



Waitakere City Council
Te Taiaro o Waitakere

Waitakere City Council

District Plan

PROPOSED PLAN CHANGE 24

Commercial Sex Activities

Prepared in fulfilment of
Section 32 of the Resource Management 1991
December 2006

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Proposed Plan Change 24

Proposed Plan Change 24 seeks to implement the Waitakere City Commercial Sex Strategy, and provide a policy and rule framework for commercial sex activities within the Waitakere City District Plan.

1.0 Introduction

This report provides a background to the Proposed Plan Change that seeks to provide for commercial sex activities in the City.

This Proposed Plan Change is a result of the Prostitution Reform Act 2003 which decriminalised prostitution and required Councils to make provision for the business of prostitution and brothels in the City. Council has prepared a Commercial Sex Strategy 2006 and it is the role of this Proposed Plan Change to implement some of the provisions of that Strategy.

In addition, this report has been prepared to fulfil the requirements of Section 32 of the Resource Management Act 1991 (the Act). Section 32 of the Act requires that an evaluation of the Proposed Plan Change be undertaken, and that a report summarising the evaluation be available for public inspection at the time the Proposed Plan Change is publicly notified.

2.0 Background Information

The Prostitution Reform Act 2003 (PRA) decriminalised prostitution and provides a framework that is concerned with safeguarding the human rights and occupational health and safety of sex workers. The intention of the PRA is to make sex work safer and to give statutory agencies responsibility to help achieve this outcome. The PRA makes prostitution legal but it does not endorse or morally sanction prostitution or its use.

The PRA applies to all brothels, including small owner-operated brothels. In the PRA, definitions are given to 'brothels', 'small owner-operated brothels', 'businesses of prostitution' and 'commercial sex premises'.

The PRA envisages that potential issues associated with the location of brothels and signage will be dealt with by Council. It provides new bylaw making powers and additional matters to be considered in relation to resource consent applications for brothels.

The relevant sections of the PRA for Councils are Section 12 -15 and enable the Council to:

- (a) make bylaws to control signage advertising businesses of prostitution and commercial sexual services (section 12);
- (b) make bylaws to control the location of brothels but not other businesses of prostitution (section 14); and
- (c) when considering whether to issue a resource consent under the Resource Management Act 1991 for a business of prostitution, have regard to whether or not the business is likely to cause a nuisance or serious offence to ordinary members of the public using the area on which the land is situated or is incompatible with the existing character or use of the area in which the land is situated (section 15).

It is not the Council's role to re-criminalise these activities or to enter into a debate about the morality of prostitution. Neither is permitted under the Act. Furthermore attempts by other Councils to adopt by-laws and other measures to exclude prostitution from operating as the Act intends, have been rejected in the Courts. Local Government New Zealand has also prepared a "Prostitution Reform Act Guide" dated June 2004 which concludes that prohibiting brothels from all parts of a city or district would be unlawful.

In response to this Council has developed a Commercial Sex Strategy (the Strategy) which comprise five approaches – both regulatory and non regulatory- to achieve the aims of the PRA. The Strategy forms part of this section 32 analysis and is attached in Appendix 1.

The five approaches of the Strategy to achieve the aims of the PRA are:

1. Location controls to manage the adverse environmental effects of brothels
2. Signage Controls
3. Hygiene Controls
4. Urban Design standards and guidelines
5. Monitoring and response measures

The Strategy requires the Council to put in place regulations and planning controls to avoid, remedy or mitigate any adverse community and environmental effects resulting from the decriminalisation of prostitution. This is in keeping with

the principles of the Resource Management Act, 1991 (RMA). The Strategy recommends that the District Plan be used as the mechanism by which the location of brothels will be regulated on the basis of their environmental effects. The focus therefore is on managing environmental effects and not on implementing a City wide ban of all types of brothels from residential areas or restricting them to certain areas of the City.

Whilst the Strategy recognises that the most appropriate method to regulate the location of brothels and signage relating to the commercial sex industry is the District Plan and contains suggested amendments, it also recognises that there is a need to control the content of signs through a Bylaw under section 12 of the PRA.

The intention of the Proposed Plan Change is therefore to implement the Strategy and meet the requirements of the PRA by managing, through the RMA and the District Plan, any potential adverse environmental effects stemming from prostitution. These could be the effects upon amenity values and upon the character of communities and neighbourhoods through:

- Location controls to manage the adverse environmental effects of brothels;
- Signage Controls; and
- Urban Design standards and guidelines.

It follows on from the District Plan amendments identified in the Strategy, by detailing the proposed new policies and rules required to implement the Strategy.

3.0 Current Provisions in the District Plan

3.1 Residential Environments – Living, Countryside, Foothills, Coastal Villages, Rural Villages, Bush Living, Waitakere Ranges Environment

- **Brothels**

Brothels would be a *non residential activity* and a *commercial service* in terms of the District Plan definitions. Subject to existing performance standards, brothels would be permitted as *home occupations* in all the residential environments but they would be restricted to 4 or less workers to meet the PRA definition of *Small Owner Operated Brothel*. There would be no restriction on hours of operation. Clear street numbering would still be required under the Street numbering bylaw.

In terms of the Non-Residential Activities rules in the residential Human Environments, brothels that are not permitted home occupations would be a Limited Discretionary Activity in the Living, Countryside, Foothills and Rural Villages Environment and Discretionary in the Bush Living and Waitakere Ranges Environment. A Limited Discretionary Activity is non-notified and does not require neighbours consent. Any application for resource consent however

would need to take section 15 of the PRA (offence, nuisance and incompatibility) into account as part of the assessment.

Non residential activities are also subject to the Traffic Generation Rule which is in the Living Environment. This requires a Limited Discretionary consent for non residential activities that generate over 20 vehicle movements per day and up to 50 movements or 1 % of the roads traffic movements (whichever is the greater). Therefore, non-residential activities on roads in the City carrying large amounts of traffic (e.g. roads classified as regional arterial, district and even collector roads in the District Plan) would still be assessed as Limited Discretionary Activities under this rule.

In the Countryside, Foothills and Rural Villages Environment, up to 20 vehicle movements associated with a non residential activity is permitted, a Limited Discretionary consent is required for vehicle movements between 50 or 2% of the roads daily traffic (whichever is the greater) and above that is a Discretionary Activity.

In the Coastal Villages, Bush Living and Waitakere Ranges Environment, up to 20 vehicle movements requires a Limited Discretionary Activity consent and above that requires a Non-complying Activity consent.

- **Signs**

In the Living, Countryside, Foothills, Bush Living and Waitakere Ranges Environments, signage associated with non residential activities and up to 1.5m² in area are a Limited Discretionary Activity. Signage greater than that size is non-complying. No signs associated with non-residential activities are permitted.

In the Rural Villages and Coastal Villages Environments signage up to 0.1m² is permitted, greater than that size and up to 1.5m² is a Limited Discretionary Activity and greater than that is a Non-complying Activity.

There are no assessment criteria relating to nuisance and offence but section 15 of the PRA would be taken into account.

3.2 – Community and Working Environments

Brothels would be permitted in these Human Environments as a *commercial service*. They would still need to meet the performance standards relating to building and development such as display space percentages in the Community Environment, 6.0 metre separation from properties in the Living Environment and a 1.8 metre high screen if adjoining the Living Environment. Generally if the performance standards are not met, a Limited Discretionary Consent is required.

In terms of signage, only signs that protrude above or beyond the outline of a building, are located above the veranda, are flashing, moving or are illuminated on a site adjacent to the residential Human Environments would require consent. There would be no assessment criteria to cover the issues raised in section 15 of the PRA but section 15 would still be taken into account.

4.0 Description of Proposed Plan Change

The Proposed Plan Change is attached in Appendix 2 and consists of:

- a new Policy;
- amendment to two existing Policies;
- two new City Wide Rules relating to the commercial sex industry;
- six new Definitions;
- amendment of two existing Definitions;
- a new Prohibited Activity Rule; and
- amendments to existing Non-residential Activities/Home Occupation Rules including the introduction of new performance standards.

The Proposed Plan Change provides for small brothels to be permitted as home occupations in residential Human Environments. To be a home occupation, one person must reside at the address. If no one resides at the address, the small brothel becomes a Non-residential activity and is assessed as a non-complying activity. The Proposed Plan Change encourages larger brothels to establish in the Community and Working Environments by making brothels a Limited Discretionary Activity in those Human Environments. Any brothel in the residential Human Environments, other than a permitted home occupation, is a non-complying activity.

Signage associated with commercial sex activities is prohibited in the residential Human Environments and is a Limited Discretionary Activity in the Community and Working Environments,

New assessment criteria that takes section 15 of the PRA into account is added.

4.1 Changes to the District Plan Policies

- New policy 11.50 relating to the location of commercial sex activities in town centres to meet urban design standards
- Amend Policy 11.18 and the explanation to refer to small brothels as a non-residential activity and home occupation and discuss the appropriate location of commercial sex activities.
- Amend Policy 11.11 relating to signage to refer to signage associated with commercial sex activities and their prohibited activity status

4.2 Changes to the District Plan Rules

4.2.1 Definitions

- Introduce six new definitions for:
 - *Small brothels* –up to 4 independent sex workers to be consistent with the definition of Small Owner operated brothel (SOOB) under the PRA
 - *Brothels* – Managed brothels or with over 4 independent sex workers
 - *Business of prostitution*
 - *Commercial sexual services*
 - *Sex worker*
 - *Commercial sex activities* – includes small brothels and brothels but excludes small brothels that are a permitted home occupation
- Amend the existing definition of *retail services* to include brothels and small brothels
- Amend the existing definition of *home occupations* to exclude *commercial sex activities*

4.2.2 Amend Existing Rules

- Non-Residential Activities/Home Occupations -all the rules relating to non residential activities and home occupations in the Living, Foothills, Countryside, Bush Living, Waitakere Ranges, Coastal Villages and Rural Villages Environments are amended to specifically provide for *small brothels* (up to 4 independent sex workers only, to be consistent with the PRA) as a home occupation. Small brothels that are a home occupation that do not meet the standards are a non- complying activity, as are all other brothels.
- Signage - all signage associated with commercial sex activities and small brothels (that are a permitted home occupation) within or visible from all the residential areas of the City is a prohibited activity.
- Hours of operation for all home occupations that are retail services are restricted to between 0700 and 1900 daily. New assessment criteria in relation to this performance standard is introduced
- Street Numbering - all home occupations are to be clearly numbered in compliance with street numbering bylaw.

4.2.3 Add New City Wide Rules

- Commercial Sex Activities – Limited Discretionary Activity consent is required for commercial sex activities in the Working Environment and above ground floor level in the Community Environment. Discretionary Activity consent required if commercial sex activities do not meet the standards in the Community and Working Environment. Non complying Activity consent required for all brothels in all other Human Environments (except small brothels that are a permitted home occupation). Introduces new assessment criteria that refers to section 15 of the PRA.
- Commercial Sex Activities (Signs) - all signs associated with commercial sex activities, that are not prohibited, will require resource consent. Introduces new assessment criteria that refer to section 15 of the PRA.

4.2.4 Existing Provisions of the District Plan

All brothels and small brothels would still need to meet other relevant existing District Plan Rules.

5.0 Assessment under the Resource Management Act 1991

The Resource Management Act 1991 (the Act) provides a legislative framework for the sustainable management of natural and physical resources in New Zealand. The purpose of the Act is to promote the sustainable management of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety. Part II (Sections 5-8) sets out the Purpose & Principles of the Act.

Section 5 (2) defines the purpose of the Act, sustainable management as:

"managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Section 6 outlines Matters of National Importance that must be recognised and provided for:

- “6. *Matters of National Importance –*
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;*
 - (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;*
 - (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;*
 - (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, site, waahi tapu and other taonga;*
 - (f) *The protection of historic heritage from inappropriate subdivision, use and development.”*

Section 7 sets out Other Matters that must be given particular regard including:

- (a) *“Kaitiakitanga;*
 - (b) *The efficient use and development of natural and physical resources;*
 - (c) *The maintenance and enhancement of amenity values;*
 - (d) *Intrinsic values of ecosystems;*
 - (e) *Maintenance and enhancement of the quality of the environment;*
- ...”

Section 8 of the Act requires that the principles of the Treaty of Waitangi be taken in account.

Part IV of the Act relates to functions, powers and duties of Central and Local Government.

Councils' functions are outlined in Section 31 as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow

activities. The District Plan is a tool to assist Council in achieving its function. Section 31 of the RMA outlines Council's functions as follows:

- (a) *The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- (b) *The control of any actual or potential effects of the use, development, or protection of land, including the for the purpose of-*
 - (i) *the avoidance or mitigation of natural hazards; and*
 - (ii) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances;*
 - (iii) *the maintenance of indigenous biological diversity:*
- (c) *The control of the subdivision of land:*
- (d) *The control of the emission of noise and the mitigation of the effects of noise:*
- (e) *The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
- (f) *Any other functions specified in this Act.*

The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Section 74 (1) of the Act is the statutory basis on which Council undertakes changes to its plan. Section 74(1) states that:

"A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II [a direction given under Section 25A(2)],, its duty under section 32, and any regulations."

Therefore before adopting an objective, policy or rule or other method in the District Plan a rigorous assessment under Section 32 of the Act must be carried out. Section 32 (3-6) states:

- (3) *An evaluation must examine –*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of this examination, an evaluation must take into account –*
 - (a) *the benefits and costs of policies, rules, or other methods; and*

- (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*
- (6) *The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.*

The analysis required under section 32 to establish a rule in a proposed plan or a Proposed Plan Change was summed up in *Nugent Consultants Limited v Auckland City Council*. (Decision No A33/96), where the Environment Court stated that:

“...a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan.”

As well as the section 32 analysis, Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment, particularly adverse effects.

Section 75 of the Resource Management Act 1991 requires that a district plan must give effect to a regional policy statement.

6.0 Section 32 Analysis

In achieving the purpose of the Act, Section 32 requires that before notifying a Proposed Plan Change Council must carry out an evaluation of the alternatives, benefits and costs of the Proposed Plan Change. Council's obligations under section 32 are divided into five parts that comprise the following:

- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
- taking into account the benefits and costs of the policies, rules or other methods;
- taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
- summarising the evaluation and reasons for evaluation.

6.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act (s32(3)(a))

As the Proposed Plan Change does not seek to amend an existing District Plan Objective, or introduce a new objective into the District Plan, further analysis is not required. In addition, it is considered that there will be no eroding of any existing objectives as a result of introducing provisions for commercial sex activities within the City. The Proposed Plan Change is consistent with the existing Objectives of the District Plan by providing mechanisms to implement the PRA, whilst ensuring that amenity values and the health and safety of the community are not compromised.

6.2 Evaluation of Alternative Methods: Benefits and Costs, Efficiency and Effectiveness (s32(3)(b)) and 4 (a)

Council is required to have regard to alternative methods that may be used in achieving the objectives of the Proposed Plan Change. This includes non-statutory methods such as education, provision of services, incentives and levying of charges. Other methods could be taking no action at all (i.e. removing all rules) or of retaining the existing rules (the status quo).

Efficiency of a method or option is measured by the ratio of benefits to costs (the higher the ratio the greater the efficiency). Effectiveness is a measure of how successful a policy or method is in achieving the objective of the plan change, in this instance implementation of the Strategy.

The following alternative methods to implement the Strategy and provide for commercial sex activities in Waitakere City have been identified and are considered below:

1. Regulate the commercial sex industry through a combination of District plan rules to govern location and a bylaw to regulate the contents of signage (the Proposed Plan Change is part of this method)
2. Retain existing rules in the District Plan without amendment (the "status quo" option).
3. Regulate commercial sex activities in the City solely through a bylaw as provided for in Sections 12 and 14 of the PRA
4. Regulate commercial sex activities through specific rules and policies in the District Plan alone
5. Provide a strategy document and brochures to inform and educate the public regarding commercial sex activities in the City and Council's obligations under the PRA.

6.2.1 Option 1

The District Plan Change and Sign Bylaw Option - Specific Policies and Rules in the District Plan to regulate the location and effects of Commercial Sex Activities and a Bylaw to control the content of signs associated with the industry

Costs

- Financial cost incurred in the dual process – both plan change and bylaw
- Relatively lengthy time frame to get both a change incorporated into the District Plan and a new bylaw

Benefits

- Community concerns addressed
- All businesses of prostitution and all aspects of signage including content controlled
- Should provide reasonable certainty and direction for both the industry and the public
- Able to address environmental effects of the industry through District Plan rules and the resource consent process and preserve amenity values and neighbourhood character of the City.
- Able to address issues such as offence, nuisance and incompatibility as provided for under the PRA
- Able to be monitored and enforced if a breach of the District Plan is involved
- Can deal with applications for brothels and assess environmental effects before they establish

- Once in force cannot be challenged on the grounds of unreasonableness c.f. a Bylaw
- Able to control the cumulative effects of brothels- prevent the establishment of a "red-light " district
- Allows good opportunity for public consultation and participation in the process

Efficiency and Effectiveness

Overall it is considered that this option would be the most efficient and effective of the methods proposed. The benefits clearly outweigh the costs. Because the District Plan provisions are effects- based they can enable the commercial sex industry to be regulated as required by the PRA, whilst at the same time ensuring that any adverse effects on the environment such as the nuisance or amenity effects are avoided remedied or mitigated. District Plan rules are able to be enforced and will ensure that the intent of the PRA is met. The use of a by-law to control the content of signs would complement the District Plan controls for size design and location. This option is recommended.

6.2.2 Option 2

The Status Quo/ Do Nothing Option – Retain Existing Rules/Bylaws

Currently the District Plan has no specific rules relating to the commercial sex industry. They would however be controlled as *non- residential* activities in the residential Human Environments and as *commercial services* in the Community and Working Environments.

Costs

- Potential for social impact including increasing offence and nuisance due to inability of current regulations to adequately address issues arising from decriminalisation under the PRA.
- Community concerns and issues identified in consultation on the Commercial Sex Strategy not addressed
- Resource consent may not always be required so the amenity and character of areas where commercial sex activities locate may be adversely affected
- Intent of the PRA would not be met as it specifically provides mechanisms to control the location of brothels and signage so as to avoid offence, nuisance and incompatibility.
- Due to lack of specific regulations and consequent monitoring there is a likelihood of commercial sex businesses operating illegally and inappropriately
- Inability to control the content of signs which could cause offence or be a nuisance to ordinary members of the public
- Existing District Plan rules may be in conflict with PRA e.g. number of workers allowed in a Small Owner Operated Brothel is less than a home occupation under the District Plan

Benefits

- No financial costs in preparing a plan change or a bylaw would be incurred to Council
- Brothel and prostitution business owners would be able to run their business without any costs associated with specific regulation
- Brothels would not be treated differently to other businesses with similar amenity impacts except for the ability to assess for offence, nuisance or incompatibility under Section 15 of the PRA, if they require a resource consent to establish

Efficiency and Effectiveness

This option would not be efficient as the costs clearly outweigh the benefits. Although the existing District Plan rules would prevail, it would not be overly effective as they were written before the PRA was enacted by Parliament. Consequently they do not specifically address the effects of commercial sex activities in the City as intended and provided for by the PRA. This option is not recommended.

6.2.3 Option 3

Control the Commercial Sex Industry and Associated Signage through By-laws under Sections 12 and 14 of the PRA

Costs

- At any stage a bylaw can be challenged on the grounds of unreasonableness and could be declared invalid by the Courts. This is of particular concern given the comparatively low level of activity in the sex industry in Waitakere City and the fact that bylaws made by other Councils have been challenged e.g. Hamilton, Auckland, Christchurch
- Challenges to a bylaw can be costly. It is estimated that the cost to Christchurch City Council in defending its bylaw was in excess of \$100,000.
- A bylaw under section 12 of the PRA can only regulate the location of brothels and not all businesses of prostitution.
- Hard to enforce in terms of deciding what is a "brothel" and not a massage parlour. Council would need to prove that a commercial sex activity has occurred and the level of proof required is evidence of the sexual act and payment. This element of proof would require that Council obtain a warrant to enter premises for the purpose of detecting a breach.
- Brothels are unlikely to comply and may be driven "underground"
- Even with proof, enforcement procedures for bylaws are difficult and cumbersome
- Not effects based-brothels can or cannot establish without any assessment of effects and consideration of the neighbourhood character which could

lead to a loss of amenity in some areas or being unreasonably restricted in others

- Could lead to establishment of a "red- light" district
- Inconsistent with the treatment of other land use activities in the city under the RMA and PRA.

Benefits

- The process can be completed in shorter timeframes than a District Plan change
- Community concerns addressed
- Can be prescriptive as does not rely on environmental effects as the basis of control
- Would provide direction and certainty for the sex industry

Efficiency and Effectiveness

Use of a bylaw to control the location of brothels would be reasonably efficient if it is sufficiently robust and not subject to legal challenge. However this has not proven to be the case for bylaws prepared by other Councils. A bylaw could only relate to the location of brothels and not other commercial sex activities. It is also considered that the use of a bylaw to control land use activities would not be effective as this is specifically the role of the Resource Management Act and is inconsistent with the way activities are currently managed in the City through the District Plan. Again this option would be neither efficient or effective as the costs clearly outweigh the benefits and it would not be effective in achieving implementation of the Strategy. Overall this option is not considered appropriate and is not recommended.

6.2.4 Option 4

Control through changes to the District Plan alone

Costs

- Would not be able to control the content of signs which could lead to detracton from neighbourhood amenity values and cause offence or nuisance to ordinary members of the public
- Would not meet community concerns

Benefits

- Less financial cost than a District Plan change and bylaw combination
- Can regulate all businesses of prostitution not just brothels
- Should provide reasonable levels of certainty for the sex industry

- Able to address environmental effects of the industry and preserve amenity values of areas where brothels are discouraged and signs prohibited
- Can address cumulative effects i.e. the effects of more than one brothel in an area

Efficiency and Effectiveness

This option would be reasonably efficient but its effectiveness would suffer from an inability to control the contents of signs. This option is not recommended.

6.2.5 Option 5

Provide a strategy document and brochures to inform and educate the public regarding commercial sex activities in the City and Council's obligations under the PRA.

Costs

- Low cost in terms of funding the resources required to implement this Option
- Would not meet community concerns in terms of taking a regulatory approach to this matter
- Potential for social impact including increasing offence and nuisance due to inability of current regulations to adequately address issues arising from decriminalisation under the PRA.
- Intent of the PRA would not be met as it specifically provides mechanisms to control the location of brothels and signage so as to avoid offence, nuisance and incompatibility.
- Due to lack of specific regulations and consequent monitoring there is a likelihood of commercial sex businesses operating illegally and inappropriately
- Inability to control the content of signs which could cause offence or be a nuisance to ordinary members of the public

Benefits

- No financial costs in preparing a plan change or a bylaw would be incurred to Council
- Brothel and prostitution business owners would be able to run their business without any costs associated with specific regulation
- Brothels would not be treated differently to other businesses with similar amenity impacts except for the ability to assess for offence, nuisance or incompatibility under Section 15 of the PRA, if they require a resource consent to establish

Efficiency and Effectiveness

This option would not be efficient as the costs clearly outweigh the benefits. Although the information and educative approach will be undertaken by the Ministry of Health and it will achieve many positive outcomes, the existing District Plan rules would prevail, and it does not specifically address the effects of commercial sex activities in the City as intended and provided for by the PRA. The Strategy includes a monitoring action and an urban design guideline to assist with educating the public and in future reviews of the Strategy. This option is not recommended.

6.3 Proposed District Plan Change – Options, Costs and Benefits

Having concluded that **Option 1**, a District Plan change/Sign Bylaw option is the most appropriate method, the following is an analysis of the proposed new District Plan Policies and Rules and new Signage Bylaw

6.3.1 Small Brothels permitted as Home Occupations in Residential Areas with new performance standards relating to street numbers, restriction on hours of operation and number of workers

6.3.1.1 Option 1

Permitted (Proposed Plan Change)

Small Brothels permitted in residential areas as home occupations provided they meet existing and proposed new performance standards

Costs

- cost of plan change
- might not be perceived as meeting community concerns

Benefits

- meets the intent of the PRA and the RMA
- is consistent with “effects-based” resource management and other permitted effects based home occupations
- integrates the commercial sex industry into existing District Plan provisions with only minor amendments needed
- provides a level of certainty for sex workers
- will ensure that neighbourhood character and amenities are protected by reducing potential noise and nuisance from after hours operations of retail service home occupations and lack of clear identification

Efficiency and Effectiveness

This option would be both efficient and effective as the benefits outweigh the costs. The sex industry is treated the same as other retail service home occupations and the introduction of new performance standards relating to property identification and hours of operation tidies up and strengthens the existing District Plan home occupation performance standards and gives consistency with the PRA. This option would meet the intent of the PRA and is recommended.

6.3.1.2 Option 2- Status Quo- Retain existing rules without amendment

Small brothels may be permitted as home occupations without restriction on hours of operation. Brothels may also be able to establish in residential areas as a Limited Discretionary Activity i.e. without neighbour consents.

Costs

- may be difficult for the public to interpret the rules in relation to the sex industry
- would not meet community concerns about property identification and nuisance
- no consistency with the PRA or the Council's Commercial Sex Strategy
- potential loss of amenity arising from adverse effects in areas where no resource consent is required
- no opportunity for public input in residential areas where only a limited discretionary consent is required
- cannot address nuisance and offence under section 15 of the PRA where no resource consent is required

Benefits

- no plan change processing costs
- would still be a permitted activity
- street numbering can be enforced through the bylaw

Efficiency and Effectiveness

This option would be partly efficient as it does not require a plan change and the sex industry is controlled through existing District Plan Rules. However it would not be effective in meeting the objectives of the Commercial Sex Strategy as the new performance standards would not be introduced and its efficiency would be reduced by forgoing the opportunity to improve the home occupation performance standards to be consistent with the noise standards.

6.3.1.3 Option 3 – Exclusion of Small Brothels

Exclude small brothels from operating in the residential areas by excluding them from the definition of home occupation

Costs

- would not meet the intent of the PRA and would possibly be ultra- vires
- would not meet concerns of the sex industry
- cost of consent to establish could drive the sex industry underground and lead to illegal brothels and subsequent enforcement issues and costs for Council
- cost of plan change
- inconsistent with the effects based planning approach of the District Plan and the RMA

Benefits

- may meet concerns of some of the community

Efficiency and Effectiveness

This option would single out the sex industry which is inconsistent with the District Plan approach. The costs outweigh the benefits in terms of efficiency and it would not be effective in implementing the Strategy.

6.3.1.4 Options 4 – Resource Consent For Small Brothels

Require all small brothels in the Residential environments to gain resource consent

Costs

- cost to applicant
- cost of plan change to Council
- inconsistent with the sex industry desire for anonymity and Councils desire for minimal visibility
- inconsistent with other permitted effects- based home occupations
- could drive the sex industry underground and lead to illegal brothels and subsequent enforcement issues and costs
- would not meet the intent of the PRA

Benefits

- provides for a level of scrutiny and assessment of effects by Council
- may meet concerns of some of the community

Efficiency and effectiveness

This option would single out the sex industry. This would not be effective or efficient as it would not meet the intent of the PRA bearing in mind the reason for this plan change is to implement the PRA.

6.3.1.5 Option 5- Laissez- Faire

Remove all performance standards for all home occupations

Costs

- residential amenities and character not protected
- would not meet community concerns
- would be inconsistent with the policies and objectives of the District Plan and the purpose of the RMA – sustainable management of resources

Benefits

- no consent processing costs

Efficiency and effectiveness

This option would not be efficient as the costs outweigh the benefits. It would also not be effective as it would be inconsistent with the RMA and sustainable management of resources and would not implement the Strategy, the intent of which is to manage the effects of brothels in the City.

6.3.2 -Signage-Prohibition on all Signage associated with the sex industry in residential areas

6.3.2.1 Option 1 – Prohibition (Proposed Plan change)

Prohibit all signage associated with the commercial sex industry within residential environments.

Costs

- cost of plan change
- consistent with the powers invoked by the PRA

Benefits

- signage has been identified in consultation as being one of the most potentially offensive and prominent aspects for the sex industry. A prohibition in residential areas would meet community concerns
- would protect residential amenity values and neighbourhood character
- would address concerns of sex workers regarding their public profile
- would minimise processing costs of requiring a resource consent

Efficiency and Effectiveness

This option would be efficient and effective in that it would provide certainty for both the community and the sex industry whilst at the same time ensuring that residential amenities are protected. This option is recommended.

6.3.2.2 Option 2 – Status Quo- Retain existing signage rules

Costs

- would not meet community concerns re offensive signs and signs associated with the sex industry
- would not be consistent with the PRA which recognises that signage has potential to offend
- potential offensiveness and detraction from amenities and neighbourhood character arising from adverse effects of offensive and inappropriate signs

Benefits

- No plan change cost

Efficiency and Effectiveness

This option would not be efficient or effective as the potential for offensive signs is not reduced.

6.3.2.3 Option 3 – Laissez faire- Permit all signage without regulation

Costs

- would not meet community concerns
- would not be consistent with the District Plan, RMA or PRA
- cannot assess nuisance, offensiveness or incompatibility (section 15, PRA)
- would require a plan change

- potential for adverse effects on neighbourhood character and amenity values and safety from the placement of uncontrolled signage throughout the City

Benefits

- no consent processing costs
- no enforcement costs

Efficiency and Effectiveness

This option would not be effective or efficient as the potential for offensive signs is not reduced and the potential for adverse effects arising from uncontrolled signage in the City is increased. It would be inconsistent with the RMA and the sustainable management of resources and a plan change with its associated costs would be required to implement it.

6.3.3 New Specific Citywide Rules for the commercial sex industry and new definitions

6.3.3.1 Option 1 – Specific City wide Rules (Proposed Plan change) and new signage bylaw relating to content

Introduce new Citywide Rules and associated assessment criteria that relate specifically to the establishment of brothels and associated signage in the City. Brothels are a non complying activity in the residential areas and limited discretionary elsewhere. Introduce urban design requirements for brothels in Community Environments

Costs

- cost of plan change
- could discriminate against the disabled community in that brothels are not permitted on ground level in the Community Environment

Benefits

- would meet community concerns
- provide a level of certainty for the sex industry and the community
- would assist Council in meeting its urban design objectives and town centre vision
- provides for a level of scrutiny and assessment of the effects by Council
- would protect amenity values and neighbourhood character
- can assess offensiveness, nuisance and incompatibility (section 15 PRA)

Efficiency and Effectiveness

This option would be efficient and effective in that the benefits clearly outweigh the costs. Although brothels would be required to locate above ground level in the Community Environment this is not considered to be an issue as all new commercial buildings and alterations are required to install lifts for access above ground level. This option would provide a level of certainty for both the community and the sex industry whilst at the same time ensuring that Citywide amenity values are protected which is the intention of the Strategy. This option is recommended.

6.3.3.2 Option 2 – Status Quo

Retain existing District Plan Rules without amendment i.e. no new specific rules

Costs

- would not meet community concerns
- cannot assess nuisance, offensiveness or incompatibility (section 15, PRA)
- District Plan rules written before the PRA enacted so do not specifically address effects of commercial sex activities
- potential for detraction from amenities and Council's and Auckland Regional Council's town centre objectives if activities are permitted without new rules or resource consent assessment
- would not be consistent with the Commercial Sex Strategy or meet the intent of the PRA

Benefits

- no plan change cost
- effects based assessment if resource consent required

Efficiency and Effectiveness

This option would not be efficient or effective and is not recommended.

6.3.3.3 Option 3 – Prohibit

Prohibit the establishment of all brothels in the City

Costs

- would not meet the intent of the PRA and would probably be ultra –vires
- potential costs from legal challenges
- would require a plan change

- not consistent with the effects based District Plan and RMA, and the PRA

Benefits

- would meet the concerns of some of the community

Efficiency and Effectiveness

This option would not be efficient or effective and is not recommended. The PRA legalised prostitution and provides methods for their establishment. Council is legally obliged to not prohibit the commercial sex industry in the City.

6.3.3.4 Option 4 – Partial Prohibition

Prohibit the establishment of brothels in the residential areas of the City only and allow with a resource consent elsewhere

Costs

- would not meet the intent of the PRA and would probably be ultra vires
- potential costs from legal challenges
- not consistent with the effects based District Plan
- would require a plan change

Benefits

- would meet the concerns of some of the community

Efficiency and Effectiveness

This options would not be efficient or effective and is not recommended.

6.3.3.5 Option 5 – Buffer Zone

Brothels can only establish if located a nominated distance from all “sensitive sites” – e.g. schools, churches

Costs

- would be in conflict with the intentions of the PRA as it could mean that brothels can only establish in very limited areas
- difficult to implement and enforce – what is a “sensitive site”, and what size the buffer zone should be?

- Singles out the sex industry and is not effects based, in that the locations that brothels can establish may not be appropriate even though they are located outside the buffer zone of a “sensitive site” i.e. adverse effects on the environment can still occur and would not be consistent with RMA
- would require a plan change

Benefits

- would meet the concerns of some of the community

Efficiency and effectiveness

This option is not efficient or effective as it would not achieve the objectives of the Commercial Sex Strategy.

6.4 Evaluation Summary

Overall it is considered that the Proposed District Plan Changes is the most efficient and effective way of achieving the objective of the plan change which is the implementation of the Commercial Sex Strategy.

It is considered that Council has both certain and sufficient information, and has utilised this information in the preparation of the Proposed Plan Change. It is therefore not considered necessary to investigate the risk of acting or not acting as outlined in s32(4)(b) of the Act, and ultimately no further assessment is deemed necessary in this regard.

The above evaluation fulfils Council’s requirements with regard to section 32 of the RMA. The analysis of alternatives benefits and costs has been carefully undertaken and summarised accordingly. Further, this evaluation will be available for public inspection at the same time that the Proposed Plan Change is publicly notified.

6.5 Assessment of Potential Adverse Effects

Under Section 31 of the Act Council’s function includes “*the control of any actual or potential effects of the use, development, or protection of land*”. Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment. Likewise, section 5(2)(c) provides for avoiding, remedying, or mitigating any adverse effects of activities on the environment.

It is considered that there are no adverse environmental effects that will be generated by the Proposed Plan Change as it sets up a framework to avoid, remedy or mitigate the adverse effects arising from the business of prostitution in the City.

7.0 Waitakere City District Plan - Existing District Plan Issues/Objectives/Policies

The objectives of the District Plan (Objectives 1-12) are concerned with the protection and enhancement of particular resources or aspects of the environment being water quality and quantity, native vegetation and fauna habitat, land(including soil), air quality, atmospheric quality, ecosystem stability, natural character of the coast and margins of lakes, rivers and wetlands, spiritual dimension(mauri), outstanding landscapes, amenity values: health and safety, amenity values – landscapes, local areas and neighbourhood character and heritage.

The Proposed Plan Change is concerned with managing the location and establishment of brothels in the City in order to avoid remedy or mitigate any adverse effects on the natural and built environment which is consistent with these Objectives, particularly Objectives 1-9 and 12.

It is also consistent with Objectives 10 and 11 relating to amenity values. The Proposed Plan Change is concerned with managing the location and establishment of brothels in the City. This is in order to protect amenity values and neighbourhood character and avoid remedy or mitigate any adverse effects on the environment which is consistent with those objectives.

It is also consistent with the relevant policies to give effect to Objectives 10 and 11. These Policies are 10.2, 10.3, 10.6, 10.8, 10.11, 10.14, 11.1, 11.3, 11.10, 11.11, 11.12, 11.13, 11.14, 11.15.

Although the Proposed Plan Change does not add any new Objectives it is considered that it would be consistent with existing Objectives. A new policy in relation to commercial sex activities has been added in relation to Objective 11.

8.0 Auckland Regional Policy Statement

Section 75 of the RMA requires that a District Plan must give effect to a Regional Policy Statement or Plan.

The Auckland Regional Policy Statement (RPS) sets out the strategic direction for the Auckland Region. It seeks to maintain a quality environment for the Auckland Region and at the same time, maintain and enhance opportunities for the region's future growth. The RPS comprises four parts: Regional Overview and Strategic Direction; Resource Management Matters of Significance to Iwi; Transport and Energy; and Environmental Protection. Each part identifies issues, objectives, policies, methods, reasons and the environmental results anticipated as a result of implementation of the RPS.

Key objectives and policies of the RPS relevant to this Proposed Plan Change are:

Strategic Objective 2.5.1

- 1. To ensure that provision is made to accommodate the Region's growth in a manner which gives effect to the purposes and principles of the RMA, and is consistent with these strategic objectives and with the provisions of this RPS.*
- 2. To maintain and enhance the overall quality of the environment of metropolitan Auckland , including its unique maritime setting, volcanic features, cultural heritage features and public open space.....*
- 6. To promote transport efficiency and to encourage the efficient use of natural and physical resources including urban land, infrastructure, and energy resources....*

2.5.2 Strategic Policies

- 1. The use, development and protection of natural and physical resources in the region is to be managed so that the regions growth is accommodated in a manner and in locations which are consistent with the Strategic Objectives and which promote the sustainable management of these resources.*

Policy 2.6.1.2

Urban development shall be contained within the defines limits(including the metropolitan urban limits and the limits of rural coastal settlements – referred to in Strategic Policy 2.5.2-3) shown in the RPS from time to time, and its form shall be planned and undertaken through an integrated process on a regional basis and in ways that are consistent with the strategic Direction and;

- (i) *provide for urban intensification around selected nodes and along selected transport corridors;*
- (ii) *provide for higher intensities of urban activities at selected locations within areas of new development;*
- (iii) *bring about patterns of activities that will mitigate the effects of increased travel and improve the energy efficiency and convenience of urban areas(refer to Chapter 4-Policy 4.4.1-2, and chapter 5-Policy 5.4.1-3;.....*
- (iv) *maintain and enhance amenity values within the existing urban area, and achieve high standards of amenity in areas of new development.*

The RPS has been the subject of extensive plan changes as required by the Local Government (Auckland) Amendment Act 2004 (LGAAA) to give effect to the regional growth concept and to strengthen the integration of land transport and land use provisions. Section 5 of the LGAAA requires that the RPS must contribute to supporting compact sustainable urban form and sustainable urban land use intensification 9 including location, timing and sequencing issues and associated quality, character and values of urban form and design.

Proposed Plan Change 6 was notified on the 31 March 2005 and amongst other things involves extensive changes to Chapter 2 – Regional Overview and Strategic Direction of the RPS. The objective of the plan change is to further strengthen the integrated management of growth and development in order to promote and integrate the sustainable management of resources in the Auckland region. Plan Change 6 seeks to ensure that growth is managed by promoting quality compact urban environments with intensification focussed around town centres and major transport nodes to create higher density communities with a variety of housing, jobs, services, and mixed use activities. It recognises that more intensive development can support a greater range of services and facilities but that careful urban design is needed to ensure good urban amenity.

Relevant issues are:

Issue 2.4.3 – Ad hoc urban redevelopment and land use changes can lead to loss of urban amenities

- *Good urban form and building design is critical to ensuring that development provide a high quality urban living experience with sufficient amenities, a range of housing to accommodate a diverse population with mixed use, vibrant and coherent high density centres and corridors.*
- *Ensuring coherent urban redevelopment with consideration of urban form and design issues contributes to the maintenance and enhancement of amenity values. (section 7(c)*

2.3 – The Auckland Regional Growth Strategy

The “Growth Concept” envisages that more intensive development can support a greater range of local services and facilities increase the opportunity for safer walking and cycling and help support public transport by bringing people closer to the main routes. Careful design will be needed to ensure good urban amenity”.

New relevant strategic objectives in addition to existing are :

2.5.1(3) To achieve a compact well designed more sustainable urban form served by an integrated multimodal (private vehicles, public transport, walking and cycling) public transport system.

2.6.1(5) To achieve a built environment within the region’s metropolitan area and rural and coastal settlements that has a sense of identity and character , has a range of densities and uses, is visually pleasant, functionally efficient, environmentally sustainable and economically viable.

Policies to achieve the objective include *Urban Containment, Urban Structure and Urban Design*. Each policy has methods for implementation and reasons.

Strategic Policies 2.6.5. (3) and (6) (Urban Structure) are as follows

(3) Development within high density centres and corridors should be in a form that supports compact mixed use environments.

*(6) The following business sectors support high density centres and corridors and should be encouraged to locate there....(ix) Personal and other services....
(11) Existing urban areas shall be managed so that amenity values and character are maintained and enhanced*

Strategic Policy 2.6.8 (1) (Urban Design)

The design of new urban area and the management and promotion of change in existing urban areas is to occur so that:....

(c) Buildings, public spaces and road corridors contribute to a vibrant liveable and attractive environment with a sense of place”

2.6.10 – Reasons, Urban Design

Urban design is critical to the development of a network of connected communities, an effective passenger transport system and the layout of buildings, roads, open spaces and the physical and social infrastructure. Quality urban design should maximise economic opportunity, social wellbeing, cultural diversity, environmental health, and choice for residents..... [particular emphasis is placed on the design of buildings, streets and public spaces. Together these

design elements should combine to create environment of high amenity that are valued community resources. ...

As the intensity of growth centres increases through redevelopment, design becomes increasingly important to the maintenance and enhancement of built character, civic spaces, streetscape and pedestrian amenity. With the prospect of more mixed, intensive urban environments, high standards of urban design are essential to ensure that centres develop as integrated attractive residential, employment and community hubs. Poorly designed development may detract from the character of these centres and adversely affect their vitality and vibrancy in turn affecting their ability to attract further activities and development.

The RPS and Plan Change 6 is focussed on ensuring that growth is managed by promoting high quality compact urban environments through intensification around town centres and transport nodes to create higher density communities with a variety of housing, jobs services and mixed use activities. It recognises that more intensive development can support a greater range of services and facilities but that careful urban design is needed to ensure good urban amenity.

It is considered that Proposed Plan Change 24 would give effect to the RPS, in particular Strategic Policy 1 and Strategic Policy 2.6.1.2. It recognises the importance of ensuring that high standards of amenity are maintained in the residential areas of the City and the need for high standards of urban design in town centres and the community environment.

It would also be consistent with Proposed Plan Change 6 to the RPS. Rules such as the requirement for above ground level brothels in town centres give effect to the strategic policies relating to urban design and urban structure by providing for the establishment of brothels in a way that would contribute to the high quality built environment and streetscape that is sought in Proposed Plan Change 6 to the RPS. It is also consistent with Proposed Plan Change 18 to the District Plan – Citywide Urban Design Rules- which is considered to give effect the RPS. Also by providing for commercial sex activities within the City it is providing choice for residents and the community whilst ensuring that amenities are protected thus giving effect to strategic policies relating to urban design and urban structure.

9.0 Waitakere City Long Term Council Community Plan

The 10 year Long Term Council Community Plan (LTCCP) covers the first decade of Council's 20 Year Strategic Direction. The purpose of the LTCCP is to:

- describe the activities of the Council;
- describe the community outcomes desired for the city;
- provide integrated decision making (between the Council and the community) and co-ordination of resources;
- provide a long term focus for the Council's decision and activities;
- provide a basis for accountability to the Waitakere City community; and
- provide an opportunity for community participation.

This is further expanded upon in in section 4.1 of the Commercial Sex Strategy.

10.0 Consultation

10.1 Background Research and Consultation

There has been extensive discussion and consultation relating to the implementation of the PRA within Waitakere City since the legislation was passed in 2003.

Reports on the implications of the PRA were presented to the August 2003 meeting of the (then) Environmental Management Committee, the October 2003 Council meeting, the July 2004 meeting of the (then) Environmental Management Committee, the August 2005 and March 2006 meetings of the Planning and Regulatory Committee. A copy of these reports is attached in Appendix 3 and form part of this Section 32 analysis.

Workshops on the 6 October 2003 and 31 May 2004 were attended by staff, Councillors, Community Board Chairs, Public Health Representatives and Police, and a work programme to progress Council policy on the matter was identified.

An internal staff team comprising officers from Consents, Legal Services, Strategy and Development, Field Services and Resource Management was formed to work through the various issues arising from the decriminalisation of prostitution. This team has worked through various options for the Council's response to the PRA and has been responsible for the drafting of the Strategy.

The team has met with representatives from the Police, Auckland Regional Public Health Service, the New Zealand Prostitutes Collective and owners of massage parlours located in Waitakere City. Members of the public and the