



**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, 14 MARCH 2006  
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 - Tuesday, 14 February 2006

**RECOMMENDATION**

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 14 February 2006, as circulated, be taken as read and now be confirmed.



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

### **4 LEGAL UPDATE (AS AT 22 FEBRUARY 2006)**

#### **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.

#### **COURT OF APPEAL**

##### ***(Unchanged)* 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. Estate Homes was granted leave to appeal to the Court of Appeal (on two issues, out of an original seven pursued).

A hearing took place in the Court of Appeal on 1 September 2005. The Court released its decision on 11 November 2005. The Court overturned the decision of Justice Venning in the High Court. However, the Court of Appeal did not restore the Environment Court findings, but instead referred the case back to that Court to reconsider its decision. The Court of Appeal agreed that the Environment Court had not taken into account the District Plan requirement that subdivision roading patterns should maximise connections within and between local neighbourhoods ("connectivity"). However, the majority judgment held that it was for the Environment Court to decide what weight should be placed on this factor, rather than for an appellate Court to do so.

The problem with the reasoning of the majority of the Court of Appeal is that it equates Council's role when approving subdivision consents, (particularly as to the roading component) as engaging in the expropriation of private land for public use, and overlooks (or at least relegates) councils' district planning role. This has significant consequences especially as it carries the implication that councils may be required to compensate developers for the "public benefit" aspects of subdivisions. An application has been made for leave to appeal to the Supreme Court.

#### **HIGH COURT**

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

Council has been served with six sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsular bordering the Waitemata Harbour. Counsel acting for the defendants has notified Council that one further set of proceedings will be filed in the High Court shortly. Once the seventh set of proceedings is filed, Council will file a statement of defence.

**(New) Waitakere City Council v P W Mawhinney (February 2006)**

This matter related to Mr Mawhinney filing an application to have his bankruptcy notice response stayed and set aside. Council has filed a response. The background to this matter is that Mr Mawhinney was served with a bankruptcy notice on 21 October 2005 in relation to \$5,063.16. This is a costs award due to Council for winning a security for costs application in May 2005 in relation to the High Court proceedings referred to below. This matter has been set down for a hearing on 21 March 2006.

**(Changed) Waste Management v Waitakere City Council, North Shore City Council, Rodney District Council and Christchurch City Council (August 2005)**

This is an action for judicial review by Waste Management seeking a declaration that the Local Government Acts 1974 and 2002 do not provide for that part of Councils' newly passed waste bylaws which make provision for imposing levies on waste for the purpose of providing economic incentives and disincentives under section 544 of the Local Government Act 1974. The matter was heard during the week of 13 February 2006. All four councils had retained Kensington Swan as solicitors and David Kirkpatrick as barrister. His Honour Justice Asher presided and reserved his decision.

**(Changed) Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (August 2005)**

This is an action for judicial review by Carter Holt Harvey alleging that the Local Government Acts 1974 and 2002 do not permit a waste bylaw which requires it to be licensed for paper recycling activities where that is a private relationship and to impose a levy on waste. There has been some consolidation of this proceeding with the Waste Management proceeding. All three councils had retained Kensington Swan as solicitors and David Kirkpatrick as barrister. The matter was heard in the week of 13 February 2006. His Honour Justice Asher presided and reserved his decision.

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

This claim was on hold pending the payment of security for Waitakere City Council's costs of \$60,000 ordered by Associated Judge Sargisson on 2 May 2005. After a defended hearing about an appropriate form of security, at which his proposal of a mortgage in favour of the Registrar had been rejected by the Court; Mr Mawhinney has paid the required security into Court. The Court awarded indemnity costs in relation to Council's application to strike out, because Mr Mawhinney's delay in providing security and leaving it to the last minute.

Mr Mawhinney now has until 31 March 2006 to file an amended claim. A five day hearing has been allocated by the Court for the week of 6 November 2006. Once an amended claim has been received we will assess whether a further strikeout application should be filed.

**ENVIRONMENT COURT**

**(New) Chapman v Humphrey (December 2005) and Weddings Etc Limited v Waitakere City Council (January 2006)**

These proceedings are related and concern the noise levels generated by the operation of Cassels Function Centre in Scenic Drive. The former proceedings are an application by Mr Chapman for an enforcement order requiring Cassels to comply with the relevant District Plan noise rule; the latter, an appeal against an abatement notice issued by the Council which required (amongst other things) that Cassels adopt the best practicable option to ensure that noise does not exceed a reasonable level. A judicial conference, regarding case management, took place on 21 February 2006. Both matters may be referred to mediation or a timetable may be set in anticipation of a hearing.

**(Unchanged) Waitakere Resource Consents Limited v Waitakere City Council (December 2005)**

This is an appeal against a refusal to issue a certificate of compliance under s139 Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The Application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

Council has lodged a detailed Notice of Reply and timetable orders have been made for exchange of evidence. The appellant (director: P.W. Mawhinney) was given until 17 February 2006 to lodge his evidence. He has not complied with the timetable and no evidence has been lodged. Council is required to reply by 24 March 2006, but will be addressing the Court on the lateness of Mr Mawhinney's evidence. A hearing will be allocated after that date.

**(Changed) Auckland Regional Council v Waitakere City Council (October 2005)**

An appeal by the Auckland Regional Council against a decision of this Council to grant consent to a proposed private high school and associated facilities. The Auckland Regional Council opposed the consent application alleging that granting consent to a new school outside of the Metropolitan Urban Limits ("MUL") would undermine the Auckland Regional Policy Statement, the Metropolitan Urban Limits ("MUL") and would create negative precedent effects. The parties are to file progress reports with the Court by 28 February 2006.

**(Unchanged) Denver Holdings Limited v Waitakere City Council (October 2005)**

An appeal by the applicant (Denver) against certain conditions imposed on a resource consent for a medium density housing development at 23 Denver Avenue, Sunnyvale. A related appeal by Mr J Baran against the Council's decision to grant the consent has since been withdrawn. We await case management directions from the Court. It is likely that the matter will be referred to mediation in the first instance.

**(Changed) R & G Britten - 19 Church Street, Swanson (October 2005)**

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Brittens property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. We are seeking final orders to require that the Brittens undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August.

The application and supporting evidence has been filed and served. At the last judicial conference in November Mr Britten gave an undertaking that there would be no further use of the access road and no earthworks would be undertaken in the vicinity of the slip and surrounding (potentially unstable) land. Mr Britten's engineer has undertaken an assessment of the affected land which has been filed in Court in affidavit form. The Council's engineers are now preparing further evidence in reply. These reports are due by 17 March 2006. The parties' experts are to discuss proposed remedial works shortly.

**(Unchanged) 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 continuing to take place in an attempt to refine the issues in dispute.

**(Unchanged) 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 Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. A judicial conference was held on 5 September 2005 to consider issues including whether these appeals should be heard following resolution of the appeals on the Swanson Structure Plan. The Court has directed that these appeals should be put on hold to await the resolution of the structure plan appeals.

**(Changed) Glorit Subdivision Limited and P W Mawhinney v Waitakere City Council (June 2005)**

A further appeal by Glorit Subdivision 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 opposing the relief sought and indicating that such boundary adjustments would require discretionary or non-complying consents. An application to strike out the appeal was heard in November 2005 and a decision of the Court released before Christmas. The appeal was struck out in its entirety and Mr Mawhinney's various arguments based on the definitions of 'site' and 'site area' under the District Plan were rejected. We have applied for indemnity costs of \$32,000 against Glorit Subdivision Limited and Mr Mawhinney in his personal capacity. In response Mr Mawhinney has applied for a rehearing of the strike out on the basis of allegedly 'new and important' evidence. That application was heard on 21 February 2006 and the judge reserved his decision.

**(Unchanged) 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 Inc have lodged applications with the Court in support of the Council as s 274 parties. A judicial conference took place on 5 September 2005 at which time the Court directed that this appeal be put 'on hold' to await the resolution of the Swanson Structure Plan appeals.

**(Changed) 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. We have prepared consent documentation in accordance with the agreement reached at mediation. The Council has granted consent for a noise mitigation fence. Consent documentation has been finalised and filed with the Court shortly. However, Mr Collett has sought further changes to the consent. A judicial conference was convened on 22 February 2006 to address settlement.

**(Unchanged) 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.

**(New) Borrett – 49 Sunnyvale Road, Massey**

The Court ordered that the site be returned to the state in which it was prior to the unauthorised works. A site investigation is to take place on 1 March 2006 to determine to what extent the remediation work has been completed. If no work has been undertaken, then Council will consider its options at that point in time.

**DISTRICT COURT**

**(New) J D Heays - 13 Turanga Road, Henderson (February 2006)**

This matter relates to charges laid under the Building Act 2004 and the Resource Management Act 1991. The Building Act charges relate to the unauthorised building work which includes conversion and alteration of a building on the property, the erection of a double garage and new unit. The Resource Management Act charges relate to the contravention of the Waitakere City Council District Plan relating to increasing the net site area of the property without land use consent. The first call for this matter is down for 17 March 2006.

**(Unchanged) Graham W Gordon - 159A Scenic Drive, Titirangi (October 2005)**

This matter relates to breaches of the Resource Management Act and Building Act. The matter was set down and heard at the Auckland District Court on 7 October 2005. Mr Gordon entered not guilty pleas to all charges and confirmed his election of trial by jury in relation to the Resource Management charges. A tentative hearing has been set down for the Resource Management Act charges on 11 June 2006.

**(Unchanged) G M and B K Wheeler - 21 Kirby Street, Glendene (October 2005)**

Charges laid under the Building Act for unauthorised building work undertaken to remove an existing deck from the second storey of the house and replace it with a new 2.4 metre high one. The new deck does not meet the standards of the building code and is considered to be unsafe. The defendants have sought building consent to remove and re-erect the deck. The matter has been adjourned for two months to permit the Council and the defendants to reach a solution.

**(Unchanged) M F Khan - 18 Patts Avenue, Glendene (October 2005)**

Charges were laid under the Building Act for unauthorised building work undertaken to convert and alter the downstairs area of the house into a separate dwelling. The matter was called on 16 December 2005 where Mr Khan entered a guilty plea and the charges against Mrs Khan were withdrawn. The matter is set down for sentencing on 2 March 2006.

**(Changed) McGuigan Syme Chilcott Limited, R McGuigan, G Chilcott, T Donald, G Pitts, M Engle, D Owens Limited, D Owens - 71 Riverlea Road, Whenuapai (August 2005)**

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter is set down for a call over on 17 March 2006.

**(Unchanged) P and D Clark, R Hawkins, R Johnston - 97 Shaw Road, Oratia (August 2005)**

Charges laid under the Building Act for unauthorised building work. The work involved alterations and extensions to the house so as to create new rooms and move kitchen facilities. The matter was called on 16 December 2005 where Mr Clark entered a guilty plea and charges against Mrs Clark, Mr Hawkins and Mr Johnston were withdrawn. The matter was set down for sentencing on 28 February 2006.

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

Charges laid under the Building Act for unauthorised building work undertaken 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. The matter was heard in part on 18 November. Charges were withdrawn against Ms Freeman, and the defendant Mr Nicola pleaded guilty. The Court convicted Mr Nicola on 16 December and fined him \$3,000, plus court costs of \$130 and solicitor's costs of \$226. The Court ordered that 90% of the fine and solicitor's costs be paid to the Council. The co-defendants Mr Casey and Eurovision Building Removals Ltd pleaded not guilty. A defended hearing is set down for 4 April 2006 for the latter two defendants.

**(Changed) 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. The matter was called on 4 November 2005, and was referred to a restorative justice conference to be organised by the defendant's solicitor. A date is yet to be set down for the conference. The parties are to report to the Court on 7 April 2006.

**(Changed) A 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. The defendant pleaded guilty to three charges of undertaking unauthorised building work, earthworks and vegetation clearance. All alternate charges against Hafeez were withdrawn. The matter has been set down for sentencing on 13 March 2006.

**(Changed) S Mohammad - 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. The defendant has not appeared before the Court as he is now residing in Pakistan. The Court has issued a warrant for his arrest to be executed upon his entry into New Zealand.

**(Changed) D Thomson - 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. The Council has been unable to serve summonses on Mr Thomson and a warrant to arrest has been issued.

**(Unchanged) 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. Mr Kasprzak entered not guilty pleas and the matter was set down for a defended hearing on 12 December 2005. Following receipt of the Council's evidence, Mr Kasprzak changed his plea. The Judge directed that he liaise with Council regarding the standard of the building work done and remedy any substandard work, if possible, at Council's direction. Sentencing is to occur on 10 April 2006.

**(Unchanged) I R Stanic – 11 Orchid Place, Henderson (May 2004)**

Charges were laid under the Resource Management Act 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 and an arrest warrant was issued. A new date is yet to be set as the Police have not executed the warrant.

**RECOMMENDATION**

That the Legal Update As At 22 February 2006 be received.

Report prepared by Setareh Masoud-Ansari, Contract Solicitor.



**PART C - ENVIRONMENTAL MANAGEMENT**

**5 CELLULAR TELEPHONE TOWERS IN WAITAKERE CITY**

**PURPOSE OF THE REPORT**

The purpose of this report is to inform the Planning and Regulatory Committee of a report that was provided to the Henderson Community Board in response to three resolutions from that Board relating to cellular telephone towers. The Henderson Community Board received that report at its meeting on 9 March 2006.

**BACKGROUND**

At the Public Forum for Henderson Community Board on 3 November 2005, the Board heard from members of the community regarding the installation of a cellular telephone tower in Roberts Road. Following this, the Board resolved as follows:

*“That the Chief Executive Officer prepares a report in relation to Council’s legal rights in terms of granting approval for the construction of Cell Phone Towers within the Waitakere City.”*

2164/2005

*“That the Chief Executive Officer be requested to prepare a report in view of public concern to examine the issue of Council approving future applications for the construction of a Cell Phone Tower, and examining the feasibility of the applications being treated as Notified Applications.”*

2165/2005

*“That the Chief Executive Officer be requested to prepare a report on the possible rezoning of Te Atatu and Roberts Road area and all potentially affected areas in the Henderson Ward.”*

2166/2005

This report is being circulated for information to this Committee, as this Committee has the delegated authority for decision making related to the District Plan's policy and rule framework for the installation and zoning of cellular telephone towers in the City.

Cell phones have become an important part of modern communication infrastructure. Many people use cell phone on a regular basis, to stay in contact with relatives and friends, or for business purposes. The telecommunication market is competitive, with several significant companies vying for a share of the market. The key to a market share is coverage – no person wants to pay for a cell phone that cannot be operated in most places across the country. Extensive coverage requires a significant number of cellular telephone towers, and the location of these towers has, on occasion, become controversial.

## **STRATEGIC CONTEXT**

The development of infrastructure (especially advances in telecommunication infrastructure) proceeds at pace. Waitakere City's challenge is to provide an economic and social environment where infrastructure is not an impediment to the sustainable development of the City. This is somewhat difficult, because several key infrastructure components (gas, electricity and telecommunications) are provided by corporate entities under their own enabling legislation (such as the Gas Act, the Electricity Act, the Telecommunications Act), and these entities are often in direct competition with each other.

The Council has developed a core strategic programme called the Waitakere Information Access Programme. The vision of this Programme is to improve Information Communications Technology infrastructure and services that is necessary to support Council's goals and priorities for developing Waitakere as an Eco-City. The Programme involves working toward this vision by providing improvements to Information Communications Technology infrastructure within the City to facilitate ongoing sustainable economic growth, and by enabling the people, business and communities in the City to take maximum advantage of communication technologies and access to information to improve their, and the City's, levels of social and economic wellbeing.

This programme has been developed in response to a strong push from the Waitakere community, particularly from those residents in rural areas, to improve communications technology in the City. This community view has been articulated in the Digital City Strategy, which is a community document that the Council has endorsed.

The Waitakere Information Access Programme fits within Council's long term strategic platform for achieving integrated transport and communications, and contributes to Council's strategic goals for Strong Communities and a Strong Innovative Economy. It supports the Digital City Strategy and its goals, and is essential in enabling Council to contribute toward delivery of aspects of the Central Government's Digital Strategy. The availability of electronic infrastructure in a modern economy and society is crucial. Increasingly the availability of broadband information technology is now a pre-requisite for industry and commerce to establish operation and maintain their competitive edge.

The timely and efficient installation and maintenance of infrastructure is therefore crucial to the development of Waitakere City.

## ISSUES

### **Council's Legal Rights in Terms of Granting Approval for Cell Phone Towers**

The Council is required to administer the Resource Management Act 1991, via its District Plan. The District Plan has been prepared following the process as specified in the First Schedule of the Resource Management Act 1991. This process included extensive public submissions, hearings and Environment Court appeals. The District Plan provides the Council with legal authority to manage the environmental effects of cellular telephone towers.

The District Plan's role is to enable infrastructure to be developed and to ensure that when infrastructure is proposed, the effects on the environment are avoided, mitigated or remedied. However, it is not the role of the Plan to determine what infrastructure is necessary to meet the needs and aspirations of the community, other than what level of intervention is necessary to protect the environment from the adverse effects of activities.

The District Plan uses the Infrastructure Rules in each Human Environment to set the activity status (permitted, controlled, limited discretionary, discretionary, non-complying and prohibited), performance standards and assessment criteria for each resource consent application for the installation of a cell phone tower.

The assessment of cellular telephone towers is provided for in the Infrastructure Rules that apply in each Human Environment. The infrastructure Rules are very similar throughout the District Plan, but are generally more permissive in the Community and Working Environments (commercial and industrial zones). This was done to enable commercial and industrial development to occur in those two Environments in a manner that fosters the economic development of the City, while ensuring that environmental performance standards are met.

The District Plan requires controlled activity resource consent for cellular telephone towers in most instances within the Community Environment and Working Environment, as the towers exceed the 2.5 metre high permitted activity standard. Under the Resource Management Act 1991, the Council must give consent to controlled activities, but may impose conditions on that consent. On occasions, performance standards in other Rules in the District Plan may not be met, and consent for other matters may be required. For example the five equipment cabinets associated with the cellular telephone tower at 147 Te Atatū Road required discretionary consent because they were located within 20 metres of a Living Environment (residential) boundary. Cellular telephone towers on residentially zoned land would be assessed as discretionary activities.

The Council is satisfied that the District Plan requirements for cellular telephone towers have been appropriately considered in the District Plan. If the cellular telephone towers do not infringe any other District Plan Rules, the Council will process the application on a non-notified basis and grant consent as a controlled activity. The Council has no legal basis to decline consent for a controlled activity, nor to publicly notify the application, as this would be contrary to section 93(1)(a) of the Resource Management Act 1991.

Where the application for a cellular telephone tower infringes other District Plan Rules and becomes either a limited discretionary, discretionary or non-complying activity, the Council has the ability to publicly notify the application and decline it. The Council would only decline the application if the adverse effects could not be avoided or mitigated via conditions placed on the resource consent. Usually any such effects can be avoided or mitigated, and so the resource consent is granted.

## Environment Court Decisions

The Environment Court has heard several appeals against granted resource consents for cellular telephone towers. The two leading cases on this matter were heard in 1996 and 1998, before the implementation of the New Zealand Standard 2772.1-1999 (which applies to radio frequency radiation emissions). The Standard was developed partly in response to these Environment Court cases.

The case Telecom New Zealand Limited v Christchurch City Council (W165/96) is instructive. In this case Telecom appealed against the Council's decision to decline an application for a cell phone tower. The Court, in allowing the appeal and granting consent, made the following comments (emphasis added):

*"It would be wrong in principle for the Court to fly in the face of that body of accumulated knowledge merely because it is not yet possible to demonstrate beyond any doubt that this technology is safe. No human activity can go forward on that basis and it would be a misuse of our discretion to reject this application by approaching the matter in that way. Our clear obligation is to evaluate the evidence, satisfy ourselves, as far as we are able, that the methodology and factual basis for the view currently held by the scientists carries conviction, and having done that then to take those matters into account in considering the overall exercise of our discretion under s 104. In approaching the matter in that way **we have no doubt that the appellant has established, to a standard which persuades us, that the levels of emission from this proposed cell phone site will not constitute any danger to the health of the residents living in the area.**"*

The Court's concluding comments on adverse effects were as follows:

*Applying the test in *Elderslie Park Limited* ...and balancing the significance of the proposed utility as an integral part of the development of a cellphone network for the Christchurch area against the sincerely held views of the residents, **we are unable to conclude that the effects which the building of the mast may have on the environment can be said to be adverse.** In coming to this conclusion we have not overlooked the very wide definition of "environment" in s 2 of the Act, including as it does people and communities and all natural and physical resources, and social, economic, aesthetic and cultural conditions.*

*It is important to recognise that in deciding whether some particular activity has an adverse effect on the environment, it does not become so, merely because some part of the community does not like the look, size or scale, of a proposed development. It is the definition of environment in its totality which must be taken into account and it cannot, in our view, be said that this technology utilising as it does physical resources and contributing significantly to the social and economic wellbeing of a large group of the community could be said to be adverse to the environment merely because by its very nature it has an appearance in scale which some people find distasteful.*

*In our view the Court is required to take a much wider perspective than that in deciding whether or not a proposal such as this is adverse to the environment.*

*If we are wrong in approaching the assessment of adverse effects in that way we have reached the clear view that if there is an adverse effect it is not more than minor when set alongside the other considerations which we are required to take into account. These include definition of "effect" which encompasses "any positive or adverse effect", and the whole question of the importance of this technology to the community.*

*We therefore conclude that the adverse effects of the proposal will not be more than minor when balanced against the need for the technology and the conditions which are to be imposed.*

A1-A80

Another instructive Environment Court decision is Shirley Road Primary School v Christchurch City Council (C 136/98). In that case, the Court declined the appeal against the granted consent, while noting that it was impossible to guarantee that there was no risk from the cellular telephone tower. The Court noted the public concern, and so therefore assessed the level of acceptable risk as an effect under section 5(2) of the Resource Management Act 1991. It looked at the definition of "effect" in section 3, and decided that there were adverse effects within the meaning of section 3(f), but only in a very weak sense. After examining the evidence, the Court decided that the risk of adverse health effects was very low and therefore acceptable. The Court therefore confirmed the Council decision to grant consent. This decision is attached at pages A1 to A80. The key paragraphs in this decision that are instructive to read are paragraphs 7, 17, 52, 73, 177, 179, 180, 193, 223, 228 - 237.

On this basis there is little reason to contemplate any blanket prohibition of cellular telephone towers via the District Plan, and it is considered that the existing District Plan provisions and relevant New Zealand Standard are adequate to address any adverse effects that may potentially arise.

### **Future Cell Phone Tower Resource Consent Applications**

The current District Plan structure and the activity categories assigned to cellular telephone towers means that it is unlikely that a resource consent application would be publicly notified, unless it was on a sensitive ridge, headland, cliff or scarp. Applications on sensitive ridges, headlands, cliffs or scarps are considered to have the potential for adverse effects on visual amenity, and it is on that basis that they might be processed on a notified basis.

Towers are required to comply with the New Zealand Standard 2772.1-1999, in terms of the emissions from the tower. The telecommunication companies ensure that they comply with this standard and make statements to this effect as part of their resource consent applications.

Given this regulatory framework, it is considered that the current processing practices should remain in place. There is no legal deficiency in the District Plan in relation to cellular telephone towers. To change the activity status of applications for cellular telephone towers to one (such as all applications being discretionary) which would be more likely to lead to those applications being publicly notified would be likely to be opposed by telecommunication companies, and be contrary to the Council's strategic direction for electronic infrastructure.

There is therefore little merit in seeking to change the District Plan to create a more stringent policy and rule framework that requires resource consent applications to be processed on a notified basis. It is clear from the case law that any appeals to the Environment Court arising from a publicly notified resource consent are unlikely to succeed in overturning a council's decision to grant consent to a cellular telephone tower, particularly where such appeals arise from radio frequency radiation concerns.

### **Rezoning Land**

The Henderson Community Board has also requested consideration of a possible rezoning of Te Atatu Road and Roberts Road and all potentially affected land in the Henderson Ward. It is assumed that the purpose of this resolution was to consider whether rezoning of land was an appropriate method to achieve greater control of cellular telephone towers.

In the case of the Roberts Road area, the cellular telephone tower is already established and any rezoning of the commercial land on which it is established would not change that fact. Rezoning at this stage would only serve to frustrate and hinder the legitimate operation of the commercial activities that are currently established in this location. Likewise, rezoning of land elsewhere in the Ward, in anticipation of potential cellular telephone proposals, would be a speculative exercise that would almost certainly result in unnecessary constraints to established businesses.

In any event, it is considered that the District Plan's current regime for the management of cellular telephone towers appropriately manages the environmental effects of those facilities. As such, the provisions of the Plan should remain without change.

## **CONCLUSION**

The Henderson Community Board has heard from members of the community that have concerns about the effects of cellular telephone towers as they are located in their communities. These communities also desire the ability to use their cell phones throughout New Zealand. Telecommunication companies rely on extensive coverage to attract clients to their services. This leads to an on-going series of resource consent applications to erect cellular telephone towers across the City. The Council is supportive of this electronic infrastructure, and has developed the Waitakere Information Access Programme to improve information and communications infrastructure across the City.

The Environment Court has considered these issues on several occasions. The view of the Court is that the adverse effects from any emissions from cellular telephone towers are not significant.

The District Plan requires applicants to obtain resource consent for the erection of cellular telephone towers, but (in general) these applications will not be publicly notified. The applications are usually granted, subject to conditions. It is clear that on occasion there are effects on amenity values. However, these effects are adequately addressed in the District Plan.

## **RECOMMENDATION**

That the Cellular Telephone Towers in Waitakere City report be received.

Report prepared by: Eryn Shields: Principal Planner.



## **6 DRAFT COMMERCIAL SEX STRATEGY**

### **PURPOSE OF THE REPORT**

The purpose of this report is to present a revised draft Commercial Sex Strategy (the Strategy) to the Planning and Regulatory Committee and to seek approval to begin consulting with the public on the Strategy and associated amendments to the District Plan.

### **BACKGROUND**

Waitakere City Council has been developing a Commercial Sex Strategy (the Strategy) to address issues relating to prostitution, following the enactment of the Prostitution Reform Act 2003 which decriminalised prostitution.

At the August 2005 meeting, the Planning and Regulatory Committee resolved that the initial draft Strategy be revised and then presented again to the Committee for its approval to be made available for public consultation. The report to the August meeting followed a nine month process, which involved the following:

- development of a draft Strategy in late 2004;
- obtaining the views of the public during a feedback period in January and February 2005;
- holding a Councillor workshop in July 2005 to discuss the issues and concerns of the public and devising workable solutions;
- consulting with key stakeholders including the New Zealand Prostitutes Collective and local police; and
- revising the draft Strategy.

The general view expressed by the Committee at the August 2005 meeting, was that the Strategy should focus on actions which would be effective in addressing the concerns of the public and to try to address any negative environmental effects of the industry in the community. A key issue for the public was the location of brothels in Waitakere City, with strong support for the Council to prohibit all brothels in residential areas, and limited support for prohibiting brothels in any part of Waitakere City. Notwithstanding the concerns and the wishes of the public, the Committee was mindful of the need to support the intentions of the Prostitution Reform Act: to decriminalise prostitution and thus increase protection for sex workers and clients. Local Councils were given the power to regulate the location of brothels, but to do so within reason given the legitimate status of prostitution.

The Planning and Regulatory Committee meeting, 9 August 2005, resolved that:

- “2. That Council officers 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 the Council to adopt for public consultation in November and December 2005.
4. That Council officers prepare draft changes to Bylaw No. 31: Hygienic Operation of Massage Facilities and present the draft Bylaw to the Planning and Regulatory Committee in October 2005 for recommendation to the Council to adopt for public consultation in November and December 2005.”

*(part of minute no. 1519/2005]*

In accordance with these resolutions, but at a later date than specified, this report presents a revised draft Commercial Sex Strategy which if approved, will be subject to public consultation. A two-pronged approach was favoured for managing the location of brothels according to their potential environmental effects by differentiating between small brothels (four or less workers) and large brothels (with five or more workers). This approach was considered preferable to prohibiting or restricting the establishment of brothels in certain areas due to perceived problems of enforcement and questions about ‘reasonableness’ given the intention of the Prostitution Reform Act 2003.

## **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

### 1 The Draft Commercial Sex Strategy

A81-A128

The draft Commercial Sex Strategy is attached at pages A81 to A128 and takes the following format:

1. Summary of the Strategy;
2. Background information;
3. Overview of Waitakere City Council's Commercial Sex Strategy;
4. Rationale of the Strategy;
5. Objectives and scope of the Strategy;
6. Approaches of the Strategy.

#### Appendices

- A. Supplementary Information;
- B. Explanation of terms;
- C. Draft plan changes to Waitakere City Council District Plan;
- D. Hygienic Operation of Massage Facilities Bylaw No 31 (1999);
- E. Bylaw No. 4 Chapter 2 Public Places 1972 (amendment to Clause 244);
- F. Waitakere City Council urban design policy, rules and guidance relevant to brothels.

The Strategy adopts a minimalist approach and has been developed in a holistic and collaborative way. The proposals to regulate the location of brothels in Waitakere City constitute the core of the Strategy. Essentially, small brothels (four or less sex workers with no manager) will be permitted to operate in residential areas (termed 'Human Environments' in the District Plan) and managed brothels (all brothels run by an operator regardless of size) will be confined to other areas ('Working' and 'Community Environments').

The benefits of this two-pronged approach include a regulatory framework that enables the Council to respond to complaints made by the public about adverse environmental effects arising from alleged and actual brothels. It will also help to reduce social impacts including negative perceptions about safety and well-being, as a result of directing large brothels towards industrial and commercial areas and away from residential areas.

Public concerns about brothels operating in the community which were raised during the feedback period in early 2005 and other complaints have been very influential in determining how the Council should seek to manage and control the location of brothels. The Strategy has been designed to accommodate the concerns of the public and to enable the Council to effectively control the location of brothels with respect to negative environmental effects. As a result the Council will be better equipped to respond to complaints made by the public about alleged and actual brothels in residential areas.

### 2 Changes which are required to give effect to the Strategy

For the Strategy to be implemented, some changes need to be made, particularly to the regulatory framework which includes Council Bylaws and the District Plan. A diagram of this framework can be found in Section 5 of the Strategy. These are discussed in brief below.

**a) Amendments to the District Plan to manage the location of brothels**

It is proposed in the Strategy that the location of brothels be controlled through the District Plan and to enable this to occur, changes need to be made to the District Plan. Details about the likely timeframe for these changes are listed in Section 4 below, and are likely to be adopted in the District Plan.

Changes that are required to the District Plan are set out in Appendix 3 to the Strategy. In summary, the changes involve:

- A new policy - that provides guidance to Plan users and explains the rationale behind the proposed changes (which hinges on the introduction of the Prostitution Reform Act);
- An amendment to the existing City Wide Rule - to prohibit 'Commercial Sex Activities' (ie. managed brothels) establishing or operating in specified areas of Waitakere City;
- Inclusion of a new City Wide Rule for Commercial Sex Activities - to regulate matters specific to these activities;
- Amendments to Non-residential activity rules - to permit the establishment and operation of small brothels in residential areas (Human Environments); and
- New definitions - for 'Commercial Sex Activities', 'Brothel' and other terms.

**b) Changes to the District Plan and use of existing Public Places Bylaw regarding signage**

To ensure that all brothels and other home occupations are adequately identified, it is proposed that changes will be made to the District Plan. Proposals include the requirement for signage at all public entrances of home occupations (including brothels), and that there will be set standards for size and content of signage for all commercial sex activities (managed brothels). This may lead to an increase in signage in the City, but it should help to resolve problems as a result of patrons of small brothels knocking on the wrong door in a residential street.

Use will also be made of an existing bylaw: Bylaw No. 4 Chapter 2 Public Places (amendment to Clause 244): 1972, which requires all properties to be adequately numbered.

**c) New general hygiene bylaw required as a result of the Strategy**

The existing bylaw (Hygienic Operation of Massage Facilities Bylaw No. 31, 1999) relating to massage parlours is not able to be relied upon for the maintenance of hygiene standards. A review is currently taking place to set standards to ensure that there is one bylaw for all premises pertaining to hygiene, including brothels, tattoo parlours, hair dressers, gymnasiums and any such premises. Once the bylaw is drafted and adopted, it will enable the Council to establish a licensing and inspection programme to ensure compliance of the hygiene standards in such premises. Such a bylaw is compatible with the objectives of the Strategy (and if anything, is influenced by it) and the development of a new bylaw will not delay the completion of the Strategy.

In the interim, all the hygiene standards of all commercial sex premises, including those formerly covered by the Massage Parlours Act, are able to be controlled and monitored through the Health Act 1956 and the Building Code. In addition, the Prostitution Reform Act has in place health and safety requirements that all premises providing sexual services are required to comply with. The standards set in the Prostitution Reform Act are enforced by Medical Officers of Health, appointed by the District Health Board and Ministry of Health.

**d) Changes to the Council's response system to provide monitoring measures**

Response and monitoring measures form part of the Strategy to help ensure that it remains relevant to the local sex industry and which enables the Council to respond effectively and appropriately. Steps will be taken to remain aware of any key developments regarding the sex industry by monitoring public feedback about the sex industry and by working with key stakeholders who have knowledge of the industry.

To monitor public feedback, changes will need to be made to the existing response system which is managed by the Call Centre (as suggested by the Council's compliance team). These changes will make it possible to monitor the frequency and nature of complaints and the responses to those complaints about alleged or established brothels. More general monitoring of the sex industry will continue through ongoing working relationships with the local police (by the Safe Waitakere team in particular), government agencies and organisations and with the New Zealand Prostitutes Collective.

**3 Changes not as a result of the Strategy**

**a) Changes regarding urban design standards and guidelines**

The Council is proposing to increase its ability to regulate the design quality and location of brothels within the City through urban design standards that are determined by the District Plan and development guidelines. New objectives which are being proposed are that: developments achieve sustainable compact urban form, and that consideration is given to the dominant natural and physical features that contribute to the amenity value and neighbourhood character of an area.

Whilst the Strategy will benefit from the proposed changes, if adopted, it is not the reason behind the proposals. Instead, the review of the urban design standards and guidelines is part of a large regional programme which has come about due to the requirements of the Local Government (Auckland) Amendment Act for local Councils to develop growth management strategies. If the urban design standards and guidelines are adopted, they will increase and strengthen Council's ability to set new requirements to principles related to urban design and development.

**4 Next steps and proposed timeframe**

The next steps towards finalising the Strategy are outlined in the Table below. If the draft Commercial Sex Strategy meets with the approval of the Planning and Regulatory Committee at this meeting, it will again be made available for public consultation potentially through the Long-Term Council Community Plan process (step 1 in Table 1 below). Once the views of the public have been received and analysed, the Strategy would be presented to the Planning and Regulatory Committee for endorsement in July 2006 (step 3).

Some consultation is specific to the District Plan to comply with the requirements of the Resource Management Act (First Schedule). Consultation regarding draft changes to the District Plan (step 2) will be carried out in April – May along with the Strategy. Before any District Plan changes can be finalised as a result of this consultation, the public are given another opportunity to make formal submissions (see steps 4 and 5 below).

Consultation regarding the new hygiene bylaw will be carried out separately as part of Council's general review of Bylaws.

Table 1 - key steps and timelines

Key Step	Tasks	Likely timeframe
1. Consultation for the Strategy	Obtain public feedback on the revised commercial sex Strategy through the Long Term Council Community Plan (Long-term Council Community Plan).	April - May 2006
2. Consultation for the District Plan	Publication of draft District Plan changes (to City Wide Rules and Non-residential activities) Rules and consultation with the public.	April - May 2006
3. Finalising the Strategy	Report to the Planning and Regulatory Committee about submissions regarding the Strategy and approval to notify proposed District Plan change and, if relevant, seek endorsement of revised Strategy.	July 2006
4. Notify District Plan	Public notification of the proposed District Plan Changes. Submissions and further submissions on Proposed District Plan sought.	July 2006
5. Hearing of District Plan submissions	Report to Planning and Regulatory Committee to enable it to hear submissions and further submissions and to make decisions on those submissions.	November - December 2006

## RESOURCES

Within Strategy and Development, there are sufficient resources to enable development of the Council's Strategy in response to the Prostitution Reform Act. Within City Services, the costs associated with the statutory Plan Change have been provided for in existing budgets. Within Legal Services, the update of the hygiene bylaw will be completed as part of the Bylaw review process.

## CONCLUSION

This report presents an updated draft of Waitakere City Council's Commercial Sex Strategy and seeks approval from the Committee to consult once again with the public before a final version is prepared for endorsement. The Strategy adopts a minimalist approach and has been developed in a holistic and collaborative way. It promotes actions that are enforceable by the Council, particularly the core part of the Strategy which places controls over the location of brothels in Waitakere City via the use of the District Plan. The aim is to present a final draft of the Strategy to the Planning and Regulatory Committee in July 2006.

## RECOMMENDATIONS

1. That the Draft Commercial Sex Strategy report be received.
2. That the Planning and Regulatory Committee approve that the revised draft Commercial Sex Strategy and associated District Plan changes be put out for public consultation.

Report prepared by: Zoe Cuming, Senior Analyst: Social Policy; Eryn Shields, Principal Planner; Peter Joyce, Project Manager: Urban Design; Michael Mills, Safe Waitakere Team Leader.



**7 WAITAKERE GROWTH & TRANSPORTATION INTEGRATION PROJECT - UPDATE ON SUBMISSIONS & 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 (LG(A)AA 2004).

The Local Government (Auckland) Amendment Act 2004 requires that the Auckland local authorities jointly appoint a single hearing panel, and that the panel be delegated Waitakere City Council's Resource Management Act powers, functions, and duties to hear submissions and make recommendations on the proposed changes. This report seeks to specifically update the Committee on the Joint Hearings Panel, and the hearings and submission process.

**BACKGROUND**

The Waitakere City component of this initiative is referred to as the Growth & Transportation Integration Programme. The public submission and further submission period has now closed. Council officers are commencing the preparation of reports on those submissions for consideration during the forthcoming hearings.

The Committee was last updated on the Local Government (Auckland) Amendment Act 2004 Joint Hearings Panel and submission process at its meeting 9 August 2005. Specific resolutions were passed with respect to Waitakere's representation on the panel:

- “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 Hearings Panel) dated 12 April 2005 with respect to the recommended composition of the Joint Hearings Panel as required by Section 41(1) of the Local Government (Auckland) Amendment Act 2004.*
3. *That Council retain specific membership on the Joint Hearings Panel as required by Section 41(1) of the Local Government (Auckland) Amendment Act 2004.*
4. *That Cr Stone be appointed to represent Waitakere City on the Joint Hearings Panel as required by Section 41(1) of the Local Government (Auckland) Amendment Act 2004.*
5. *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 the Waitakere Growth & Transportation Integration Project - Update on Submissions & Joint Hearings Panel report.*
6. *That the Planning and Regulatory Committee accepts the late submissions as valid submissions to the Waitakere City District Plan Proposed Plan Changes 13 - 18.”*

1518/2005

There were a total of 15 different Plan Changes notified covering the Auckland Regional Policy Statement, and the Auckland, Franklin, Manukau, North Shore, Papakura, Rodney and Waitakere District Plans, with a total of 2,180 submissions received on those various changes.

## STRATEGIC CONTEXT

Waitakere's Growth and 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 integration of land use development with the transport network.

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

## ISSUES

### Joint Hearings Panel

The Planning and Regulatory Committee confirmed its acceptance of the recommendations from the Auckland Regional Council regarding the Joint Hearings Panel composition, specifically the number of representatives from each of the Auckland territorial authorities and the Regional Council. This was based on the proposed Growth Forum Model which had worked in the past for a regional process. To summarise the Auckland Regional Council recommended:

- Hearings Panel to consist of a maximum of 10 members (as per the Growth Form Model);
- The Auckland Regional Council has three members on the Panel, two that are current Councillors and one independent commissioner; and
- All the other councils have one member each on the Hearing Panel (with ability for the councils to have shared Commissioners if desired)

Section 41 of the Local Government (Auckland) Amendment Act 2004 sets out the requirements for the appointment and delegation of powers to the jointly appointed single panel to hear the submissions to the Regional Policy Statement and District Plan Changes as follows:

#### **41 Delegation of powers to single panel -**

- (1) *The Auckland local authorities must jointly appoint a panel of 3 or more hearings commissioners to hear any submissions lodged on the proposed land transport and land use changes.*
- (2) *Each Auckland local authority must, under section [34A](#) of the Resource Management Act 1991, delegate to the panel its powers, functions, and duties to hear submissions and make recommendations on the proposed land transport and land use changes.*

Section 34A of the Resource Management Act 1991 (RMA) provides amongst other matters, for a local authority to appoint and delegate to hearings commissioners any of the Councils' functions, powers or duties under the Resource Management Act, except for the approval of the policy statement or plan.

The Local Government (Auckland) Amendment Act 2004 therefore requires that the Auckland local authorities jointly appoint the whole single hearing panel. Each Auckland local authority must delegate to the jointly appointed hearing panel their powers, functions, and duties to hear submissions and make recommendations on the proposed land transport and land use changes. The final decision with respect to rejecting or accepting each submission to Waitakere City Council's Proposed District Plan Changes 13 to 18, rests with Waitakere City Council and not the Joint Hearings Panel.

Each Council has considered the matter of the composition of the hearing panel and nominated commissioners. It is recommended that the Council approves the panel that has been nominated:

Auckland City Council	<b>Lindsay Rae</b>	Community Board Chair
Auckland Regional Council	<b>David Hill</b>	Independent Commissioner
Auckland Regional Council	<b>Paul Walbran</b>	Councillor (Chair)
Auckland Regional Council	<b>Wynn Hoadley</b>	Councillor
Manukau City Council	<b>Neil Morrison</b>	Councillor
Franklin District Council & North Shore City Council & Papakura District Council	<b>Alan Watson</b>	Independent Commissioner (Shared)
Rodney District Council	<b>Bill Smith</b>	Councillor
Waitakere City Council	<b>Carolynne Stone</b>	Councillor

The Auckland Regional Council, after seeking legal advice, has advised that the votes cast by the hearings commissioners on the Panel only count as one vote. Any hearings commissioner acting as a delegate appointed by more than one council do not have a vote for each individual Council they have been appointed by, they only have one vote. In this case, Commissioner Watson has one vote, even though he has been appointed by three councils as their member on the Panel.

It remains the view of officers that Council retain specific Waitakere membership on the Joint Hearings Panel. This option is preferred over the Franklin, North Shore and Papakura Council's approach of sharing one representative on the Joint Hearings Panel.

All matters heard by the Joint Hearings Panel will be forwarded to Waitakere City Council with recommendations on whether to accept, accept in part or decline the submissions made, and recommendations identifying amendments to Proposed Plan Changes 13 to 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 the decisions made by the Council in the light of the recommendations will proceed to the Environment Court.

### **Further Submissions - Statutory Process**

The Plan Changes were publicly notified on 31 March 2005, with submissions closing 31 May 2005. There were 1,190 submissions received to all the Local Government (Auckland) Amendment Act 2004 Plan Changes.

The Auckland Regional Council engaged external consultants to summarise the submissions and publicly notified the summary to enable further submissions to be made. The further submission period ended on 16 December 2005, with 1,240 further submissions received across the region (including a further submission from Waitakere City Council), with 133 further submissions received to Waitakere's Plan Changes. Implications for Hearing process.

Now that the submissions have been summarised and the further submissions received, the range of issues (and therefore the length of the hearing process) is able to be estimated. Based on previous hearing processes it is expected that between 40 – 60 days will be required for the hearings and Joint Hearing Panel deliberations. It should be noted that the hearing days do not necessarily run consecutively, but are scheduled around the availability of the Joint Hearings Panel members. Therefore it is possible that hearings will extend beyond 2006 into 2007. It is likely that the specific Waitakere Plan Changes (such as the application to shift the Metropolitan Urban Limits with associated District Plan Changes and New Lynn proposed Plan Changes) that were included as part of our Growth & Transport Integration programme, will be scheduled in the later part of the hearings process. The policy associated Plan Changes across all the local authorities and the Regional Council will be heard first.

Current advice from Auckland Regional Council officers is that the hearings are likely to commence in late April 2006. The hearings will be ordered on a topic by topic basis, rather than Plan Change by Plan Change. The list of topics (and their ordering and the timetable) is still being finalised and will be provided to the Committee at the meeting.

The submissions related to regional growth (i.e. the key components of the Auckland Regional Policy Statement - Plan Change 6) will be heard first, along with the Council's Proposed Plan Change 16 that addresses managing City growth. Decisions on these matters will have significant implications for Plan Changes 13, 14 and 15 in particular, and Waitakere's proposals to shift the Metropolitan Urban Limits (as contained in the Auckland Regional Policy Statement - Plan Change 7).

Formal decisions from the Joint Hearings Panel are not expected to be released until after all the hearings have been completed. There will also be the requirement that each Council considers the recommendations of the Joint Hearings Panel and make the final decisions with respect to each submission to their respective Plan Changes. Due to this process it is not envisaged decisions will be made until 2007.

Given the lengthy process, and time from when the Plan Changes were first publicly notified in March 2005, the Council may wish to consider making a formal approach to the Auckland Regional Council to request that the Joint Hearings Panel attempt to schedule the hearing dates as frequently as possible, to enable as many of the submissions to be heard in 2006 as possible. It is noted there are a number of Councillors who have been nominated to sit on the Panel and therefore this would affect their usual Council commitments.

## **RESOURCES**

The Growth and Transport Integration project has been budgeted within the 2005/2006 Annual Plan and draft 2006/2007 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 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 be 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 continued to advance through the statutory process. With submissions and further submissions now received, all councils have an understanding of what the substantive issues are. Specific matters raised in response to the Waitakere City Proposed Plan Changes 13-18 and Metropolitan Urban Limits Shift proposals (RPS Plan Change 7) are now identifiable.

The number and range of topics raised in submissions also gives an indication of the extensive time and resource implications for the Council, in terms of preparing hearing reports and servicing the Joint Hearings Panel. There will also be the ongoing work associated with providing the detailed information to support Council's applications to shift the Metropolitan Urban Limits.

The hearings process is scheduled to commence in April 2006. The Local Government (Auckland) Amendment Act 2004 requires that the Auckland local authorities jointly appoint a single hearing panel and that the panel be delegated Waitakere City Council's Resource Management Act powers, functions, and duties to hear submissions and make recommendations on the proposed changes. It is recommended that the Council pass a resolution to this effect.

### **RECOMMENDATIONS**

1. That the Waitakere Growth & Transportation Integration Project – Update on Submissions & Joint Hearings Panel report be received.
2. That pursuant to section 41 (1) of the Local Government (Auckland) Amendment Act 2004 (LG(A)AA 2004) the jointly appointed hearing panel to hear submissions and make recommendations on Waitakere City Council's Proposed District Plan Changes 13,14,15,16,17 and 18 be: Paul Walbran (Chair), David Hill, Wyn Hoadley, Neil Morrison, Lindsey Rea, Bill Smith, Carolynne Stone, and Alan Watson.
3. That pursuant to section 41 (2) of the Local Government (Auckland) Amendment Act 2004 (LG(A)AA 2004), and under section [34A](#) of the Resource Management Act 1991, the joint hearing panel be delegated Waitakere City Council's powers, functions, and duties to hear submissions and make recommendations on Waitakere City Council's Proposed District Plan Changes 13,14,15,16,17 and 18.

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

