of brothels on the basis of their negative environmental effects (via a City Wide Rule in the District Plan), upon different areas.

A bylaw was the most popular option amongst submitters for controlling the location of brothels, as this was perceived by the submitters to be the toughest approach. The Auckland City bylaw was often referred to and it was viewed as working well, however, there are problems with that bylaw and that Council is facing legal challenges to it.

Outcome of a Councillor Workshop

A3-A4

In view of the concerns raised by the community about the location of brothels and the legal difficulties of regulating this in practice, a Councillor workshop was arranged at the request of the Chairperson of the Planning and Regulatory Committee. A workshop was then held on 11 July 2005 with the intention of examining how best to address the ‘location issue’ raised by the public. The workshop notes are contained at pages A3 to A4.

A5-A6 Four (4) alternative approaches to control the location of brothels were outlined at the workshop. For details about all four approaches and their strengths and weaknesses attached at pages A5 to A6.

There was support amongst Councillors for the approach that was recommended by officers. This approach focused on what actions were available to Council that would be effective in addressing the concerns of the public. Consideration of the issues and experiences of other Councils suggest that it is more productive to focus on the negative environmental effects of the industry in the community, rather than attempting to restrict the location of brothels as a particular type of “unwanted activity” in certain areas.

A5 Under this approach, large brothels would be prohibited from residential areas (via a City Wide Rule in the District Plan) and the home occupation rules would be extended to control the activities of small brothels in residential areas (see Options 1 and 2 at page A5). This approach was ‘tested’ at the workshop, by demonstrating how it would help to resolve the complaints made by the public about alleged and actual brothels in residential areas.

There was also support (by some Councillors) for the allocation of specific areas within the City, and probably close to town centres, where commercial sex activities are encouraged to locate (often known as ‘red light districts’). The primary reason for support of ‘red light districts’ was due to concerns about allowing brothels in residential areas, regardless of size.

The Strategy

The Strategy contains a mixture of regulatory and non-regulatory options which are:

- (a) location controls according to environmental effects;
- (b) controls on hygiene;
- (c) signage controls;
- (d) urban design guidelines;
- (e) monitor the commercial sex industry; and
- (f) regional linkages with other councils.

A7 The Strategy remains largely unchanged with regards to Options b) to f). Option a) is the key to the Strategy and has now been revised to accommodate the concerns of the public and to ensure that Council uses an effective approach to controlling the location of brothels with respect to negative environmental effects. Please refer to page A7 for a diagram of these options that comprise the Strategy. Each option is explained below, with particular emphasis upon the regulatory option of controlling the location of brothels on the basis of their environmental effects through the District Plan.

Regulatory: Location Controls according to Environmental Effects

The location of brothels will be determined according to their potential adverse environmental effects upon neighbourhoods as regulated by the District Plan. A two-pronged approach distinguishes the regulation of large brothels and small brothels.

a) Large brothels

Large brothels (with 6 or more sex workers) will be prohibited from establishing in residential areas and will be permitted to establish in some non-residential areas, but away from sensitive areas and subject to obtaining a resource consent. This approach will be regulated through a City Wide Rule in the District Plan. Note, that non-residential areas in the District Plan include Working and Community Environments and some Special Areas. Residential areas are mainly defined as Human Environments.

b) Small brothels

Small brothels (with five (5) or less sex workers), will be permitted in residential areas as a home occupation business under District Plan rules. When small brothels locate in non-residential areas, they will also be subject to the location controls in the City-Wide rule to avoid adverse effects on sensitive sites and address any other issues. No resource consent would be required unless the activity did not comply with the rules (namely, the District Plan Non-residential Activity Rules).

The home occupation rules will be amended to address adverse environmental effects of home occupation businesses, such as brothel visibility and incidences of nuisance, by regulating activities such as hours of operation, signage, noise, light, number of vehicle movements and off and on street parking. Any amendments to the Non-residential Activity Rules will apply to all home occupations, not just small owner-operated brothels. Any resource consent issued for a brothel would be enforceable by the Council if the activity operated in breach of the conditions of that consent. Currently the existing home occupation rules make it difficult but not impossible for five (5) prostitutes to operate as a home occupation within the District Plan rules (in particular, vehicle movement restrictions apply).

Possible changes include:

- Restricting the number of vehicle movements during the night time. The current rules permit 20 vehicle movements per day regardless of time. The average household carries out 11 vehicle movements per day;
- Requiring home occupation businesses to provide adequate signage so that visitors including clients and trades people could easily identify the right property.

The benefits of this two-pronged approach include:

- The potential to reduce adverse environmental effects, that may affect neighbourhood character, especially in residential areas;
- Greater certainty about traffic movements, signage, noise and the effects of the activity on amenity values;
- The ability of the Council to enforce the rules when it is considered that a small or large brothel is operating without the necessary resource consents;
- Reduce social impacts, that include perceptions of safety and well-being, by restricting activities due to their adverse environmental effects;
- The potential to encourage large brothels into the City's commercial and industrial areas, where their environmental effects are less likely to affect residents.

The possibility that clusters of brothels or home occupation businesses may occur in residential streets was raised during the Councillor workshop. In response to this query, staff working in resource consents, consider it unlikely that cumulative effects of brothels will become a major problem and it is not considered necessary to impose proximity controls at this stage.

Regulatory: Signage Controls

There are two types of signage issues relating to commercial sex premises.

a) Adequate identification

The adequate identification of small brothels operating in residential areas may help to resolve some of the problems experienced by the residents and this would be covered by the home occupation rules above. Identification numbering of all home occupation businesses, and therefore including brothels, would help to resolve problems relating to brothels, such as occasions where residents have been bothered by clients who have mistakenly called at the wrong house when looking for a parlour or alleged brothel and would be solved by better signage.

The home occupation rules could ensure adequate identification in various ways, by for example:

- Introducing the requirement that each property is numbered, that the rules are tighter for cross-lease properties and that signage is displayed at unclear entrances and doors;
- Referring to other regulatory controls, such as the requirement that people adequately number their properties in accordance with an amendment to Bylaw No. 4 Chapter 2 Public Places (Clause 244) which will be effective on 31 July 2005.

b) Controls on the signage itself

Signage of commercial sexual premises can be controlled by imposing restrictions on content, form or amount on display. This can be done by a bylaw which is a new power created under the Prostitution Reform Act. This will provide additional control over and above the current District Plan provisions.

c) Regulatory: Hygiene Standards

The Hygienic Operation of Massage Facilities, Bylaw No. 31, will be reviewed to ensure that provisions require suitable standards of hygiene in all brothels and massage parlours.

d) Regulatory and non-regulatory: Design Controls

The Council can influence the appearance of brothels and commercial sex activities through building design standards and controls. Steps are being taken to tighten design standards and assessment criteria within town centres to achieve a high quality of street appeal and pedestrian amenity, through proposed changes to the operative District Plan and proposed new District Plan Rules (both currently being notified). If introduced, these changes will strengthen existing District Plan Rules.

Guidelines and pre-design consultations with building developers also help to ensure that the appearance of buildings are appropriate to the use and character of an urban area. Consideration may be given to choice of construction materials, the form and scale of the buildings and their location on the site.

e) Non Regulatory: Monitoring Measures

Monitoring of the commercial sex industry will be carried out by liaising with the police and other local councils, and setting up a system to capture and filter public comments and views and respond to them.

The implementation of the district plan must also be monitored (as required by section 35 of the Resource Management Act), and so the performance of the revised home occupation rules and City Wide Rule in the District Plan can be monitored and, if necessary, improved by a subsequent plan change in the future.

f) Non Regulatory: Collaboration on Regional Issues

Regional links with other councils will help when dealing with localised problems that may arise across the region. This could include working closely with other agencies such as the New Zealand Police, Inland Revenue, Customs and the NZ Prostitutes Collective, where relevant, to provide a co-ordinated and effective response to issues that may arise when action is taken against any brothel that is contravening resource consent conditions, the District Plan or Council Bylaws. The Council would be keen to work towards an agreed process with these agencies.

Next steps and proposed timeframe

The aim is to have a final draft of the Strategy approved by the Council in October 2005, prior to it being put out for final consultation with the public. Once public comments have been received and analysed, the Strategy would be presented to the Planning and Regulatory Committee for endorsement in early 2006. The key steps are outlined in the Table below.

Two further stages of consultation are required before the Strategy can be adopted. The first stage (see step 1 in Table below) will seek feedback on the proposed changes to the home occupation rules in the District Plan as these were not contained in the Strategy that was put out for public feedback in January. A draft revised Hygienic Operation of Massage Facilities Bylaw No. 31 (1999) will be put out for public consultation (step 4) and written or oral submissions will be considered at Hearings (step 5). The second consultation phase (see step 4), is a formal process that will need to comply with the requirements of the Local Government Act in respect of the Strategy and any bylaw changes, and the Resource Management Act (Clause 3, First Schedule), in regards to changes with the District Plan.

District Plan changes involve an additional process (see steps 6 & 8 below). Following notification of the Proposed Plan changes (step 4), the public will have the opportunity to make submissions, further submissions (step 6), and to speak at a hearing of those submissions (step 8).

Table - key steps and timelines

Key Step	Tasks	Likely timeframe
1. Consultation	Consult with the public to ask their views on: <ul style="list-style-type: none"> • Proposed changes to the District Plan home occupation rules • Proposed changes to hygiene rules via a bylaw 	Early August to early September 2005
2. Draft proposed regulatory changes	Report to Planning and Regulatory Committee to present: <ul style="list-style-type: none"> • Draft changes to the District Plan home occupation rules • Draft hygiene bylaw 	11 October 2005 meeting

Key Step	Tasks	Likely timeframe
3. Revise the Strategy and prepare for consultation	Report to Council to: <ul style="list-style-type: none"> • Approve revised draft Strategy to be out for public consultation • Initiate bylaw process • Approve draft documents for consultation 	26 October 2005 meeting
4. Formal consultation	Obtain public feedback on the revised Strategy (in its entirety), including: <ol style="list-style-type: none"> a. Location controls based on environmental effects b. Hygienic Operation of Massage Facilities Bylaw No 31 (1999) c. Notification of District Plan changes to home occupation rules d. Signage e. Urban design controls and guidelines f. Regional links 	November and December 2005
5. Process following formal consultation	Upon completion of the consultation period: <ul style="list-style-type: none"> • Written or oral submissions will be heard at Hearings scheduled for the Planning and Regulatory Committee 	February 2006
6. Finalising District Plan	Further submissions on Proposed District Plan sought	March 2006
7. Finalising the Strategy	Report to Planning and Regulatory Committee: <ul style="list-style-type: none"> • On bylaw submissions for recommendation of the bylaw for Council for adoption • On District Plan submissions and other submissions about the Strategy • Endorsement of the Strategy 	March 2006
8. Hearing of District Plan submissions	Report to Planning and Regulatory Committee: <ul style="list-style-type: none"> • To present any further submissions and request a decision on those submissions 	April to May 2006
9. Adoption of Strategy	As set out by the Planning and Regulatory Committee when the Strategy was endorsed.	April to May 2006

RESOURCES

Within Strategy and Development, there is sufficient budget to cover the costs of developing the Council's the Strategy in response to the Prostitution Reform Act. Within City Services, the costs associated with the statutory Plan Change is provided for in existing budgets. Within Legal Services, the update of the Hygienic Operation of Massage Facilities Bylaw No. 31, will be completed as part of the Bylaw review process.

CONCLUSION

This report seeks approval from the Committee to continue to develop the Strategy in response to the Prostitution Reform Act. The initial draft of the Strategy has been revised following the feedback received from the public, and consideration has been given to how the Council can best respond to the complaints raised by residents. A future work programme is outlined, which will involve further consultation on proposed regulatory changes and revision of some parts of the Strategy. The aim is to present a final draft of the Strategy to Council in October 2005, prior to it being put out for final consultation with the public.

RECOMMENDATIONS

1. That the Feedback on Commercial Sex Strategy report be received.
2. That staff revise the Commercial Sex Strategy to take account of the issues raised by submitters and at the Councillors workshop, and present the Commercial Sex Strategy to the Planning and Regulatory Committee in October 2005, for recommendation to Council to adopt for public consultation in November and December 2005.
3. That staff obtains initial public feedback in August and September in accordance with the document presented at this meeting regarding changes to Home Occupation Rules as a result of public feedback on the Strategy, and a report will be presented for approval of the proposed District Plan changes to the Planning and Regulatory Committee in October 2005.
4. That staff prepare draft changes to the Bylaw No. 31: Hygienic Operation of Massage Facilities and present a draft Bylaw to the Planning and Regulatory Committee in October 2005 for recommendation to Council to adopt for public consultation in November and December 2005.

Report prepared by: Zoe Cuming, Senior Analyst, Social Policy (Strategy and Development); Eryn Shields, Principal Planner (City Services); Sharleen Grounds, Solicitor (Legal Services); and Peter Joyce, Project Manager, Urban Design (Strategy and Development).

