

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON TUESDAY, 10 JULY 2007 COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO</u>
<u>PART A - OPENING OF MEETING</u>	1
1 APOLOGIES	1
2 URGENT BUSINESS	1
3 CONFIRMATION OF MINUTES	1
4 CONFLICTS OF INTEREST	1
<u>PART B - REGULATORY / ENFORCEMENT</u>	2
5 LEGAL UPDATE (AS AT 29 JUNE 2007)	2
<u>PART C - ENVIRONMENTAL MANAGEMENT</u>	11
6 LAPSING OF DESIGNATIONS OF A TERRITORIAL AUTHORITY WITHIN ITS OWN DISTRICT	11
7 ISSUES AND OPTIONS PAPER: REVIEW OF THE BULK AND LOCATION RULES OF THE WAITAKERE CITY COUNCIL DISTRICT PLAN (LIVING ENVIRONMENT)	13
8 LITTER INFRINGEMENT OFFENCES - INCREASE IN FEES REPORT	18
9 WAITAKERE DISTRICT PLAN WORKING ENVIRONMENT – REVIEW OF KEY ISSUES	20
10 PROPOSED PLAN CHANGE 24: COMMERCIAL SEX ACTIVITIES	31
<u>PART D - PUBLIC EXCLUDED MATTER</u>	40
11 DISTRICT PLAN UPDATE – MAWHINNEY APPEAL	40
PROCEDURAL MOTION TO EXCLUDE THE PUBLIC	40

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PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 12 June 2007

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 12 June 2007, as circulated, be taken as read and now be confirmed.



4 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 29 JUNE 2007)

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 minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Planning and Regulatory Committee if it wishes. References to the Council's District Plan were not included in previous reports but will be included separately under the Environment Court heading in all future reports.

COURT OF APPEAL

(Changed) **Carter Holt Harvey v Waitakere City Council, North Shore City Council and Rodney District Council (April 2006)**

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. He reported that the argument put forward to the Court of Appeal by Carter Holt seemed more compelling than that presented to the High Court and that the arguments received a sympathetic hearing from the court. The decision has been reserved. If the argument is successful the Council will need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. Costs on both decisions are reserved pending the Court of Appeal decision.

HIGH COURT

(Unchanged) **Waitakere City Council v C P Brunel and the Cove Limited (December 2006)**

The Council sought to acquire land under the Public Works Act 1981 for a carpark at the Westpark Marina boat ramp. The owners objected and the High Court eventually declared that the Council could take the land. The property owners' application for leave to appeal was heard in the High Court on 19 March 2007. Leave was declined.

The Council has claimed costs for both hearings and a decision on this is still awaited.

Negotiations to purchase the properties have been completed and the Council now owns the land, but with some minor compensation issues unresolved, including the costs issue. Hopefully the outstanding issues can be resolved with minimal disagreement.

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

The Council has been served with seven sets of proceedings under the Public Works Act in the High Court claiming the Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. The Council filed applications to strike out the various claims on the basis that the events which triggered an obligation under the Public Works Act occurred prior to the offer back obligation coming into force and the Act should not apply retrospectively.

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 Public Works Act 1991. An application for leave to appeal has been filed with the High Court against that decision in order to preserve the Council's position. Advice on the prospects of that appeal is awaited from Matthew Casey QC and Alan Galbraith QC, both of whom were overseas at the time the application had to be filed.

(Changed) West Auckland Enterprises Limited (May 2007)

The Council has made a liquidation application to put West Auckland Enterprises Limited (formally Sunderland College Property Limited) into liquidation.

This company owes the Council \$17,000 for unpaid resource consent hearing fees and has failed to comply with a statutory demand. West Auckland Enterprises Limited has not responded to correspondence regarding this debt. The matter will be called in Court on 5 July 2007.

(Changed) All Seasons Properties Limited v Waitakere City Council (April 2007)

An appeal against the Environment Court's decision to grant consent to Ongoing Enterprises Limited. The Environment Court upheld the Council's original decision to grant consent for the establishment of a medical centre at 382-386 Te Atatu Road.

The initial case management conference occurred on 15 May 2007. The Court has issued a Minute confirming a timetable for filing submissions and has allocated a half-day hearing on 3 October 2007. However it is possible that a stand-by fixture may be allocated any time after 29 June 2007.

Substantive hearings involving Mr Mawhinney

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

The judgment of Fogarty J in relation to the Council's strike out application was released on 14 September 2006. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim was struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions based on common law duties against local authorities generally.

A costs application in respect of the proceedings from 1999 to date was lodged with the Court. An interim Costs Judgment was released by the Court this month ruling on the applicable award under the High Court scale, on the basis of scale 2. This is a very low rate and a disappointing outcome. A revised calculation in light of the interim findings has been prepared and will be submitted. An uplift of 50% on the applicable scale award has been sought in light of the manner in which Mr Mawhinney has conducted the proceedings. Mawhinney has paid \$60,000 as security for costs. The current prognosis is that the final award is unlikely to exceed that amount.

(Changed) Mawhinney and Glorit Subdivision Limited v Waitakere City Council (February 2006)

This matter related to a further appeal in the High Court by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by the Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Environment Court in December 2005 and Mr Mawhinney's application to be reheard has also been dismissed by Judge Shepherd in the Environment Court.

Both decisions have been appealed to the High Court. The matter has been set down for hearing in the High Court on 5 October 2007. Mr Mawhinney has lodged security for

costs of \$1,500. Subsequently Glorit Subdivision Limited, of which Mr Mawhinney was a sole director and shareholder, has been wound up, for non-payment of costs awarded in favour of the Council. The Court has now granted leave to allow the Official Assignee to withdraw from the proceedings. Mr Mawhinney has also applied for an adjournment, which has been opposed. This matter will be determined in July.

Debt Recovery proceedings involving Mr Mawhinney

(Changed) Waitakere City Council v P W Mawhinney (February 2006)

The Council issued a bankruptcy notice against Mr Mawhinney to recover payment of unpaid costs and disbursements awarded to the Council in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney paid the debt and costs of \$3,475 in accordance with the bankruptcy notice. The Council sought indemnity costs against Mr Mawhinney due to additional costs incurred by the Council for being forced to make an application for substituted service. This application was heard on 31 January 2007 before Associate Judge Doogue.

On 12 February 2007, Associate Judge Doogue delivered a judgment that awarded the Council full indemnity costs of \$2,598 against Mr Mawhinney, plus Council's disbursements of \$359.38. These costs have not been paid. A bankruptcy notice was issued and attempted service by a process server occurred on 24 May 2007 at Mr Mawhinney's place of residence where he refused to accept service of the bankruptcy notice. We have written to Mr Mawhinney giving him a final opportunity to accept service of the bankruptcy notice. An application for substituted service has been filed with the Court.

(Unchanged) Waitakere City Council v Glorit Subdivision Limited (March 2006)

The Council has been seeking to recover the costs awarded to it in these proceedings.

Mr Mawhinney's barrister had advised that Mr Mawhinney has no liquid assets to pay this debt. Despite this, Mr Mawhinney paid the judgment debt of \$14,290.50 plus costs for the bankruptcy notice on 28 March 2007. Mr Mawhinney's barrister advised Mr Mawhinney would not be paying the other outstanding costs of \$1216.88 still owing to the Council. Debt recovery proceedings for this outstanding amount have been initiated.

(Changed) Waitakere City Council v P W Mawhinney (May 2007)

Mr Mawhinney (and Glorit Subdivision Limited (In Liquidation)) jointly and severally owe the Council a cost award of \$2,000 for costs obtained in the Environment Court.

A bankruptcy notice was issued and attempted service by a process server occurred on 24 May 2007 at Mr Mawhinney's place of residence where he refused to accept service of the bankruptcy notice. We have written to Mr Mawhinney giving him a final opportunity to accept service of the bankruptcy notice. Mr Mawhinney did not accept service of the bankruptcy notice. We prepared and filed an application for substituted service with the Court.

ENVIRONMENT COURT

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

Councillors will recall that this matter has been to the Supreme Court, to resolve the attempts made by Estate Homes to argue that it should be fully compensated for the costs it incurred building Marinich Drive. The Supreme Court ruled that the only issue for determination was whether Estate should be compensated at a local or collector road standard and remitted the matter back to the Environment Court which heard argument on Monday 28 May and delivered its decision on 15 June 2007. No further evidence was

called. The only evidence before the Court was that the appropriate standard was a collector road. Notwithstanding, the Court has held that a local road would suffice. This finding seems perverse and we are taking advice as to whether to appeal (again) from Matthew Casey QC. We are also investigating the possibility of finding a mechanism to resolve the compensation issues. Previous attempts to negotiate a settlement have always foundered because of the mismatch between the developers expectations and the Council's view of a reasonable outcome.

**(Unchanged) Auckland Regional Council v Waitakere City Council (May 2005)
Waitakere Ranges Protection Society Incorporated v Waitakere City Council (May 2005) ("the Duncan appeal")**

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated 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 the Auckland Regional Council and Waitakere Ranges Protection Society Incorporated oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006, the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its 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 Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Incorporated have lodged applications with the Court in support of the Council as Section 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing resumed on 23 May 2007 to hear the evidence of a witness for one of the Section 274 parties who was not available during the March hearing. The hearing has now been completed. The Court has reserved its decision.

(Unchanged) Waitakere City Council v 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 Britten's 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. The Council sought final orders to require that the Britten's 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 2005.

Separately and in parallel, the Council has initiated a mediation process with Mr Britten in an attempt to find an alternate resolution to expedite the matter. As a consequence of that process the parties are working towards concluding an agreement for the completion of remedial work in accordance with the Council resolution at its meeting held on Thursday, 20 July 2006.

Mr Britten has been granted resource consent to undertake the remedial works. The remedial work will not begin until the summer of 2007/2008. This has been communicated to the Environment Court and a new reporting date of 30 November 2007 has been set down. The Enforcement Order proceedings remain on hold.

(Unchanged) David Paul Leaky v Waitakere City Council (May 2006)
All Seasons Properties Limited v Waitakere City Council (May 2006)

These were appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 and 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. The activity is a non-complying activity. The appeals alleged that the location of these premises in a residential area would adversely affect the integrity of the District Plan. A hearing was held on 7 and 8 February 2007 and 2 March 2007. The Court upheld the Council's decision to grant consent, subject to a new condition for additional on site car parking being provided and agreed upon by the applicant and the Council.

An application for costs was filed on behalf of the Council seeking costs against All Seasons Properties Limited and D Leakey. Costs of \$8,500 were awarded.

All Seasons Properties Limited have filed an appeal in the High Court against the decision of the Environment Court.

(Unchanged) Ritchies Transport Holdings Limited, v Waitakere City Council, and Rex Campbell, Section 274 Party (September 2006)

This is an appeal against an abatement notice issued to the directors of Ritchies Transport Holdings Limited ("Ritchies"). The appeal relates to the requirement of the abatement notice to reduce the buses parked on the boundary, reduce daily traffic movements, undertake mitigation measures in respect of noise and ensure the hours of operation are between 6.00 am and 9.00 pm. The requirements are those set out in the Ritchies resource consent (RMA 991374). The appeal is on the grounds that the business enjoys existing-use rights, that the resource consent does not limit the number of vehicles, the vehicle movements, noise levels and hours of operation. An application for stay was concurrently filed with the notice of appeal. Mr Rex Campbell, a neighbour on the eastern boundary of Ritchies, has joined the proceedings as an interested party.

A judicial telephone conference was held between the parties to consider the application for stay on 27 September 2006. Mr Campbell, the Section 274 party joined the conference by consent. The Court granted the application for stay upon the agreement of all parties, including Mr Campbell, for a three-week period to permit the parties to resolve the appeal. As a result, the appeal has been put 'on hold'. The Council met with the parties on 16 October to resolve the appeals. As a result, the parties agreed for the stay to continue and that Ritchies would lodge resource consent (lodged on 9 January 2007) to address the matters raised in the abatement notice. The Council reported back to the Court on 30 March 2007 that the consent application was being processed, and notification of the application is pending. The Council is still in the process of receiving expert reports in support of the application. The Council filed a progress report on 30 April 2007. That report outlined that the applicant, Ritchie's, sought an extension of time to submit further information as to acoustic issues. The Court has set down a new reporting time of 30 July 2007 for another progress report to be filed.

(Unchanged) Abacus Developments Ltd & 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) have been concluded.

(Changed) Waitakere City Council v Rodney District Council ("RDC") (April 2007)

An appeal and s 274 notices filed by WCC regarding decisions by RDC on the Rodney Proposed District Plan regarding future urban development issues. A pre-hearing conference occurred on 27 and 28 June 2007, at which time the Court directed a case management process going forward. This involves workshops and mediations from August 2007 with a hearing scheduled (if required) for 2008. The Court intends to resolve all outstanding appeals in respect of the Rodney Plan by the end of 2008.

(Changed) L Aalbers v Waitakere City Council (May 2007)

An appeal against two abatement notices issued by the Council to require cessation of a home occupation for the provision of sexual services from a rear site without resource consent. The Council contends that the activity is in breach of the District Plan Rules which require resource consent to operate as a home occupation because it is on a rear site as defined by the District Plan (Rule 11). The appellant has also sought an application for a stay to permit her to continue operating from the site. The applications have been filed out of time and the solicitors for the appellant have been required to file an application for waiver to file the appeals out of time and to file an affidavit in support of the application for a stay. The matter is set down for a judicial conference on 6 June 2007 at 9.30am. The Council opposed the application for stay and the appeals on the basis that they are out of time and the activity cannot continue without resource consent. The Court granted the application for stay which permits the activity to continue until such time that the appeal is resolved. The matter is set down for an urgent hearing in August although a date is yet to be allocated. In the interim, three parties have joined the appeal as interested parties.

(New) The Tree Council and the Sunnyvale Protection Society v Waitakere City Council (June 2007)

An appeal against Council's decision to grant subdivision and land use consent to Sunshine Boulevard Limited for a 56 unit medium density residential development at 25-27 Awaroa Road and 20 Sunnyside Road, Sunnyvale. A notice of reply is being filed.

Mawhinney Matters in the Environment Court

(Unchanged) Perceptus Limited and Swanson Heights Limited v Waitakere City Council, Waitakere Resource Consents Limited and Glorit Subdivision Limited v Waitakere City Council, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v Waitakere City Council

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. The Council has filed an application to strike out the appeals. Mr Mawhinney filed his submissions in opposition on 30 January 2007. The Court has placed these matters on hold.

(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 Section 139 of the 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.

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). The proceedings have recently been reactivated and Council has filed a strike out application with the Court. Mr Mawhinney has filed a notice of opposition. Submissions in support of Council's strike out application have been filed and submissions in opposition received from Mr Mawhinney. The Court has notified us that it is likely the strike out application will be heard in the week of 3 September 2007.

Plan Change Hearings

(Unchanged) I and Z Farac v Waitakere City Council (March 2004)

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. The appellants sought to rezone a greater part of the property as 'Living 2 Environment' (as opposed to "Living 4").

Subsequent to discussions and consultant input, the appellants and Council have agreed on the rezoning of part of the subject property from Living 4 to Living 2. Consent documentation is being prepared and will be filed shortly.

DISTRICT COURT

(Changed) J and P Cottingham - 122 Lone Kauri Road, Karekare (May 2006)

Charges were laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was set down for a first call on 11 December 2006. The matter was adjourned on 22 January 2007 with intimation that guilty pleas may be entered to some of the charges. The adjournment was also requested to permit the defendants to seek expert advice on use of their property and to meet with the Council to consider what consent applications were necessary. The matter was called on 2 April 2007. One of the defendants, Mr P Cottingham pleaded guilty to a charge of permitting building work without consent. The other charges of contraventions of the Resource Management Act and charges against Mrs J Cottingham were withdrawn by the leave of the Court. The Resource Management Act contraventions are being addressed by negotiation. The defendants have applied for a determination from the Department of Building and Housing ("DBH") in respect of the Council's decision to decline their application for a certificate of acceptance for the illegal conversion of 4 household units at the property. The DBH have appointed an investigator who is looking into this matter. The Council is making a submission to set out its reasoning for the decision to decline a certificate of acceptance. Given that the Cottingshams have only recently filed their application and an investigator just appointed, the sentencing scheduled of 2 July 2007 is not proceeding and is now set down for 12 November 2007.

(Unchanged) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads (August 2006)

This prosecution relates to the removal of six houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The Council was fined \$4,800 plus costs (90% of the fine will be remitted back to the Council as prosecuting authority). The matter was set down for a first call on 1 December 2006. The Council entered a guilty plea. The other defendants entered guilty pleas on behalf of the company on 12 February 2007 and the charges against the directors personally were withdrawn. The companies were to be sentenced in May but due to the Court not setting the matter down, sentencing has been moved to 27 July 2007.

(Changed) S and F Lese, S Nuuola - 50 Kelman Road, Kelston (August 2006)

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. All parties have entered a guilty plea. Sentencing was set down for 14 June 2007 at 10.30am; however the matter did not proceed as the Court had not set time aside for this matter. It is now set down for 5 July at 10.30 am.

(Unchanged) G and Q Potts - 88 Wiseley Road, West Harbour (August 2006)

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The defendants now allege that no additional building work has been undertaken other than that for which they were previously prosecuted. The matter is now set down for a status hearing on 5 July at 2.15 pm.

(Unchanged) H K Graham - 11 Karaka Road, Whenuapai (July 2006)

Charges have been laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorised minor household units on the site. There are also fire safety and insanitary (drainage facilities) issues at the site due to the buildings being used for residential purposes.

A defended hearing was held on 22 February 2007. Leave was given for the parties to file further written submissions. On 3 May 2007 the Court issued a written decision convicting Ms Graham on the 3 charges laid under the Building Act 2004 (unauthorised building work, unsafe building and insanitary building) and confirmed that it had dismissed the charges laid under the RMA (breach of district plan rule for unauthorised minor household units) due to an inability to prove that the alleged use was a residential activity in accordance with the district plan definition. The Court's reasoning regarding the dismissal of the RMA charges was that the definition in the District Plan as to the definition of "residential activity" was impractical, and accordingly difficult to enforce. The Court said that "*there is a high degree of nonsense*" in the definition as it requires a three part test that had to be met. The definition requires:

- The use of land or buildings by people for living accommodation; and
- That those people must voluntarily live at the site for a period of one month or more; and
- That those people will *generally* refer to the site as their home and permanent address.

It was considered by the Court that to prove the first test, the Court could rely on the evidence of council officers and photographic evidence. However, the last two elements were more difficult to prove. The Council would have to have direct evidence from the tenants to attest to the fact that they have lived there for more than one month and consider the residence to be their home and permanent address. The Court expressed surprise that the level of activity at the site did not constitute an offence under the District Plan given that the property was being used for residential purposes.

In respect of the building work at the property, evidence was presented that Ms Graham admitted to altering the pig sheds to allow them to be used as flats. This was not refuted by Ms Graham in the trial. Ms Graham relied on at least some of the work being exempt which was not accepted by the Court as the statutory tests could not be met. The Court noted that contrary to the Court's findings, Ms Graham was of the view that the buildings were sanitary because the drainage system was designed for a large number of pigs therefore it would be adequate for a small number of humans occupying the units. The buildings were found to be dangerous (lack of fire protection) and insanitary (inadequate sanitary facilities for human habitation).

The Court considered that the Council's actions in obtaining a search warrant were justified and reasonable to gather evidence for the purposes of the prosecution given the history of this matter. In any case a search warrant is not an abuse of process where a view had been formed that an offence was being committed and the purpose of the visit would be to obtain evidence for or in support of a prosecution. An alternative of requiring permission of the owner/occupier is not necessarily appropriate as enforcement officers may not be given access, may only be given restrictive access, and may have evidence destroyed or covered up prior to enforcement officers entering the site.

The Court pointed out that Council officers conducted the investigation in 2006 thoroughly and with due consideration for the health and safety of those using the buildings on site. The officers had the relevant expertise to make a finding of fact of whether a building is dangerous and insanitary and the Council does not need to seek outside expertise where it employs staff with extensive experience.

The Court also noted that *“the evidence does show that Ms Graham dealt with the Council in what can at best be described as a duplicitous fashion”* in the period between February 2004 and February 2006. On the one hand to appear as though she was complying with District Plan requirements whilst on the other hand she was continuing to undertake building work to complete the flats. Sentencing is scheduled for 3 July 2007 at 10am.

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

This matter relates to breaches of the Resource Management Act and Building Act. When the matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter is to proceed to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007 but due to administrative issues it did not. This matter is now set down for a jury trial on 18 February 2008 with the Building Act charges set to be heard by a judge alone in the week of 25 February 2008. Mr Gordon has been assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This is a result of Mr Gordon refusing to obtain legal representation. This should enable the matter to proceed without Mr Gordon seeking further time to consider the matter of legal representation.

(Changed) M and D Gladwin - 45 Kay Road, Swanson (April 2007)

Charges have been laid under the Resource Management Act 1991 for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200 m² were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without a resource consent. This matter is set down for a first call on 23 July. The defendants are being served.

(Changed) Hobsonville Residential Developments Limited and Treecare Services Limited - 18-28 Banning Way, Hobsonville (Limeburners Bay) (April 2007)

Charges have been laid under the Resource Management Act 1991 against the developer and contractors for doing earthworks of approximately 2.49 hectares, undertaking vegetation clearance, and doing work in scheduled archaeological site without resource consent in contravention of the General and Managed Natural Area and Heritage Rules of the District Plan. This matter is set down for a first call on 23 July. The defendants are being served. In the interim the Council has been working with the developer to properly assess the damage, particularly to the archaeological areas of the site in the preparation of their subdivision consent application.

(Changed) W L Garrett - 7 Saronia Avenue, Glen Eden (April 2007)

Charges have been laid under the Resource Management Act 1991 and the Building Act 2004. These charges relate to a breach of an abatement notice, undertaking earthworks (to excavate the basement of an existing house of approximately 256 m² and to build two retaining walls of 3-5 metres each) without resource consent and in contravention of the General Natural Area Rules. Charges under the Building Act relate to doing building work

without building consent in contravention of section 40 (1) of the Building Act. The building work related to the building of the retaining walls, altering the foundations and the drainage system of the house, removal of structural walls, re-cladding the exterior of the house. This matter is set down for a first call on 23 July. The defendant's are being served.

(Changed) R Brooky – 18 Silverstone Place, Henderson (April 2007)

Charges have been laid under the Building Act 2004 for non-compliance with a Notice to Fix for work undertaken to re-clad the house. This matter is set down for a first call on 23 July. The defendant is being served.

(Changed) R Narayanaraja, P Ramasubramanian, S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act 2004 relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter is set down for a first call on 23 July. The defendants are being served.

Leaky Building Claims

(Changed) Claims statistics are as follows:

(a) Claims currently being handled are 29.

- High Court: 3
- District Court: 0
- WHRS: 25

(b) Number of claims for Waitakere City as at 27 June 2007, which may include some consent processed by building certifiers, was 335. This is a decrease of 6 since 30 May 2007.

(c) 227 (or over half of the WHRS claims) relate to 3 large multi-unit developments.

RECOMMENDATION

That the Legal Update (As at 29 June 2007) report be received.

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



PART C - ENVIRONMENTAL MANAGEMENT

6 LAPSING OF DESIGNATIONS OF A TERRITORIAL AUTHORITY WITHIN ITS OWN DISTRICT

PURPOSE OF THE REPORT

The purpose of this report is to advise the Planning and Regulatory Committee of the requirement and proposal to undertake a review of the Waitakere City Council's designations contained within the District Plan before January 2008.

BACKGROUND

A designation is a provision made in the District Plan to allow land to be secured or used for public works or other projects, and facilitates the establishment and on going protection of what is often necessary or essential services. It is of strategic importance to Waitakere City Council's function as a local authority, that existing designations which are required to provide these services are retained within the District Plan.

ISSUES

Resource Management Act

A1-A5

Waitakere City Council, as a requiring authority under Section 166 of the Resource Management Act 1991 (the Act), has 74 designations within the partially operative District Plan, relating to proposed and existing reserves, water supply, sewerage, solid waste, roads, car parking and cemeteries, as listed in the attachment at pages A1 to A5.

Section 184A of the Act relates to the lapsing of designations of a territorial authority in its own district and states in 184A (2) that

"A designation of a territorial authority in its own district lapses on the expiry of 5 years after the date on which it is included in the district plan unless—

- (a) It is given effect to before the end of that period; or*
- (b) Within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purposes of this subsection; or*
- (c) The designation specified a different period when incorporated in the plan."*

184A(3) adds that;

"Where paragraph (b) or paragraph (c) of subsection (2) applies in respect of a designation, the designation shall lapse on the expiry of the period referred to in whichever of those paragraphs is applicable, unless—

- (a) It is given effect to before the end of that period; or*
- (b) Within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purpose of this subsection."*

Proposed Review

The Waitakere City District Plan was deemed partially operative in March 2003 and therefore the designations listed in the District Plan are due to lapse in March 2008 unless specified otherwise. A review of the Waitakere City Council designations is being undertaken in order to identify the status of each designation as to whether they have been given effect to, are still required within the District Plan with substantial progress being made, or are no longer required, and where applicable, the additional timeframe likely to be required to implement the designation.

Following confirmation from the relevant asset areas of Council a formal resolution will be put to the Committee in accordance with Section 184A to update the Waitakere City Council designations. It is noted that this must be undertaken no later than January 2008, being 3 months before the designation date of March 2008.

Lapsing Of Designations by Requiring Authorities Other Than the Territorial Authority

Section 184 of the Act relates to the lapsing of designations which have not been given effect to by requiring authorities other than the territorial authority. As part of the review outlined above, all other requiring authorities will be contacted and requested to undertake a similar review of their designations within the District Plan and to provide an update of the status of the designations and where applicable apply to the Council for a longer time period.

Conclusion

As stated above the designations listed in the District Plan are due to lapse in March 2008 unless an alternative lapse date was specified or effect has been given to the designation. Following a review of the designations a report will be presented to the Committee seeking a formal resolution to update and provide a new timeframe for those designations which are required to be retained in the Plan. This review must take place before January 2008 in accordance with S.184A of the Resource Management Act.

RECOMMENDATION

That the Lapsing of Designations of a Territorial Authority Within Its Own District report be received.

Report prepared by: Bronwyn Allerby, Senior Planner: Policy Implementation.



7 ISSUES AND OPTIONS PAPER: REVIEW OF THE BULK AND LOCATION RULES OF THE WAITAKERE CITY COUNCIL DISTRICT PLAN (LIVING ENVIRONMENT)

PURPOSE OF REPORT

The purpose of this report is to seek the Planning and Regulatory Committee's approval to undertake a review of the bulk and location rules of the Waitakere City Council District Plan (the Plan) and to prepare a draft Plan Change accordingly.

BACKGROUND

The Plan contains Policies, Objectives and Rules for the purpose of managing the effects of land use on the environment.

Since the Plan was notified in 1995, a number of matters have been identified where rules either appear to have been incorrectly drafted, are open to misinterpretation or are not achieving the desired outcomes on site. Poor drafting or misinterpretation leads to unnecessary time spent by staff and customers and can sometimes result in additional costs in processing Resource Consent applications. By providing clearer rules which are not open to interpretation the resource consent process can be simplified, costs minimised and customer satisfaction increased.

The purpose of this review would not be to overhaul the rules contained within the Plan, but to provide clearer interpretation of the rules, provide simplification of the rules where possible and ultimately to provide enhanced amenity within residential areas, without substantially changing the objectives of the Plan

The scope of the review would centre around the Living Human Environment Rules however in order to retain consistency within the Plan, where the same or similar rules occur within another Human Environment (such as the Height in Relation to Boundary rule) it is recommended that those rules be reviewed across all Environments.

In some instances changes to the Human Environment Rules have consequential impacts on the Natural Area Rules (e.g. earthworks on sensitive ridgelines) and therefore these rules would also be reviewed where applicable.

STRATEGIC CONTEXT

The working draft of the Growth Management Strategy Waitakere City Council aims to ensure that the city remains a great place to work, live and play well into the future. The Strategy provides a blueprint for how the city might best accommodate growth pressures.

These issues are also documented and influenced by the Auckland Regional Policy Statement (ARPS - updated 2005), the Auckland Regional Growth Strategy (ARGS 1999), the Northern and Western Sectors Agreement (NAWSA 2001) and the Local Government Auckland Amendment Act (LG(A)AA 2004).

All of these documents highlight the need to manage growth of the Auckland Region in an integrated manner with the aim of consolidating development into a sustainable compact urban form, with well-integrated land uses and transport network. With increased intensification of building development within the existing metropolitan urban limit, as set by the Auckland Regional Council, there is a need to maintain adequate amenity in residential neighbourhoods as this intensification occurs.

The bulk and location rules within the Plan are one of the main mechanisms which Council utilises to manage the effects of land use and to achieve a high standard of amenity in the urban areas. The Plan ties in with the Urban and Rural Villages section of the Long Term Council Community Plan which supports urban consolidation and sustainable development, and seeks to provide for a mix of housing styles.

The objectives under the Plan that are relevant to the bulk and location rules include objectives 9, 10 and 11. These seek to protect the quality and significance of the City's landscapes, and to maintain and enhance amenity values and neighbourhood character. The relevant policies under each objective outline in more detail what the rules are setting out to protect and achieve by assessing the effects of each activity.

The Resource Management Act 1991

The purpose of the Resource Management Act (the Act) as outlined in Part II is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. 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 the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

There are two sections of the Act that are relevant in terms of a proposed district plan rule change. Firstly, there is the purpose of the Act, which is found in Section 5, Part II where the Act promotes the sustainable management of natural and physical resources, and secondly, Section 7 of the Act, which talks about Other matters that need to be considered in terms of achieving the purpose of the Act. Section 5 seeks to 'manage 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 well being and for their health and safety. Avoiding, remedying, or mitigating any adverse effects of activities on the environment'. Section 7 requires the relevant consenting authority to acknowledge other matters which in this case include, the efficient use and development of natural and physical resources, the maintenance and enhancement of amenity values, and maintenance and enhancement of the quality of the environment.

Section 35 of the Act requires Council to monitor the the efficiency and effectiveness of policies, rules, or other methods in its plan.

Auckland Regional Council

Section 75 of the Act requires that a district plan must give effect to a regional policy statement or plan. The Auckland Regional Policy Statement (ARPS) is now operative and the way in which the bulk and location rule relates to the ARPS is through the Policy in regard to Regional Development, which is part of the ARPS Strategic Direction, Policy 2.6.1 (vi) where it states 'maintain and enhance amenity values within the existing urban area, and achieve high standards of amenity'. The proposed plan change would only involve minor changes to the wording under the Plan with the intention of improving amenity on site or providing clarification on the interpretation of a rule. The plan change would remain consistent with the Auckland Regional Policy Statement.

ISSUES

Since public notification in 1995 the Plan has been required to be considered in the assessment of applications, with varying degrees of weight as the Plan progressed through the transitional to operative status. Over that time a significant number of applications for Resource Consent have been processed, with a number of small, but by no means insignificant, issues being identified in the drafting or interpretation or outcomes of the rules. Although these issues may not be considered strategically significant, addressing them will assist with streamlining the processing of resource consents, reduce the cost and frustration to applicants and improve the environmental outcome and amenity on site. Review of the policies and objectives would also need to be undertaken to ensure that any proposed changes to rules maintains consistency with the anticipated environmental outcome of the Plan.

A6-A75

The following section of the report provides a brief discussion of the issues already identified within the Living Environment rules of the Plan. A copy of the rules referenced in the report is attached at pages A6 to A75.

Residential Activities / Density

Rule 2 Living Human Environment

Where resource consent has been granted for a dwelling on a site less than 450m² in area and subsequent changes, alterations or additions are sought to that dwelling, further consent under this rule is required regardless of whether or not the proposal complies with all other bulk and location rules for the site. This is potentially onerous and costly to applicants. In these cases, assessment of the proposed additions and alterations against the other bulk and location rules (yards, outdoor space, height in relation to boundary etc) should be sufficient to assess the appropriateness of the proposal for the site.

Building Location-Natural Landscape Elements

Rule 2 Coastal Villages, Bush Living and Waitakere Ranges Environment

Rule 3 Living, Foothills and Rural Villages Human Environment

Earthworks

Rule 3.1 General, Restoration, Managed, Coastal, Protected and Natural Areas

Buildings or development located on a sensitive ridge currently require resource consent as a controlled activity pursuant to Rule 2.2 or 3.2 of the Human Environment (as applicable) where;

- the proposal does not increase the height of the building, or increase the building coverage by more than 20m², and

- the building is not visible in front of the sea or above the skyline as viewed from a road or public place.

The Natural Area rules require Limited Discretionary resource consent for any earthworks within an approved building platform where the earthworks are located on a sensitive ridge/ headland/cliff or scarp.

The rule does not specifically exclude additions and alterations to the building, which fall entirely within the building footprint (eg. a dwelling partly constructed on poles, with the proposal to enclose that lower level, creating a downstairs bedroom or basement, or a proposal to enclose a verandah). Therefore Resource Consent is required for this type of development. Given that these types of additions and alterations do not create any additional effects on the sensitive ridgeline than the existing building may have already done, it is considered onerous to applicants to have to apply for Resource Consent for this type of work.

Height In Relation To Boundaries/Separation Of Buildings

Rule 3 Open Space Human Environment

Rule 5 Living, Rural Villages, Coastal Villages, Bush Living Human Environments

For the purpose of calculating the height in relation to boundary (HIRB), where a site boundary adjoins a 'shared driveway' or 'pedestrian access way serving a rear dwelling', the site boundary is taken to be the farthest boundary of that shared driveway or pedestrian access way.

Where the site boundary adjoins a driveway serving only one rear dwelling or site, HIRB is taken from the nearest boundary (being the subject site boundary) as a driveway serving only one rear site does not meet the definition of "Shared Driveway". It could be argued that the effects of height to boundary (such as shading or dominance) on a driveway serving only one rear dwelling or site is no different than if that driveway were shared. As such the option to include driveways serving rear sites within the rule could be considered.

The rule should also be reviewed in terms of impacts on pedestrian access ways. Calculating the height to boundary from the far side of a pedestrian access way has the potential to cause overshadowing, loss of light and a subsequent loss of amenity and sense of safety to these access ways.

The height to boundary rules are currently not applied to the Transport Environment (road boundary) however buildings built close to the front boundary, with no restriction on HIRB, can appear quite dominant and create adverse impacts on the character and amenity of the streetscape of residential areas. Exemptions would apply to medium and high density developments.

In addition the diagrams in the Plan which accompany the rule could be improved.

Building Coverage

Rule 7 Living Human Environment

Definitions

The definition of 'building coverage' excludes un-covered decks and terraces which in some instances may add significantly to the bulk of the building and impact upon privacy and neighbourhood character, especially if constructed at above ground floor level. Uncovered decks and terraces have the potential to add significantly to the bulk and scale of a dwelling, and impact upon adjoining residential amenities resulting in visual intrusion, physical dominance and loss of privacy. The effects are compounded when the deck or terrace is elevated as it becomes more prominent and visible whilst also offering opportunities for overlooking of adjoining sites. The review would need to assess whether

decks and terraces of a certain height or level above ground, or at first or second floor levels, should be considered under the building coverage rule.

Building Location – Privacy/Amenity

Rule 8 Living Human Environment

Definitions

The intention of the rule is to provide adequate separation and therefore privacy between the main living rooms of the dwelling (measured from the main glazing) and adjoining sites. However the rule and associated diagrams may be confusing in that they also imply that the area of outdoor space (required under Rule 9) also requires a minimum separation distance from the site boundary. It is also unclear what is / is not included as main glazing within the dwelling and the definition should be reviewed.

The rule is not currently applicable to Minor Household Units. Minor household units have the same potential effects on the privacy of adjoining sites as does the main dwelling on the site and therefore it is considered that some level of separation distance would be appropriate.

Outdoor Space

Rule 9 Living Human Environment

The rule and associated diagram is difficult to interpret and open to misinterpretation. The crux of the rule is ensuring that the outdoor space is usable, is of sufficient size and has a bearing to the north of between 135° and 225°. The rule should be reworded to make this clear. In addition it may be appropriate to require that the outdoor space is accessible from the main living area of the dwelling.

Minor household units whilst being used as an additional household unit are currently exempt from providing any individual areas of outdoor space for the exclusive use of that unit. This can result in very poor on site amenity for both the occupants of the minor household unit and those in the main dwelling.

Non-Residential Activities

Rule 10 Living Human Environment

Rule 10.1 requires all retail sales and services to be confined to a front site which amongst other requirements must have a minimum net site area of 450m². Where resource consent has previously been granted for a site size of less than 450m², and the application for a new non-residential activity can comply with the other requirements of the rule, the 450m² threshold seems unnecessarily onerous.

Where a site has been granted resource consent for a density less than 450m², Council has determined that the effects of the reduced density is acceptable. It would therefore seem reasonable that retail sales be allowed from these sites, subject to meeting the other requirements of the rule.

Car Parking And Driveways

Rule 12 Living Human Environment

Rule 12.2 outlines the standards to which shared driveways must be constructed where the shared driveway serves more than one 'dwelling'. The definition of dwelling excludes minor household units. Minor household units are an additional household unit and the standards for driveways should be no different than if two dwellings were served, providing safe, efficient and maintenance free access.

Noise (Non-Residential Activities)

Rule 13 Living Human Environment

Noise should be measured in accordance with the relevant New Zealand standard. In certain circumstances the current wording conflicts with the standard in terms of the location at which noise should be measured. For example on a large site it may not be appropriate for noise to be required to comply at the boundary, but rather it should be measured at the nominal boundary to a dwelling, as per the requirements of the standard.

CONCLUSION

As outlined above, since the notification of the Plan in 1995, a number of minor issues have been identified with the wording of the bulk and location rules of the Living Human Environment, These have resulted in either misinterpretation of the rule, frustration to applicants and staff and in some cases unnecessary additional costs to development. A review of the bulk and location rules, focused around the Living Environment would assist in providing clear interpretation of the rules, improved amenity within the residential area and streamline and reduce the cost of the resource consent process.

RECOMMENDATIONS

1. That the Issues and Options Paper: Review of the Bulk and Location Rules of the Waitakere City Council District Plan (Living Environment) report be received.
2. That a review of the bulk and location rules of the Living Environment be undertaken and that a draft Plan Change be prepared and reported back to the Planning and Regulatory Committee for consideration.

Report prepared by: Bronwyn Allerby, Senior Planner, Policy Implementation.



8 LITTER INFRINGEMENT OFFENCES - INCREASE IN FEES REPORT

PURPOSE OF THE REPORT

The purpose of this report is to recommend to the Planning and Regulatory Committee, that the Litter Infringement fee in respect of All Litter Act 1979 infringement offences is increased to \$400.00.

BACKGROUND

In 1995 the Council adopted by way of Special Order the litter infringement notice provisions contained in the Litter Act 1979. The infringement fees were set at \$50 for depositing garden waste and allowing litter to escape from a motor vehicle and \$100 for all other offences of depositing litter.

On 28 June 2006 the Litter Amendment Act 2006 came into force amending the Litter Act 1979 and increasing the maximum available fee for litter infringement offences from \$100 to \$400. At a meeting on 10 April 2007 the Committee indicated an intention to raise the litter infringement fee to \$400 for all offences and resolved that a report be brought back to the Committee after public notice of that intention had been given.

On 10 April 2007 the Planning and Regulatory Committee considered a report outlining the amendments to the Litter Act 1979 and the Council's options. The Committee resolved:

- “1. That the Litter Amendment Act 2006 report be received.
2. That in accordance with sections 13 (2A) and (3) Litter Act 1979 officers are authorised to arrange for public notice to be given of Council’s intention to increase the litter infringement fee to \$400.
3. That a report be brought back to the Planning and Regulatory Committee at least 14 days after public notice of the Council’s intention to increase the litter infringement fee has been given.”

583/2007

STRATEGIC CONTEXT

Part of the Council’s zero waste strategic platform is to produce a clean and an attractive city. Appropriate litter enforcement action including the issue of infringement notices, can help combat littering and illegal dumping by acting as a deterrent to further offending, thus complimenting the Council’s vision.

ISSUES

A76-A80 Public Notices were published in the Western Leader on 14 June 2007 and in the New Zealand Herald on 14 June and 16 June 2007. A copy of the notice published in the Western Leader on 14 June, and a copy of the Litter Amendment Act 2006 are attached at pages A76 to A80 respectively.

A81-A84 Over the course of the process the Council received a number of informal submissions. Overall the majority of feedback has been in support for what has been recommended. However, there was some negative feedback that should be considered by the Planning and Regulatory Committee. A summary of the informal submissions, including those published in the media, is attached at pages A81 to A84.

RESOURCES

No additional resources are required.

CONCLUSION

At the meeting on 10 April 2007 the Planning and Regulatory Committee indicated an intention to raise the litter infringement fee to \$400 for all offences. Public consultation has been carried out; the majority of the feedback has been in support for what has been recommended. It is therefore recommended that the Planning and Regulatory Committee approve this increase in infringement fees.

RECOMMENDATIONS

1. That the Litter Infringement Offences – Increase in Fees Report be received.
2. That public notice in accordance with section 13 (2A) Litter Act 1979 has been given.
3. That the litter infringement fee payable in respect of all Litter Act 1979 infringement offences is increased to \$400, the maximum permitted by the Act effective immediately.

Report prepared by: Robert Menzies, Waste Minimisation Officer and Yvonne Donaldson, Team Leader: Legal Services.



9 WAITAKERE DISTRICT PLAN WORKING ENVIRONMENT – REVIEW OF KEY ISSUES

PURPOSE OF THE REPORT

The purpose of this report is to set out to the Planning and Regulatory Committee, matters arising from a review of key issues pertaining to the District Plan's Working Environment.

BACKGROUND

The Working Environment is one of the District Plan zones where businesses generating employment opportunities for the city can locate. With some exceptions, these are generally non-retail based activities manufacturing and warehousing goods and services that are consumed locally, regionally, nationally or internationally. They can also include service or office based industries.

Available employment land within Waitakere that is well situated relative to the motorway and arterial transport corridors is scarce. The best and most attractive potentially vacant employment land is located at the northern end of Lincoln Road close to the North-Western motorway. Historically, much of Waitakere's employment land has been located near the rail corridor, its town centres or in isolated pockets adjacent to the inner Waitemata Harbour. However these areas are now less attractive to many businesses due to the fact that the predominant form of transport is by road rather than rail and water, ageing infrastructure and the shortage of vacant land upon which they can relocate or expand. In addition, the recent intensification objectives of the Regional Growth Strategy and subsequent District Plan changes required under the LG(A)AA have indicated that town centres are to accommodate a greater proportion of future population growth. This has had the effect of placing greater pressure on businesses located within or adjacent to the city's main town centres where often residential and commercial/industrial activities become incompatible. In this regard, Waitakere is possibly one of the worst affected cities in the region as historically much of its industrial land has been located adjacent to its town centres e.g. New Lynn and Henderson compared to cities such as North Shore and Auckland City where industrial areas are located away from the main retail/business centres.

For some time there has been a concern that available employment land within the Working Environment is being eroded by the proliferation of land use activities that create little or no employment opportunity relative to other industrial uses. Pressure for the establishment of activities such as residential and convenience-retail as well as 'large-format' retail in the Working Environment has occurred largely in the absence of a clear strategy that protects valuable employment land and which redirects inappropriate activities to other parts of the city. Rather, the policy focus of the District Plan to date has been a 'centres based' approach where maintenance of the retail/business centres is the key objective.

A85-A91

The issue surrounding demand for residential activities in the Working Environment was comprehensively addressed in a report to the Planning and Regulatory Committee in August 2004, as attached at pages A85 to A91. The report noted that of the 490 hectares of Working Environment land identified in the District Plan as much as 20 hectares has been taken up by medium density residential activities.

The uptake of available Working Environment land for the period 2001-2004 was around 12.3 hectares. The report noted that if this trend continues, it could mean a future employment land capacity of as little as 5 years (excluding possible future employment land opportunities in Massey North and the Hobsonville corridor). In 2005 this figure was further refined to as little as 3.6 years taking into account the effects of a constrained land supply on property prices¹. It is noted that the uptake of Working Environment land has

¹ Potential Employment Capacity of Working Environment Zoned Land Located Outside Identified Growth Nodes in Waitakere City (2007) – p6

been constrained by supply and is likely to have been higher had more land been available.

In addition to concerns about residential activities within the Working Environment, is the establishment of convenience-retail activities (where there is less than 100m² retail floor space). Such activities, particularly where they occur in clusters use up valuable Working Environment land without generating significant employment opportunities and can detract from the retail core of the city's town centres. This is most noticeable along the eastern side of Lincoln Road north of Te Pai Place and at the intersection with Paramount Drive. In addition to convenience-retail, considerable interest has been expressed from 'large-format' retail developers seeking to locate within the City. Due to the lack of vacant land within the City's Community Environment (within or adjacent to the town centres), developers have expressed interest in locating within the Working Environment particularly along Lincoln Road. This is in spite of Council provision for such activities within proposed future commercially zoned land that will form part of the expanded Massey North Town Centre.

STRATEGIC CONTEXT

Compared to other cities in the region, Waitakere provides a low number of jobs relative to its resident population. The city currently accommodates 14% of the Auckland region's resident population but provides only 8% of the jobs. The majority of jobs within Waitakere (approximately 74%) are filled by its residents, however more than 50% commute out of the City for work on a daily basis. This imbalance between resident population and the availability of local employment is viewed as a significant hindrance to Waitakere achieving a sustainable and robust local economy as well as avoiding the adverse environmental and social effects caused by a large commuter population.

Strategically, the availability of land for business growth has become a significant issue both locally and regionally. The recently published 'Auckland Region Business Land Strategy – October 2006' (ARBLS) predicts that the region is likely to face shortages of vacant business land somewhere between 2011 and 2020. If these predictions are closer to 2011 as expected, the capacity of vacant business land across the region will be only slightly greater than the conservative predictions for Waitakere (around 2009).

The ARBLS is a sub-set of the Regional Growth Strategy and is intended to provide a strategic framework for the location of future business growth in the Auckland region to 2031. Protecting existing vacant employment land and establishing new greenfield areas is a collaborative effort across the region involving the commitment of all the territorial authorities. However to date, the focus of the ARBLS has been addressing 'regional' capacity issues rather than employment land capacity 'inequities' on a city by city basis. Waitakere City Council has raised this issue with the ARC as part of its feedback on the ARBLS although it is noted that Regional Outcome 4 of the ARBLS does support local authorities maximising local employment opportunities in order to *'reduce unwanted traffic congestion, invigorate local centres and contribute to economic growth'*.

The collaboration of territorial authorities has already been seen in respect of recent District Plan changes under the LG(A)AA designed to better align District Plan land use and transport policies with regional objectives and policies consistent with the Regional Growth Strategy. The proposed plan changes include additions to District Plan objectives and policies to support the retention and protection of existing employment land (Plan Change 16) as well as provision for future employment land that includes a significant addition to the city's employment land north of the Massey North town centre (identified as the Massey North Employment Special Area - Plan Change 15) and within the Hobsonville corridor (Plan Changes 13 and 14) as well as new design controls for the Living (6) Environment to manage reverse sensitivity (Plan Change 17).

The ARBLS distinguishes two business sectors. The manufacturing, transport and storage, construction and wholesale trade (Group 1) sectors tend to seek large, relatively cheap vacant sites with good access to the motorways and away from residential areas. The retail, café/restaurants, finance and insurance, communication services, property and business services, health and education (Group 2) prefer to be located in or close to town centres, with ready access to a customer base and good road and public transport. The profile of businesses in Waitakere tends to fall within the Group 1 sector where manufacturing is the largest employment generator making up 21% of the city's employment.²

The bulk of Waitakere's potentially vacant Working Environment land that is situated in close proximity to the north-western motorway and away from residential areas is at the northern end of Lincoln Road (Lincoln Working Environment – approx 93ha). New employment land areas are proposed as part of the Massey North/Hobsonville expansion (NORsGA). The location of these areas meets the criteria attractive to large manufacturing, transport/storage, construction and wholesale businesses. It is noted that the proposed addition of the Massey North Employment Special Area has the added advantage of being situated close to a town centre.

The Council's own Long Term Council Community Plan (LTCCP) establishes a strategic directive for business development in the city. This objective was referred to in the 2004 report to the Committee.

"The Strong Innovative Economy" platform seeks to achieve the following:

2020: Waitakere is home to lots of innovative activities, providing local, quality work and development options for its people. Environmentally responsible businesses are supported and flourishing".

The LTCCP is further supported by the Council's Economic Development Strategy (EDS) - June 2004) sets out six objectives that relate to an agreed vision statement:

"Waitakere is home to innovative and sustainable economic activities which provide a range of quality local employment options for its people, enabling a growing proportion of them to work closer to home. All people of Waitakere have the opportunity to participate in, or benefit from this dynamic local economy."

Within its EDS (2004), the Council has expressed a desire to attract businesses that have a clean green image, that are innovative (such as film and marine based industries), as well as businesses that create significant and meaningful employment opportunities for the local resident population. In addition, improving the quality of the city's environment as a place to live and do business is a key objective. The 2004 EDS is currently under review.

The delivery of such strategic objectives are, to a large extent reliant on the manner in which land use activities are controlled through regulatory tools such as the District Plan. District Plan objectives and policies need to clearly articulate the purpose of land zoned for business purposes and the potential adverse environmental effects that can arise from an increasing commuter population while at the same time balancing the need to provide for other significant and unique land use activities that also provide economic and employment opportunities for the City.

² Potential Employment Capacity of Working Environment Zoned Land Located Outside Identified Growth Nodes in Waitakere City (2007)

ISSUES

The review addresses a number of issues including:

- The strategic importance of existing employment land (Working Environment) in Waitakere to provide local employment opportunities for its resident population and reduce out of town commuting;
- Existing District Plan objectives and policies and the extent to which they support and protect the use of existing Working Environment land for generating employment opportunities within the City and local businesses seeking to establish, relocate or expand;
- Existing District Plan Rules (a) - a review of existing rules that enable land use activities such as residential, retail and community facilities to establish within the Working Environment that in turn use up valuable employment land and potentially create reverse sensitivity effects;
- Existing District Plan Rules (b) - a review of rules that potentially create unnecessary and/or onerous hurdles for business to locate within the City such as parking and landscaping requirements;
- Identification of Industrial Air Quality Management Areas for heavy industrial activities;
- The issues discussed below in this report are wide ranging and complex. The report provides only an overview of the issues. The detailed analysis and discussion that underpins the review will be compiled into a Section 32 report to accompany a future plan change intended to address a number of these issues.

Existing District Plan Objectives and Policies Relating to the Working Environment

The Waitakere District Plan has a clear centres-based strategy to consolidate retail and some mixed use activities within its town centres. This is set out in Part 6.2.4 of the Policy Explanation section of the District Plan. The purpose of this strategy is to minimise the adverse environmental effects arising from high numbers of vehicle trips across the city (Policy 1.2, 1.3, 1.8, 4.1) and to protect the amenity and general vibrancy of the city's town centres (Policy 11.17). There is an expectation that the bulk of retail activities will locate within or peripheral to the existing town centres. However exceptions to this include "yard" based retail activities such as car yards that may have an adverse effect on the amenity of town centres as well as shops selling goods manufactured on-site, automotive parts, food and convenience shops (Policy 11.17a).

Based on this policy framework, it is not anticipated that significant retail activities will occur away from the town centres although the wording of policy 11.17 and its explanation does acknowledge the potential for larger, more bulky retail activities or destination stores that are incompatible with the pedestrian oriented nature of a town centre to locate away from the main centres. Policy 11.17 specifically refers to proposals for retail activity in Working Environments adjacent to town centres and along major roads requiring resource consent or a plan change to address the matters set out in Policies 1.3 and 4.1. Its explanation goes further by suggesting that retail stores that supply large or infrequently purchased items, or 'destination stores' (which are the sole or main destination of their customer's shopping trips) could be located 'alongside', or outside major town centres for instance on main roads where a suitable or appropriate location within the town centres cannot be found. This is providing the proposal does not conflict with the policy aims set out in Policies 1.3 and 1.4. Given the shortage of vacant land within the city's Community Environments, the potential for such activities to locate outside the main centres is significant. This issue is recognised in Policy 11.17(b) which is concerned with ensuring there is enough land for retail activities to expand within the main town centres.

The District Plan contains six Human Environments that provide for activities generating employment (aside from retail/office based activities provided for in the Community Environment). These include:

- Working Environment;
- Working Environment (Lincoln Road);
- Working Environment (New Lynn) – Plan Change 17;
- Massey North Employment Special Area – Plan Change 15;
- Hobsonville Marine Industry Special Area – Plan change 13;
- Hobsonville Village Centre Industry Precinct – Plan Change 14.

In respect of the city's employment areas, the District Plan restricts retail activities within these areas in order to support the amenity and focal point of the existing town centres. The Lincoln Rd Working Environment has policies that seek to maintain the high standard of amenity that exists in this area relative to other Working Environment areas as well as a range of location choices for businesses (Policy 11.24). Based on the policy explanation it appears that it also applies to the establishment of residential activities which are provided for within the Lincoln Road Working Environment to reduce home/work separation. Given the quality of business land in this area and the shortage of quality employment land generally, it is considered the wording of this policy and its accompanying explanation should be modified to reflect the strategic importance of the Working Environment.

Since the August 2004 agenda report, further proposed policies that recognise the strategic importance of Working Environment land have been added to the District Plan as part of Plan Change 16. These include Plan Change 16 Policy 0.10 which states:

"The supply of, and demand for, employment land should be continuously monitored so that sufficient land remains available to accommodate the city's employment growth and business needs. If necessary, further plan changes should be initiated at any time as necessary to provide for employment/business land needs."

The explanation that follows Objective 0 proposed in Plan Change 16 states that:

"a key driver for land use changes at Massey North/Westgate, Hobsonville Village and Hobsonville Airbase is to provide employment land within Waitakere City to stem the flow of residents out of the City to work which ultimately adds to the Auckland regions traffic congestion problems."

A further benefit of providing additional employment land in Massey North and Hobsonville is to assist in offsetting the proposed downsizing of Working Environment land in New Lynn by providing a possible alternative for existing businesses to relocate to. A lack of options for businesses seeking to relocate within Waitakere has been a key concern for Waitakere Enterprise which supports the retention and expansion of businesses in the City.

While the proposed introduction of Policy 0.10 establishes an obligation on the part of the Council to monitor its supply of employment land, it does little to deter other land use activities attempting to locate within the Working Environment zone. It is considered that a further policy that specifically restricts the location of retail and residential activities within the Working Environment is necessary as these areas are not required to fulfil the City's population growth objectives, nor are they areas suitable for mixed use. Significant strategic analysis has been undertaken by the Council to determine the capacity and population estimates for each of the city's town centres and neighbourhood centres. It is clear from this analysis that Working Environment land is not required to accommodate future population increases.

Policies that restrict residential and retail activities are proposed for the Massey North Employment Special Area. Rather than being permitted, convenience shops not exceeding 100m² (within a 500m radius), retail associated with manufacturing or yard-based activities, service stations and automotive marine products, parts and accessories will be limited discretionary (Policy 11.45). A further restriction requires that retail sales associated with yard-based activities, service stations and automotive marine products be limited to a designated area shown on the Massey North Urban Concept Plan.

Residential Activities within the Working Environment

The District Plan rules provide for some residential activity in the Working Environment. Rule 7 permits dwellings subsidiary to a non-residential activity on the same site. Residential activities that are not subsidiary to a non-residential activity are discretionary subject to assessment criteria. However these criteria relate to matters such as the amenity of the living environment and public safety rather than the adverse effects of establishing such activities on strategically important employment land. The absence of specific policies that refer to the strategic importance of business land along with poor linkages to rules and assessment criteria could potentially lead to further proliferation of residential activities within the Working Environment not envisaged by the District Plan. This has already been highlighted to the Committee in the Agenda report presented in 2004.

While containing some of the City's prime employment land even less stringent rules apply to the Lincoln Rd Working Environment. Policy 11.24 seeks to maintain the high amenity of this area and provide for a range of location choices for businesses, however greater flexibility for residential activities that are not subsidiary to non-residential activities is provided for. Within the Lincoln Road Working Environment, residential activities that are not subsidiary to non-residential activities are limited discretionary. Assessment is limited to matters of design, landscape treatment and screening and makes no reference to the strategic importance of the land for employment purposes. There is also little explanation given in the Plan for such an approach apart from a desire to help reduce home/work separation by providing for a reasonable level of residential activity in this area. The term 'reasonable' is undefined with no mechanism for preventing a future imbalance between residential and business activities.

Within the proposed Massey North Employment Area and the New Lynn Working Environment, residential activities are restricted as non-complying activities. These controls are linked to policies that recognise the strategic importance of the land to provide employment opportunities for the resident population and to avoid reverse sensitivity issues (Proposed policies 11.45 and 11.49). Both of these areas have the added advantage of being close to town centres that provide an alternative location for residential and mixed use development. Restrictions on residential activities in the general Working Environment are also considered appropriate. In order to protect strategically important Working Environment land it is considered appropriate to also restrict residential activities within the general Working Environment (except where they are closely aligned with on-site activities such as caretaker facilities) such as that proposed in Plan Change 17 for the New Lynn Working Environment.

In August 2004, the Council resolved to further investigate the effectiveness of the Working Environment rules with a view to preparing a plan change relating to the establishment of residential activities. Proposed options included splitting the existing Working Environment into two sub-environments, Working 1 and Working 2. Through objectives and policies, Working 1 would reinforce the strategic importance of business land where residential and most retail activities would be restricted. Working 2 could include areas more suited to residential or mixed use activities e.g. in close proximity to a town centre or public transport routes. This form of analysis and zoning separation is still considered appropriate and will be undertaken as part of the Section 32 report forming part of this plan change. Through this process it will be possible to determine whether there are parts of the Working Environment where more flexible controls could be applied allowing for some retail and residential activity.

Retail Activities within the Working Environment

The District Plan provides for some retail activities to establish within the Working Environment. These include convenience-shops, retail shops subsidiary to a manufacturing, takeaways, restaurants, service stations or retail activities that for amenity reasons would not typically locate within a town-centre, e.g. yard-based activities such as car sales. Convenience shops tend to be retail activities that serve the local working or resident population for example local lunch bars, video outlets, bakeries, chemists etc and are considered a necessary and valued part of local communities. The District Plan makes provision for convenience shops in what is very loosely defined as:

“a premises used for retail services or retail sales provided that retail sales shall be limited to one or more the following: food, beverages, books, magazines, and stationery items and healthcare items.”

As presently worded, the definition of convenience-shops provides for a wide range of activities largely due to the broadly defined term, ‘*retail services*’. Floor space restrictions only apply to retail floor space i.e. the area of the shop devoted to retail sales. There are currently no floor space restrictions on retail services. For example the size of video outlet store (considered a retail service) would only be constrained in terms of the size of the area devoted to the sale of items such as videos, confectionary etc. Based on the wording of Rule 5.1(a) the potential for proliferation of convenience-shops and including services is significant.

A report prepared by Hill Young-Cooper in 2004 demonstrated this highlighting a tendency for developments to cluster a number of convenience-shops together, for example a green grocer, video outlet store, a restaurant and health shop. This accumulation of several convenience-shops within one site or in close proximity to other convenience shops as seen along Lincoln Road is not an outcome envisaged by the Plan. Rather their function is intended to serve the local working and resident population and to complement the retail function of the major town centres.

Clearer policies and greater restrictions on convenience retail sales and retail services are required if the strategic importance of Working Environment land is to be recognised and protected. In addition, the Plan needs to better articulate the purpose of convenience-shops within the Working Environment to serve the needs of local workers and residents without undermining the retail function of the town centres. In this regard an explanation to Policy 11.17(a) should be provided with clear links to rules and assessment criteria. It may also be desirable as discussed above to further refine the Working Environment into two zones to restrict retail and residential activities entirely from some more strategically located parts of the zone. Careful monitoring of the supply of Community Environment land within neighbourhood centres should also be undertaken to allow expansion of convenience retail activities in these locations that serve the local resident population and to provide an alternative location to the Working Environment which tends to have greater availability of greenfield land.

A further issue for consideration is provision for food and beverage retailing within the Working Environment. Currently these activities are provided for under both Rule 5.1(a) and Rule 5.1(c) which has created some confusion over whether they should be restricted to 100m² (which would provide for smaller lunch bar/café type establishments) or unrestricted under Rule 5.1(c) which would enable any number of fast food and restaurant activities to establish with no restriction on floor space. While it may be appropriate to have some restaurant and fast food services located in the Working Environment, particularly along major roads, it is generally not in accordance with Policy 11.17(a) which states the retail activities in the Working Environment should be restricted.

Reverse Sensitivity

Reverse sensitivity is an issue that is becoming increasingly prevalent where incompatible land use activities that were previously separated through traditional zoning methods are locating closer together. This can be seen in the city’s town centres such as

New Lynn and Henderson where resident populations are increasing in close proximity to industrial activities that often generate adverse noise, air pollution and traffic effects.

Reverse sensitivity in broad terms is where a new activity has the potential to complain about the environmental impacts of an existing activity. It is sensitivity not to environmental impact, but to complaint about environmental impact. For example an existing industrial activity that produces air discharges experiences complaints from residents moving into new apartments that have been built on adjacent land even though it is operating lawfully.

In terms of Waitakere's Working Environment, the land most at risk are those areas adjacent to the main town centres New Lynn and Henderson where there are existing industrial activities. The regional intensification objectives of the growth strategy are likely to result in a significant increase in the number of people living in the town centres who in turn may complain about existing industrial activities and their effect on local amenity. Other parts of the Working Environment e.g. along Lincoln Road or smaller pockets in Te Atatu and Swanson are less likely to be affected as they are not the focus of residential intensification.

Some work has been undertaken in New Lynn as part of proposed Plan Change 17 to address the issue of reverse sensitivity. This includes provision for boundary setbacks and forced air ventilation systems. However wider consideration of this issue as it impacts other parts of the Working Environment is appropriate and will be undertaken as part of this plan change.

Landscaping and Fencing

In order to maintain the privacy and amenity of the adjacent areas and the existing streetscape there are requirements for landscape treatment in conjunction with the development of sites within the Working Environment. For sites under 2000m² this is in the form of a performance standard that requires minimum (%) planted areas from the road boundary. For sites over 2000m² a controlled activity consent is required where the development incorporates planting of at least 10% of the net site area. Some interest has been expressed in whether it is necessary to require consents for landscape treatment within the Working Environment and whether it creates unnecessary compliance costs. While some landscape treatment is considered beneficial in order to enhance the amenity of sites within the Working Environment (and support the Green Network concept), the extent to which this should involve a consent requirement warrants further investigation. In particular, the way in which other councils within the Auckland region have addressed this issue.

Similarly, there is concern that requirements for fencing of Working Environment sites and outdoor storage areas (adjacent to the Living and Open Space Environments and the College Special Area), involving 1.8 metre close boarded fences are becoming targets for unsightly tagging and vandalism. Investigation of other options for screening and protection of Working Environment sites and outdoor storage areas from adjacent residential and parks areas also forms part of this review.

Car Parking

Through recent requirements for District Plan changes under the LG(A)AA, the need to review car parking requirements in both the Community and Working Environments has come to the attention of staff. In particular the extent to which current car parking controls are generating an over supply of car parking which may be surplus to business requirements but nevertheless provided in order to avoid costly consenting processes. This trend is inconsistent with the Council's objectives to encourage increased patronage of public transport (particularly within town centres and major transport corridors where significant investment is being made) as well as protecting valuable Working Environment land for the establishment of new businesses.

The current requirements for car parking in the Working Environment are 1 on-site car park for every 20m² of retail gross floor area and 1 on-site car park for every 35m² of non-residential gross floor area. Council officers have expressed concern that such requirements may be excessive and that a distinction could be made between office based activities versus manufacturing and warehousing that may have less need for on-site car parking.

Much of the Council's focus to date has been on parking requirements within the town centres (Community Environment). Some consideration has been given to car parking maximums in order to allow the market to determine whether additional car parking is warranted. However, a report commissioned from G B Arrington by the Council has suggested that while car parking maximums may be a useful tool in controlling excessive provision of car parking in town centres and employment areas, this should be done in the context of a comprehensive car parking management plan.

Community Facilities (Churches)

Recent concern has been expressed about the establishment of churches in the Working Environment. In particular the fact that they occupy large sites (including car parking areas) but return little to the community in terms of employment opportunities or rates to Council. Within the Working Environment, the establishment of churches is provided for as a 'Non-Residential' Activity. Such activities are permitted providing they comply with the relevant bulk and location controls, including car parking requirements.

It is difficult to determine categorically, the extent to which churches detract from the employment objectives of the Working Environment. Churches in general tend to rely on voluntary labour (whose numbers can vary significantly throughout the week) engaged in some form of social service. By their nature, churches often have an outward community focus and are involved in a wide range of social services. They also play a significant role in the spiritual wellbeing of local communities.

Community and Working Environments are logical places for churches to locate in that they often provide opportunities for larger lot sizes and a local built form that is consistent with their own (particularly modern churches) as well as external facilities such as car parking areas. In addition, churches often have other social and community facilities associated with them such as cafes and pre-schools. Their operational activities also require an ability to make noise (such as worship music and singing) and generate traffic throughout the day and into the evening. Such activities are less likely to be tolerated in more sensitive residential areas, although churches are provided for in the Living Environment as a 'Discretionary (Non-Residential) Activity' where the gross floor area is greater than 250m².

It is noted that the Auckland, North Shore and Manukau City all provide for the establishment of churches (and other places of assembly and worship such as mosques or temples) within their Business zones, although restrictions are imposed in heavy industrial zones in Manukau and Auckland. In this regard, it would be unusual for Waitakere to restrict the establishment of churches in its Working Environment given the nature of their activities and the contribution they make to the social wellbeing of local communities. However should there be decision in the future to split the existing Working Environment to provide for a more business/industrial focussed activities, it may be appropriate to restrict 'places of worship/assembly' in this zone.

Industrial Air Quality Management Areas (IAQM)

Industrial Air Quality Management Areas have been established under the Regional 'Air Land Water Plan' to provide for heavy industrial activities within the metropolitan urban limits. Auckland City, Manukau City and Papakura District Councils have made specific provision within their District Plans for the discharge of contaminants to air from heavy industry. These district plans have industrial zones that support reduced amenity and

restrict sensitive activities such as residential and retail. They are therefore considered suitable as areas to promote industrial intensification. Such zones have been included within the Regional Industrial Air Quality Management Areas as shown in the Regional Air Land Water Plan.

There are no IAQM's in Waitakere, North Shore City or Rodney District. This is not because there are no heavy industrial activities operating, but because these District Plans (including Waitakere) do not make appropriate provision for such activities to operate in relative isolation from more sensitive residential, commercial community orientated activities.

In response to a submission from Waitakere City Council to the Regional Air, Water Plan seeking that Working Environment land surrounding and on both sides of The Concourse be identified as an IAQM, the Regional Council cited Policy 10.1 of the Waitakere District Plan which states:

"Non-residential activities should be managed in a way that emissions of odour, dust... and other discharges to air do not cause a nuisance, or otherwise have an adverse effect on the health of occupants of the surrounding residential properties.... Where activities cannot be managed in a way that avoids the creation of a nuisance on adjacent sites;

- *They must be located at a sufficient distance from those sites, or within an appropriate Working Environment;*
- *Or appropriate performance measures to minimise emissions should be imposed so that the adverse effects on any emission are avoided."*

The Regional Council's Decision Notice 26 in respect of IAQM's noted that Waitakere's District Plan does not explicitly provide for heavy industry in a manner similar to the Business 5 and 6 zones of Auckland City or the Business 6 zone of Manukau City. That is, there is no provision in the Working Environment for a reduced level of amenity and it does not seek to restrict sensitive activities from locating in those areas. These are key criteria that have been used in determining where IAQM areas are appropriate. Currently heavy industry that involves 'Part A' processes is non-complying in the Working Environment. Furthermore the majority of the Working Environment is close to more sensitive zones including Living (residential) and community (commercial/retail centres).

In respect of IAQM areas, further work needs to be undertaken to determine whether heavy industrial activities (of which there are some already operating under existing discharge consents) are appropriate for Waitakere and if so, where they could be accommodated in the future. Clearly they are not suitable in areas close to sensitive residential and commercial zones. Nor may they be appropriate in proposed new employment areas such as Massey North and the Hobsonville corridor.

Options for Future Plan Change(s)

Based on the above discussion, there is a need to make changes to District Plan objectives, policies and rules and assessment criteria to better reflect the strategic importance of the city's Working Environment. Without a clear strategy to increase local jobs and reduce the number of commuters out of the city on a daily basis, Working Environment land is likely to be further eroded by activities that do little to provide employment opportunities for the city's resident population.

A number of options are available to the Council which need to be more thoroughly considered as part of a Section 32 analysis. Such changes may include:

- Strengthening existing objectives and policies to more clearly articulate the Council's intent on providing more local jobs to reduce the number of people commuting out of the city on a daily basis to work;

- Strengthening existing objectives and policies to more clearly articulate the role of the Working Environment and the part retail and residential activities have to play, if any;
- Methods to achieve this could include splitting the Working Environment into two zones. A more pure Working Environment could be established where residential and retail activities (and potentially community facilities such as churches) are restricted along with a more flexible Working Environment that might provide for some of those activities;
- Options for dealing with convenience-shops. In particular the definition of 'convenience-shop' with some control over the size and distribution of such activities including retail services;
- Restrictions on residential activities especially within the Lincoln Road Working Environment;
- A wider review of reverse sensitivity issues as they impact Working Environment land throughout the city;
- Reviewing landscaping/fencing requirements;
- Reviewing car parking requirements in the context of a comprehensive car parking strategy.

The next steps will be to consider issues set out above and develop options that address each of them. This will be presented in a Section 32 report that will form the basis of a proposed plan change.

RESOURCES

The Council has committed staff resources to thoroughly researching and progressing District Plan changes to address these issues.

CONCLUSION

The purpose of this report has been to set out matters arising from a review of key issues pertaining to the Working Environment. Ongoing monitoring of the Working Environment, its function and objectives is critical if the city is to maintain and expand opportunities for local employment and a robust local economy. Strengthening existing District Plan objectives, policies and rules that relate to the Working Environment will complement work being undertaken in other parts of Council to support and nurture local businesses.

RECOMMENDATIONS

1. That the Waitakere District Plan Working Environment – Review of Key Issues report be received.
2. That a comprehensive report be prepared setting out in detail the key issues arising from a review of the Waitakere District Plan's Working Environment and options for future management which will form the basis of a Section 32 report that will accompany any necessary District Plan changes.
3. That any necessary District Plan changes addressing issues relating to the Working Environment and supporting the strategic importance of the Working Environment to provide local employment, be drafted and reported back to the Planning and Regulatory Committee for consideration along with the Section 32 report.

Report prepared by: Deanne Rogers, Planner: Policy Implementation.



10 PROPOSED PLAN CHANGE 24: COMMERCIAL SEX ACTIVITIES

INTRODUCTION

This report addresses the issues that relate to Proposed Plan Change 24. The Proposed Plan Change seeks to insert into the District Plan a policy and rule framework to administer the environmental effects arising from the commercial sex industry in Waitakere City. The Planning and Regulatory Committee will be required to hear submission on the proposed Plan Change 24: Commercial Sex Activities.

This report sets out the background to the Proposed Plan Change, the various statutory requirements, and provides an analysis of the submissions that were received during notification.

SUMMARY

A92-A121

The Council's Planning and Regulatory Committee approved the draft Plan Change 24 for notification at its meeting on Monday, 12 December 2005. The Proposed Plan Change was publicly notified on Wednesday, 20 December 2006, and 4 submissions were received. A summary of submissions was notified on Wednesday, 28 March 2007. One further submission was received. A copy of the submissions and the further submission are attached at pages A92 to A121.

The issues raised in submissions generally related to the following matters;

- Opposing small brothels acting as home occupations in residential areas, and seeking a ban for small brothels;
- Amendments to clarify the policy, rules and assessment criteria in the Plan Change;
- Clarification of the definition of terms used in the Proposed Plan Change.

A122-A147

Having considered Proposed Plan Change 24 against the relevant statutory criteria, and having regard to the submissions received, it is recommended that, subject to any contrary or additional evidence submitted at the Hearing, Proposed Plan Change 24 be approved with amendments as set out at pages A122 to A147 of this report.

BACKGROUND INFORMATION

The Prostitution Reform Act 2003 (PRA) decriminalises the soliciting and provision of sexual services for reward. Decriminalisation means that the previous laws relating to prostitution no longer apply, and it is now subject to the same laws and controls that regulate other businesses. It is now viewed by Parliament as just another "commercial" activity, meaning that sex workers have the same status in law as their clients; and labour laws and health and safety regulations can be applied.

Reports on the implications of the PRA were presented to the August 2003 and July 2004 meetings of the (then) Environmental Management Committee, the October 2003 Council meeting, and the December 2004 Planning and Regulatory Committee meeting. At its July 2004 meeting of the Environmental Management Committee, the Committee resolved

- "2. That the Council continue to use the current District Plan and policies to regulate commercial sex premises (including brothels, sex shops, striptease clubs, massage parlours or activities of a similar nature) while it develops an integrated strategy and regulatory framework for dealing with any effects relating to the decriminalisation of prostitution."

1283/2004

The Planning and Regulatory Committee considered the Draft Commercial Sex Strategy in March 2006. The Committee resolved:

- “2. That the Planning and Regulatory Committee approves that the revised draft Commercial Sex Strategy and associated District Plan Changes be put out for public consultation.”

385/2006

Following receipt of comments on the Draft Strategy, the Draft Plan Change was amended to reflect the revisions to the Strategy that related to matters able to be addressed via the Resource Management Act framework. This has led to the notification of Proposed Plan Change 24.

STRATEGIC CONTEXT

As a result of the decriminalisation of prostitution, the Council has developed a Commercial Sex Strategy (the Strategy). This Strategy seeks to address issues relating to prostitution in the City. The Strategy was approved by the Planning and Regulatory Committee in December 2006.

The Strategy is supportive of the Prostitution Reform Act's endeavour to decriminalise prostitution and to create a framework that safeguards the human rights of sex workers and promotes the welfare and occupational health and safety of sex workers (amongst other things). Several of Council's strategic priorities are supported by the Strategy, in particular Safe City, which requires a focus on occupational health and safety considerations in addition to the general safety of the community. Safety in the community will be enhanced by influencing prostitution activities to take place on privately owned premises in well-managed brothels and away from public spaces and streets.

The Council has strategic goals for the City's town centres, and is working with a range of partners (including business and community groups) to revitalise the centres to make them attractive, economically vital, safe and people friendly. With this as the focus, the Strategy seeks to ensure that sex industry premises are integrated into the town and neighbourhood centres by emphasising the need for them to integrate into the overall urban design vision.

The objectives of the Strategy are:

1. Recognition of legitimacy of the sex industry
2. Reduction of environmental effects
3. Awareness of developments in the sex industry
4. Collaborative working with key stakeholders
5. Commitment to developing workable responses and solutions
6. Establishment of minimum hygiene standards

The Strategy outlines five approaches to achieve the objectives, which are:

1. Manage the adverse environmental effects of brothels through location controls
2. Controls on signage
3. Controls on hygiene standards
4. Urban design standards and guidelines
5. Monitoring and response measures

The Strategy applies to brothels, businesses of prostitution and commercial sexual services, but does not address issues relating to street prostitution. This approach aligns with the Prostitution Reform Act.

STATUTORY REQUIREMENTS AND PLANNING FRAMEWORK

Resource Management Act

The Resource Management Act 1991 (RMA) provides for changes to be made to the District Plan. The Section 32 report for Proposed Plan Change 24 clearly identifies the relevant sections of the RMA, and other statutory documents that must be taken into account when notifying a Proposed Plan Change.

The purpose of the RMA as outlined in Part II of the Act is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the RMA is to assist the Council to carry out its functions. The 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. The Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

The Act provides a statutory framework for the management of natural and physical resources. The purpose of the RMA is *'to promote the sustainable management of natural and physical resources'*.

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 managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.

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

Section 31 sets out functions of territorial local authorities for giving effect to the Act within its boundaries. These functions include the integrated management of the natural and physical resources of the district and the control of the effects of the use or development of land.

Section 32 imposes a statutory responsibility to evaluate the options available to achieve the Council's particular objectives or policies.

Part V of the Act relates to Standards, Policy Statements and Plans. Section 73 of the Act provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.

Section 74 states the matter Council must have regard to when changing its District Plan and includes its functions under the act and any Regional Policy Statements. Under section 75, a District Plan must give effect to a Regional Policy Statement.

Section 76 requires that when making a rule that Council must have regard to the actual or potential effect on the environment including adverse effects of that rule.

Section 35 of the Resource Management Act 1991 requires that a local authority monitor the suitability and effectiveness of its plan in managing the City's environment. Council therefore has a duty and care to ensure that its District Plan remains relevant in order to achieve integrated management of its natural and physical resources.

Auckland Regional Policy Statement

Section 75(3) of the Resource Management Act 1991 requires that a district plan should give effect to a regional policy statement. The Auckland Regional Policy Statement (RPS) provides a resource management framework for managing environmental effects within the Auckland region.

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. These Strategic Policies recognise 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.

Proposed Plan Change 24 is also 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. The Rules do this 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.

Proposed Plan Change 24 is also consistent with Proposed Plan Change 18 to the District Plan – Citywide Urban Design Rules-which is considered to give effect the RPS. Providing for commercial sex activities within the City provides choice for residents and the community whilst ensuring that amenity values are protected, thus giving effect to strategic policies relating to urban design and urban structure.

Current District Plan Provisions

The current District Plan provisions relating to the commercial sex industry are non-existent, as the District Plan was prepared prior to the enactment of the Prostitution Reform Act 2003. The industry is managed by the pre-existing policies and rules within each Human Environment, and these are not designed to address any adverse effects arising from the operation of the industry.

Section 32 Considerations

Section 32 of the Resource Management Act 1991 requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted.

The Council's obligations under section 32(3) 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 providing reasons for that evaluation.

The Section 32 analysis done prior to notification of Proposed Plan Change 24 identified that the Proposed Plan Change was necessary and the most efficient and effective means of achieving the purpose of the Act. The section 32 analysis has been updated in this report where recommendations are made in response to submissions that would amend the Proposed Plan Change.

ANALYSIS OF SUBMISSIONS

A total of four submissions, and one further submission were received on Plan Change 24. A full copy of the submissions is attached in Appendix 'A' of this report.

Given the relatively small number of submissions that were received, the approach taken for the analysis of submissions for this Hearing is to take each submission and discuss the matters raised.

Submission from Tjeerd Smilde (Submission 24/1)

- The submitter seeks that small brothels should be banned from operating in residential areas.

Mr Smilde's submission was supported by Further Submission 24/5.

Discussion

This submitter has concerns relating to brothels operating in residential areas, and draws on personal experience to form this view. The submitter raises issues associated with personal safety within the immediate community surrounding a small brothel. The submitter seeks that small brothels be enabled to occur in industrial areas, away from residential areas.

It is understood that the Council has taken action against the brothel operating in Mr Smilde's locality. The effects identified by Mr Smilde are part of the reason why the Council has publicly notified Proposed Plan Change 24, as the Council currently has little ability under the District Plan to address environmental effects arising from brothels in residential areas. Mr Smilde also raises social issues associated with the brothel operating in his locality.

The Proposed Plan Change will assist in avoid the issues the submitter raises by requiring small brothels to obtain resource consents if they wish to establish in residential Human Environments. This will then give the Council more ability to act if the small brothel then operates in breach of the conditions of its resource consent.

The Council has previously taken the view that banning small brothels in residential areas is unenforceable (i.e. implementing a ban will not stop brothels operating). A ban will also act to re-criminalise sex workers, which is an approach that is not in keeping with the Prostitution Reform Act 2003. Consequently Mr Smilde's submission is not supported.

It is recommended that:

Submission 24/1 be rejected.

Submission from Waitakere City Council (Submission 24/2)

- This submitter supports the Proposed Plan Change and seeks a number of detailed amendments to the Policies and Rules that are provided in Proposed Plan Change 24.

Discussion

The Council made a submission in support of Plan Change 24, subject to further detailed amendments as identified in the submission. The Council's submissions were as follows.

Typographical Errors

This submission is supported as it seeks to clarify matters within the District Plan and enable Plan users to understand and effectively implement the District Plan Provisions.

Retail Sales.

There is a strong likelihood that brothels that establish in the Working Environment will want to sell goods usually found in "adult" shops. Currently the District Plan would make this type of retail sale in a Working Environment a permitted activity in terms of such sales being in a convenience shop associated with a brothel. These shops are limited by the District Plan to 100 square metres, and if greater floor space is proposed, a resource consent for a discretionary activity is required. The definition of "convenience shop" specifies that certain goods can be sold, and the definition of "retail sales" enables 10 percent of that floor space to be utilised to sell goods not listed in the definition. These provisions cover the variety of goods expected to be retailed as a subsidiary activity in brothels located in the Working Environment. It is not therefore necessary for Working Environment Rule 5: Retail Sales to be amended.

The Council does not wish to encourage a proliferation of activities that have retail sales as their sole function in the Working Environment. A discretionary activity resource consent will provide the necessary consideration of the nature and extent of the retail sales proposed as a subsidiary activity to a brothel if that proposal exceeds 100 square metres.

Policy 11.18

The submission seeks to delete explanatory text associated with Policy 11.18, as explanation of activity status is unnecessary. This deletion is appropriate.

Policy 11.50

This submission seeks to clarify the Council's intention for brothels in terms of their location above ground. This phraseology is intended to mean at the first floor of a building or above. This amendment is supported as it clarifies the intention of the Proposed Plan Change. A further clarification where the words "...the proposed activity..." is replaced by the word "...prostitution..." is also supported as it provides greater clarity and certainty.

Section 15 of the Prostitution Reform Act

This submission seeks to make it clear that section 15 of the Prostitution Reform Act will be applied to all resource consent applications. This amendment is supported as it provides greater clarity and certainty.

Waitakere City Council Proposed Plan Change 18 Urban Design Matters

The Council expects that a commercial sex activity will locate in new buildings, or may seek to alter existing buildings as part of its establishment. The submission seeks to ensure that the Council's policy of directing these activities to the first floor or above apply to new buildings or amendments to existing buildings. Through the hearing of submissions on proposed Plan Change 18, City Wide Rule 4 Building Design – Mixed Use has been deleted, and it is appropriate to remove cross references to this Rule. These amendments are appropriate as it provides greater clarity and certainty.

Assessment Criterion 1(f)

This submission incorrectly refers to Assessment Criterion 1(f), when the matter it refers to is contained in Assessment Criterion 1(e). It is important to widen the scope of this assessment criterion, as there are many public places that may not be a "street" in the literal meaning of the term. This amendment is appropriate as it provides greater clarity and certainty.

Assessment Criterion 1(g)

This submission seeks to better align Assessment Criterion 1(g) with Policy 11.50, and in particular the Council's approach to ensuring that commercial sex activities do not locate together in clusters. This amendment is appropriate as it provides greater clarity and certainty.

Definition of Prostitution

This submission seeks to include a definition of the word "prostitution" to ensure that there is no uncertainty about what is meant when this word is used. The definition of prostitution is unnecessary as the Proposed Plan Change refers Plan users to the definition of commercial sexual services.

The word "prostitution" is, however, replaced by "commercial sex services" in the definition of the term "small brothels" to clarify this matter. This amendment is accepted in part as it provides greater clarity and certainty.

It is recommended that:

Submission 24/2 be accepted in part, to the extent identified in the discussion above.

Submission from M Mahwhinney and R Nicolson (Submission 24/3)

These submitters made detailed submissions on wording within the Proposed Plan Change.

The submitters supported the proposed amendments to Policy 11.11, City Wide Rule 1 Commercial Sex Activities, and City Wide Rule 2 Commercial Sex Activities - Signs.

Policy 11.18

The submitter seeks the amendment of the Explanatory text introduced by the Proposed Plan Change to suggest that small brothels operating as a home occupation must have similar effects to other home occupations. It is expected that the environmental effects of small brothels acting as a home occupation will be similar to other home occupations, and if the effects are not, then those effects will be addressed through the resource consent process. The approach advocated by the submitter is not consistent with the Prostitution Reform Act and would be inconsistent with the effects based approach of the District Plan. This submission is not supported.

Policy 11.50

The submitter seeks the substitution of the word “discouraged” with the word “prohibited” in Policy 11.50. This relates to commercial sex activities other than home occupations located in residential Human Environments. The term “discouraged” is carried through to the City Wide Rule 1 by making such activities non-complying. To make the substitution sought by the submitters would require the elevation of this activity to be a prohibited activity, which is not consistent with the Council’s approach to commercial sex activities. This submission is not supported.

City Wide Rule 2 Commercial Sex Activities - Signs

The submitter seeks the prohibition of signage for commercial sex activities in all Human Environments, other than the Community and Working Environment. Such an approach is not consistent with the Prostitution Reform Act and would be inconsistent with the effects based approach of the District Plan and so this submission is not supported.

Non Residential Activities

Item A

The submitter seeks that every person involved in a home occupation must reside on the site of the home occupation. The submitter is concerned that sex workers are not prepared to work in their own areas, and so will travel to work at another sex worker’s home occupation.

The District Plan requirement applies to all home occupations, not just small brothels. It is considered that travel to a home occupation by three sex workers will not amount to a significant traffic generation effect from their travel to and from work. It is likely that the sex workers will travel from their home to a place of work, and the effect of that travel will be less than minor. The effects of patrons visiting small brothels are addressed by the relevant Human Environment Rules. The approach advocated by the submitter is not consistent with the effects based approach of the District Plan, and so this submission is not supported.

The submitter also seeks that the definition of “Small brothels” be amended to reflect this submission, and this is also not supported for the reasons provided in the paragraph above.

Item B

The submitter supports the exclusions that are provided for in discretionary activities, as long as the bullet points that follow are all included. This submission appears to mainly apply to the Living Environment, and can be addressed by improving the punctuation of the Living Environment Rule.

Item C

The submitter supports the limitation on the hours of operation contained within the non-residential activity rules.

It is recommended that:

Submission 24/3 be accepted in part, to the extent identified in the discussion above.

Submission from the New Zealand Prostitutes Collective (Submission 24/4)

The New Zealand Prostitutes Collective provided a discussion of By-laws, and the merits of By-laws vs District Plan Changes. The Collective consider that a District Plan Change may subvert appeal options for people with an interest in the regulation of prostitution. This view is not accepted by the Council.

The Collective wish to ensure that regulation ensures that sex workers are able to remain within the law to avoid harm to themselves. The Council considers that the Proposed Plan Change achieves this, by enabling small brothels to operate in residential areas as home occupations, while larger brothels are encouraged to locate in Community and Working Environments.

The Collective seek the clarification of definitions within the Proposed Plan Change, in particular the exclusion of small brothels from the definition of Commercial Sex Activities. This definition has been formulated to exclude small brothels acting as a home occupation from being subject to City Wide Rule 1. Small brothels acting as a home occupation in residential human environments are assessed using the existing policies and rules that apply to non-residential activities and home occupations in that Human Environment. Small brothels that are not home occupations are subject to City Wide Rule 1.

The Collective also wish to ensure that commercial monopoly situations are not able to be created by the District Plan. While such considerations are outside of the scope of the Resource Management Act, the Council considers that the Proposed Plan Change enables a range of large and small brothels to establish, thereby avoiding any monopoly situations.

The Collective are concerned that sex workers operating in their home may be exposed to the public by the requirement to obtain a resource consent. Notification guidance is provided for any "commercial sex activity". Small brothels acting as home occupations are expressly excluded from the definition of commercial sex activities, and so if they meet the permitted activity status, will not require a resource consent. However, all non-residential activities operating outside the permitted activity hours of operation will need a notified resource consent. The Collective's concern is about the safety of the sex workers, and while this is an issue that the New Zealand Police may address in terms of personal safety, it is not considered appropriate to enable sex workers to avoid a resource consent on this basis.

The Collective's submission was opposed by Further Submission 24/5.

It is recommended that:

Submission 24/4 be rejected, as the matters raised in the submission are addressed in the discussion above.

RECOMMENDED CHANGES TO THE PLAN CHANGE

A122-A147 Changes to the text of Proposed Plan Change 24 as recommended in the analysis of submissions are included in the Table of Changes at pages A122 to A147 attached to this report.

CONCLUSION

A122-A147 This report sets out the background, issues and Section 32 considerations for Proposed Plan Change 24. In addition, the report considers issues raised in submissions on the Proposed Plan Change, and recommends changes to the Proposed Plan Change where the submissions have merit under the Resource Management Act 1991 and meet the statutory requirements of that Act. The changes are contained in a revised version of the proposed Rule, at pages A122 to A147.

RECOMMENDATIONS

1. That the Proposed Plan Change 24: Commercial Sex Activities report be received.
2. That the Planning and Regulatory Committee Hear submissions to the Proposed Plan Change 24: Commercial Sex Activities.
- A122-A147* 3. That pursuant to Clauses 10 and 16 of the First Schedule of the Resource Management Act 1991, Proposed Plan Change 24: Commercial Sex Activities, is adopted, with the amendments as described in Sections 8.0 of this report and listed in attachments at pages A122 to A147.
4. That pursuant to Clause 10(1) of the First Schedule to the Resource Management Act 1991, the relief sought by the submitters is accepted in part or rejected, as outlined in the discussions relating to each submission in the body of this report.

Report prepared by: Eryn Shields, Principal Planner, Resource Management.



PART D - PUBLIC EXCLUDED MATTER

11 DISTRICT PLAN UPDATE – MAWHINNEY APPEAL

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

PROCEDURAL MOTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following part of the proceedings of this meeting, namely, District Plan Update – Mawhinney Appeal.

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

General subject the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"> District Plan Update – Mawhinney Appeal 	The withholding of information is necessary in order to: <ul style="list-style-type: none"> Maintain legal professional privilege. 	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

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

- The report contains information which if released will result in loss of legal professional privilege and could affect the Council's negotiations.*

