

## ISSUES

### Existing Provisions of the Waitakere City District Plan Relating to the Working Environment

The District Plan includes rules to control residential activities within the Working Environment. Under Rule 7 of the District Plan, the establishment and use of a dwelling which is subsidiary to a non residential activity on the same site is a permitted activity. This rule allows for the establishment of caretaking facilities, but recognises the primary use of the site as being devoted to non residential activities.

Residential activities that are not subsidiary to a non residential activity within the Lincoln Working Environment can be established as a limited discretionary activity. All other residential activities that are not subsidiary to a non residential activity within the Working Environment are a discretionary activity. The plan includes a few brief assessment criteria relating to design and on-site amenity issues. These criteria are very general and are open to a wide interpretation.

To date, surveys reveal that there are approximately 1150 medium density residential dwellings established or consented to on Working Environment land. This residential development takes up approximately 20 hectares. Concerns have been raised regarding the lack of good design and on-site amenity for some of those residential developments that have been established within the Working Environment.

There are presently no policies in the District Plan regarding the strategic importance of Working Environment land for providing business opportunities. The District Plan does not currently seek to maintain a supply of business land. The plan does seek to encourage intensification of activities in the urban area, particularly in relation to Town Centres. While this does provide opportunities for intensification of activities and increased employment opportunities, it is considered that such intensification will not provide for all business growth of the City. There does need to be an ongoing supply of greenfield land for new business activities.

### Issue/s Identification

2 As of June 2004, Waitakere City currently has 29.7 hectares of vacant land and 76.9 hectares of potentially vacant land in the Working Environment, giving a total area of around 106.6 hectares. Appendix A includes details of definitions of vacant and potentially vacant land at pages A1 to A2. In 2001, there were 145 hectares of vacant and potentially vacant industrial land.

The uptake of Working Environment land for the past three years has been around 12.3 hectares per year, which means that there is a "capacity" of around 8.7 years. The reality is however that this estimate is overly generous as some of this potentially vacant land may not become available for some time. For example, there are 13.5 hectares at 12 Selwood Road which is subject to a Designation in favour of Radio New Zealand, and is unlikely to be developed for business use in the short term. Likewise some of the potentially vacant land may not be suitable/attractive for industrial/business development at the present time. Overall, there is a shortage of large sites for larger footprint business activities. The accessibility of this existing land is also an issue.

Prior to 2001, the uptake of Working Environment land was 17.6 hectares per year. The rate of take up is largely dependant on when the land is actually available for development. For example, there are large areas of potentially vacant land available between Lincoln Road and Central Park Drive, which will not be readily available until the proposed roading Designation becomes operative. Once the internal roading network has been established, it is anticipated that the uptake rates of this land will be high.

Given the issues outlined above, it is considered that in actuality the City only has about 5 years worth of available vacant Working Environment land.

If suitable land is not available in Waitakere City, it is likely that businesses will locate elsewhere in the region. It is worth noting that North Shore City had a business land uptake of 28 hectares last year (2003).

There are opportunities for additional employment land to be provided in the Northern Strategic Growth Area, as indicated in the Western and Southern Sector Agreement. However, taking into account the necessary resource management processes that will need to be followed, and then the necessary site development works (installing infrastructure), this land may not be available for a number of years.

The provision of land that has been primarily identified for employment activities is considered to be of significant importance to the sustainable management of Waitakere City. This importance stems from the need to ensure that there is an appropriate balance between population and employment within the City. At the present time, Waitakere City experiences a high reliance on employment in other parts of Auckland by Waitakere residents. It is currently estimated that up to 63% of the resident workforce is employed outside of Waitakere City. This reliance contributes to demand and congestion on the transportation network with associated impacts on air and water quality.

The establishment of additional employment opportunities within the City lessens the reliance on centres elsewhere in the Auckland region for employment. Furthermore, additional employment opportunities will be demanded by residential population growth. The opportunities for further business growth are becoming diminished as the Working Environment land supply diminishes, and as this land is used for residential purposes.

From a regional perspective, it is worth noting that in comparing the total employment land with similar Councils such as North Shore and Manukau City, Waitakere City is already significantly underserved with appropriately identified business land.

Recent research also shows that the level of residential growth in Waitakere City is disproportionately larger than the uptake of business land. It would seem that we are not providing sufficient business land/business opportunities within the City to meet the increasing residential population. This means that the majority of new and existing residents will continue to seek employment outside of Waitakere, thereby reinforcing the suburban nature of the City. This is likely to account for the number of people leaving Waitakere City to work increasing from 60% to 63% over the last 10 years.

The above analysis highlights/confirms two key issues. There is a need to retain existing land for business purposes, unless there are special circumstances that warrant residential use. There is also the need to provide additional business land to redress the historical shortfall for the past number of years and to meet the demands of the ever-growing residential population. The issue of the provision of additional business land is being addressed as part of the review of the Northern Strategic Growth Area. This report focuses on the existing Working Environment land.

The implications for residential activities within the Working Environment differ depending on the particular area and its function. There are positive effects associated with residential and mixed-use activities within Town Centres such as New Lynn and Henderson. For example a residential population in town centres makes shopping precincts safer, contributes to more efficient public transport and reduces the number and distance of trips as these areas are generally located closer to places of employment (than residential zones) and residents can use means other than private cars to get to work. Positive effects can also occur through the creation of more vibrant communities and the establishment/growth of night time/entertainment/tourism economies.

In contrast, those residential activities which establish on Working Environment land, which are not within a town centre or near accessible public transport do not offer the same benefits as these areas are not intended to be centres but places of employment.

The result of this is the inefficient use of land through the loss of employment generation potential. This could exacerbate problems of stifling economic growth opportunities. There are also issues of reverse sensitivity where lawfully established businesses are threatened by residential activity, or discouraged from locating in business areas where residential units are present. This is particularly relevant for those businesses that can be noisy or noxious which is a feature of many of those areas located outside the town centres.

A loss of employment land may potentially reduce opportunities for relocating within the City due to the shrinking business land supply. This may result in a risk to the local economy of losing a wide range of business types.

The lack of business land is likely to see a continuing increase in vehicle trips and distances as residents travel to employment in other centres. Once land has been established for residential purposes, it is irrevocably removed from redevelopment due to unit titling.

As noted above, concerns have also been raised regarding the lack of good design and on-site amenity for those residential developments that have been established within the Working Environment.

#### **Potential District Plan Change(s)**

The increasing strategic importance of Working Environment land means that this needs to be reflected in the policies, rules and assessment criteria of the District Plan. It is anticipated that the District Plan will be amended to reflect the strategic importance of this land. The policies of the District Plan, as they apply to the Working Environment, will be reviewed and it is likely that additional policies will be proposed which recognise the strategic importance of providing a ready supply of employment land. Consequently the rules will encourage employment activities, and restrict areas where residential is not considered to be an appropriate activity in The Working Environment.

It is proposed that the Working Environment be divided into two sub-environments, to be named Working Environment 1 and Working Environment 2.

Areas identified as Working Environment 1 will refer to policies in the District Plan which reinforce the strategic importance of business land and avoid residential activities. It is anticipated that residential activities will be a non-complying activity within Working Environment 1.

It is anticipated that some areas will be identified as Working Environment 2, which are likely to be areas with characteristics that may lend themselves to residential or mixed-use activities, subject to meeting certain criteria including, among other things, proximity to a town centre and public transport, mitigation against reverse sensitivity, design and on-site amenity controls.

It is considered that the Resource Management Act 1991 provides the most appropriate mechanism to address this resource management issue. The potential for an irreversible loss of this strategically important business land is likely to have a detrimental effect on the provision of future employment opportunities.

### **Approaches taken by other Local Authorities to the Issue**

Waitakere City Council was the first Auckland Council to adopt an innovative effects based approach to dealing with resource management issues. At the time, there was sufficient land within the City to provide for economic growth and employment opportunities. However, as time has passed, the uptake of land and the use for residential purposes has eroded the availability of this land. North Shore City Council is experiencing similar issues regarding the uptake of business land. That Council is currently reviewing its provisions relating to residential activities on business land.

The Auckland Regional Council has also been reviewing the availability of business land from a region wide perspective. This is discussed further in Section 4.6.

### **The Resource Management Act 1991**

The purpose of the Resource Management Act 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 Resource Management 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. The Council is required 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 issue of the provision of employment land enables the Council to fulfil its obligations under Part II of the Act by enabling sustainable use of the City's natural and physical resources, while avoiding or mitigating the adverse effects of development on the City. Notably the Council's strategic objectives seek to encourage people living in Waitakere City to also work in the City. As noted above, it is estimated that 63% of the workforce of Waitakere works outside of the city. This creates adverse effects of traffic congestion, water pollution and air pollution.

### **Auckland Regional Council**

Section 75 of the Resource Management Act requires that a District Plan must not be inconsistent with a regional policy statement or plan. The Auckland Regional Policy Statement is now operative and provides the umbrella policies from which the rules, objectives and policies of the District Plan must be in accordance. The proposed review is not considered to be inconsistent with the Auckland Regional Policy Statement. The Regional Policy Statement recognises the need to reduce trip generation and overall traffic congestion.

The uptake of business land is also being considered at the regional level. The preparation and implementation of the Regional Growth Strategy, which is concerned with accommodating projected population growth appropriately across the Auckland region, has generated studies of both residential and business land capacity. (Reference: Auckland Metropolitan Area: Capacity for Growth 2001, March 2003.

The research undertaken for the Capacity for Growth 2001 report measures how well the region is meeting a previously given commitment to provide 15 years' capacity for residential, business and commercial uses.

The report identified a number of trends in relation to business zoned land across the Auckland region:

- In general land is being consumed too quickly;
- The availability of vacant business zoned land declined by 26% across the region between 1996 and 2001 (2,603 hectares reduced to 1,939 hectares);
- It is estimated that only 15 years' supply of vacant business land remained at 2001 should consumption continue at its present rate, with less business land being available in the north and west of the region;
- Vacant business zoned land is being consumed at a faster rate than residential land. It is estimated that between 14 and 25 years' supply of residential land remained as at 2001 depending on growth rates;
- Residential development on business zoned land affects the ability for future business growth and development; and
- Of the total number of new dwellings granted consent in the region, 18% were to be located on business land.

#### RESOURCES

Ongoing issues with residential activities within the Working Environment have led the staff to conclude that this issue should be afforded some priority within the District Plan monitoring programme. Sufficient staff resources and budget exist to undertake the necessary work in the current financial year.

#### CONCLUSION

The Working Environment provides for a broad range of industrial and commercial business uses. Together with the Community Environment, these two environments of the District Plan provide the main employment areas within the city.

As of June 2004, Waitakere City currently has 106.6 hectares of vacant land and potentially vacant land in the Working Environment. In 2001 there were 145 hectares of vacant and potentially vacant industrial land. The uptake of Working Environment land for the past three years has been around 12.3 hectares per year, which means that there is a "capacity" of around 8.7 years. However, the City may only have as little as 5 years of available vacant business land.

The provision of land that has been primarily identified for employment activities is considered to be of significant importance to the sustainable management of Waitakere City. This importance stems from the need to ensure that there is an appropriate balance between population and employment within the city. At the present time, Waitakere City experiences a high reliance on employment in other parts of Auckland by Waitakere residents for employment. It is currently estimated that up to 63% of the resident workforce is employed outside of Waitakere City. This reliance contributes to demand and congestion on the transportation network and air pollution.

It is therefore considered that there is a need to retain existing land for business purposes, unless there are special circumstances that warrant residential or mixed use activities.

Overall, it is concluded that a draft Plan Change should be prepared to address residential activities within the Working Environment.

It is also considered that the Committee should advise the Manager. Resource Consents that consideration of business land supply issues and issues of reverse sensitivity on existing or future industrial development should form part of any necessary assessment in terms of Sections 94 and Section 104(1) (c) *"any other matter the consent authority considers relevant and reasonably necessary to consider the application."* when considering applications for Resource Consent for residential development within the Working Environment.

#### **RECOMMENDATIONS**

1. That the Issues Surrounding Residential Activities within the Working Environment report be received.
2. That further planning investigations are undertaken in relation to the effectiveness of the current Working Environment controls with the view towards preparing a plan change relating to residential activities in the Working Environment.
3. That any necessary proposed draft plan change be reported back to the Environmental Management Committee.
4. That the Group Manager: Resource Consents is advised that the loss of Working Environment land to residential activities is of concern to the Council and that consideration of business supply issues, as well as consideration of reverse sensitivity on current or future industrial developments should form part of any assessment of residential activities in terms of *"Sections 94 and 104(1) (c) any other matter the consent authority considers relevant and reasonably necessary to consider the application."*
5. That Council promotes its position in terms of supporting the use of Working Environment land for the promotion of employment.

Report prepared by: Michael Campbell, Planner: Policy Implementation and  
Lois Easton, Group Manager: City Development Projects.

**Appendix A**

**COPY OF SUBMISSIONS**

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"SUBMISSIONFORM1.DOC"



### Waitakere City District Plan Submission on a Plan Change to the District Plan

Office Use Only	
Submission No:	24/1/1
Date Received:	5/2/07
File No:	

A separate form for each submission in support or opposition is required.

#### Submitter Details

Name:	TJEERD SMILDE		
Address:	25 Tartapo St Massey		
Name of Agent: <small>(if any)</small>			
Address For Service: <small>(if different)</small>			
Phone:	Business	Home 09 8331623	Fax

#### Submission Details

1. Name and number of the Proposed Plan Change: Commercial Sex Activities Proposed Plan change 24

2. My submission relates to these specific provisions of the Proposed Plan Change:  
6.3.1 Small brothels permitted as Home Occupations in Residential Areas with new performance standards relating to street numbers, restriction on hours of operation and number of workers

(Continue on a separate sheet if necessary)

3. My submission is that: (Give a summary of the nature of your submission. Indicate clearly whether you support or oppose the specific provisions, or if you want to have them changed. Give your reasons)  
Please see attached sheet

(Continue on a separate sheet if necessary)

1193

4. I/We seek the following decision from Council:  
(Give precise details of the changes to the Proposed Plan Change that would satisfy your submission)

\_\_\_\_\_  
Please see attached sheet  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

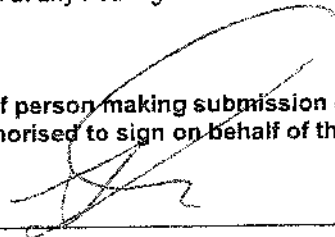
(Continue on a separate sheet if necessary)

5. Please indicate whether you wish to be heard in support of your submission. Yes  No

*Do not want to be heard at all so yes*

6. If others make a similar submission, would you be prepared to consider presenting a joint case with them at any hearing. Yes  No

Signature of person making submission or Person authorised to sign on behalf of them

Signed  Date 26/1/07

Address for service of person making submission (State your full postal address)

\_\_\_\_\_  
25 Taitapu Street  
\_\_\_\_\_  
Massey  
\_\_\_\_\_  
Waitakere  
\_\_\_\_\_

Telephone No. 09 8331623 Fax No. \_\_\_\_\_

Chief Executive	<input type="checkbox"/>
Corporate Services	<input type="checkbox"/>
City Services	<input checked="" type="checkbox"/>
Asset	<input type="checkbox"/>
Consulting Services	<input type="checkbox"/>
EO: ATER	<input type="checkbox"/>
Strategic Group	<input type="checkbox"/>
Contract Services	<input type="checkbox"/>
Plan Services	<input type="checkbox"/>

Post to The Group Manager: Planning and Community Services, Waitakere City Council, Private Bag 93109, Henderson, Waitakere City

Resource Management (Forms) Regulations 1991  
(In accordance with Regulation 5 and Form 6A of the Resource Management (Forms) Regulations 1991)

A94

3. My submission is that:

**I oppose that small brothels are permitted as home occupations in residential areas.**

The reasons for my opinion are that my values and beliefs totally disagree with allowing prostitution. However, let me explain what we continue to experience living next door to a brothel for the last 7 months. It has been a constant nightmare. We as well as our other neighbours have become scared with what is happening next door. The unsavoury characters that we have seen there, combined with police turning up and arrests being made, cars coming throughout the whole day and night – causing a large loss of sleep, the dangerous speed of the cars coming down the road (going straight past our neighbourhoods playground, which is only 70 metres away – where kids will play at till late in the evening), abandoned cars needing to be towed away or notices given – 4 thus far, cars turning up in the middle of the night with loud stereos on, the brothel manager's dog wearing a pink g-string and walking down the road, neighbours who have lived here for over 20 years scared to walk around the reserve, all while the manager has her 8-10 year old son staying there intermittently. Surely all these factors around a neighbourhood that has sensitive sites, with the playground 70 m away and the reserve right behind the house show the damaging effect it has on the neighbourhood?

We moved into this area two years ago when we purchased our house. We would love to have a family, yet are very worried about bringing up children with this sort of activity happening next door. I don't want men turing up at our door trying to find where the brothel is and having to explain to my children that this man is willing to pay for sex and he should go next door. I can't believe that our children are put at risk like this. I am not sure what the police have been finding next door on their visits, but the arrest surely makes me think of the deep connection between brothels and prostitutes with drugs. I have also been shocked at seeing how young some of the girls look.

4. I seek the following decision from the Council:

**I want Council to ban small brothels from operating in residential areas.**

Instead small home based brothels should be moved away from our neighbourhoods where the effects associated with the operation can be readily controlled and moved into Industrial areas, so that neighbourhoods can be precisely what they were meant for. I want the Waitakere Council to stand up for its residents and take its concerns and sensitivities into account. I realise at the same time, unfortunately, that because of central government you have to enable commercial sexual service providers to operate within the city, but surely that can be away from residential areas? I would like you to take the same action that Hamilton City Council undertook, where they banned sex workers from operating from home and restricted brothels to non-residential areas. I am impressed with the Waikato Council and pleased they are listening to its community. I just ask the the Waitakere Council do the same.

Thank you for allowing to express my view.

A95

26/2/-

## Resource Management Act 1991

### Submission on Plan Change 24 To the City of Waitakere District Plan

**To:** Project Leader  
Auckland Planning Documents  
Auckland Regional Council  
Private Bag 92012  
**Auckland City**

**Submitter:** Waitakere City Council  
Civic Centre  
6 Waipareira Avenue  
Henderson  
**Waitakere City**

**Address for Service:** Harry O'Rourke  
Chief Executive  
Attention: Philip Brown  
Waitakere City Council  
Private Bag 93109  
**Waitakere City**  
Tel. 09 836 8000  
philip.brown@waitakere.govt.nz

- 1.0 This is a submission on the following plan change:
- 1.1 **Proposed Plan Change 24 to the Waitakere District Plan.**
- 1.2 The specific provisions of Plan Change 24 that my submission relates to are:
- 1.3 Plan Change 24 in its entirety, in particular the policies, rules, and assessment criteria. Further particulars of the relevant provisions are provided in this submission.
- 1.4 Waitakere City Council's ("WCC's") submission is:
- 1.5 WCC supports Plan Change 24, and seeks that the territorial local authority approve the Plan Change, subject to the amendments referred to herein.
- 1.6 Amendments are generally sought in order to:  
  
Clarify the intent of Plan Change 24, and to strengthen the wording of the policies, rules and assessment criteria (and associated wording).

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- (i) Full particulars of the proposed changes will be provided at any hearing of the Plan Change.

In summary, the changes sought will be discussed in the following sections of this submission:

## **General Submissions Relating to Plan Change 24**

### **Typographical Errors**

- 1.7 Proposed Plan Change 24 contains a number of typographical and editorial errors, and also has on occasion used incorrect words. This leads to a lack of clarity for Plan users, and requires amendment to improve the clarity and effectiveness of the Proposed Plan Change. These amendments are listed in Appendix A of this submission.

### **1.8 Relief Sought**

Amend Plan Change 24 in accordance with the relief sought as detailed in Appendix A.

### **Retail Sales**

- 1.9 Proposed Plan Change 24 does not provide for any permitted retail sales which are subsidiary to the business of prostitution within the Working environment. Any resource consent for retail sales associated with the business of prostitution would be assessed as a non-complying activity.

### **1.10 Relief Sought**

Consideration be given to whether an area of retail sales associated with the business of prostitution within the Working Environment should be included as a permitted activity.

## **2. My submission seeks amendments to the following Policy and Explanations within Proposed Plan Change 24.**

- 2.1 Explanation under Policy 11.18 - This submission considers that it is unnecessary to go into details of activity status for a certain activity within the Explanation of the Policy. The relevant Human Environment Rules satisfactorily outline the activity status against which an application is to be assessed. It is perhaps more appropriate to note that the activity is not provided for within the Human Environments.

## 2.2 Relief Sought

Amend the Explanation under Policy 11.18 as follows (additions underlined and deletions ~~struckthrough~~).

*Small Brothels* can function as *home occupations* within the residential areas and the effects of these activities are similar to other *retail services* that are *home occupations*. Where *small brothels* do not comply with the definition of *home occupation* and/or the permitted activity standards for the relevant residential Human Environment, in terms of their potential for causing adverse effects and serious nuisance and offence to members of the public, they are recognised as being inappropriate and not provided for in the residential Human Environment, ~~within the environment and are a non-complying activity. For similar reasons, Commercial Sex Activities can also only establish in the City's residential Human Environments by way of a non-complying activity resource consent.~~ The nature of the adverse effects of *Commercial Sex Activities* are such that it is appropriate to encourage their location in the commercial and industrial parts of the City, where their effects are less likely to affect the amenity values and neighbourhood character of residential areas.

## 2.3 New Policy 11.50 states that all commercial sex activities within the Community Environment are restricted to above ground locations. This is not entirely accurate or clear.

Firstly, 'above ground' can be interpreted in two ways. The intention is that 'above ground' does not include the street level, but does include the first floor and above. It may be that 'above ground' is interpreted to be anything that is not underground i.e. basements, which would then include the street level. It is therefore submitted that Policy 11.50 be amended so that commercial sex activities are directed to 'first floor locations or above'.

Secondly, whilst commercial sex activities are directed to a first floor location or above, in some instances consent may be granted to operate at the street level of a building. The physical location of the commercial sex activity is more accurately one of the triggers in which to determine the activity status to assess the proposal.

Policy 11.50 states that Commercial Sex Activities are 'encouraged to locate' within the Community Environment. This may suggest a bias whereby Waitakere City Council is actually encouraging Commercial Sex Activities to establish rather than directing these activities to certain Environments. Using the words 'provided for' more accurately recognises Councils position in accordance with the requirements of the Prostitution Reform Act 2003.

It is also submitted that the reference to a cumulative effects assessment done as part of the resource consent be removed. This would be carried out as a matter of course when assessing a resource consent and the removal of this text helps keep the Policy succinct.

## 2.4 Relief Sought

Amend New Policy 11.50 as follows (additions underlined and deletions ~~struckthrough~~).

### New Policy 11.50- Commercial Sex Activities

*Commercial Sex Activities* are ~~encouraged to locate~~ provided for within the Community Environment and within the Working Environment to avoid any adverse effects that *commercial sex activities* may have on the amenity values and neighbourhood character of residential Human Environments. However *commercial sex activities* in the Community Environment are ~~restricted~~ directed to first floor ~~above-ground level~~ or above, to ensure that a high quality environment is provided in the Community Environment. Adverse cumulative effects arising from *Commercial Sex Activities* being located in proximity to each other shall be avoided. ~~through a cumulative effects assessment done as part of the resource consent process.~~

- 2.5 It is submitted that the words 'the proposed activity' be replaced by 'prostitution' in the Explanation of New Policy 11.50 [and has also been italicised in accordance with my submission outlined in 4.1 that prostitution be added to the definition section]. It is considered that the proposed change adds certainty to what Council is seeking to manage the environmental effects of.

[note: '*prostitution*' has also been italicised as per submission 4.1]

## 2.6 Relief Sought

Amend the Explanation under Policy 11.50 as follows (additions underlined and deletions ~~struckthrough~~).

### ***Explanation***

The Prostitution Reform Act 2003 legalised prostitution and requires that Council provide for commercial sex activities within the City. The Council has developed its "Commercial Sex Strategy" to co-ordinate its response to the Prostitution Reform Act 2003.

The Prostitution Reform Act 2003 allows the Council to control the location of commercial sex activities. This control seeks to manage the environmental effects of ~~the proposed activity~~ *prostitution*, to ensure that the activity is not offensive or a nuisance to ordinary members of the public, and to ensure that the activity is not incompatible with the neighbourhood character.

**3. My submission seeks amendments to the following Rules within Proposed Plan Change 24.**

**3.1** The Prostitution Reform Act 2003 (PRA) directs that all resource consents must have regard to the provisions of Section 15 of that Act. Commercial Sex Activities Rule 1.2 – Discretionary Activities notes Section 15 of the PRA as one of the other relevant matters against which Discretionary Activities require assessment. Reference to Section 15 of the PRA is more appropriately located within the Rules section so it is clear that it relates to all resource consents for Commercial Sex Activities regardless of activity status.

**3.2. Relief Sought**

Amend Rule 1 – Commercial Sex Activities to make it clear that all applications for resource consent, regardless of activity status must have regard to Section 15 of the Prostitution Reform Act 2003.

Amend the relevant Human Environment rules for Non-Residential Activities to also reflect the above.

**3.3** Commercial Sex Activities Rule 1.1 (i) provides for Commercial sex activities that are located above ground level in an existing building within the Community Environment as a limited discretionary activity. This reflects Policy 11.50 and associated Explanation.

Rule 1.1 (iii) outlines that in order for a new building/premises, or additions to an existing building for Commercial Sex activities to be assessed as a Limited Discretionary Activity, it must comply with Proposed City Wide Rules 2, 3, 4 and 18. City Wide Rule 3 'Building Design – Street Frontage' directs new premises within certain street typologies to provide a certain level of active street frontage including glazing and display space. This would be inconsistent with Policy 11.50 in which it is sought to protect the amenity values and neighbourhood character of an area through directing Commercial Sex Activities to above ground floor locations.

**3.4 Relief Sought**

Commercial Sex Activities Rule 1.1 (iii) be amended to direct Commercial Sex Activities in new buildings/premises and additions to existing buildings to first floor locations or above, to be consistent with Rule 1.1 (i) and Policy 11.50.

**4.0 My submission seeks amendments to the following Assessment Criteria within Proposed Plan Change 24.**

**4.1** Assessment Criteria 1(f) discusses the extent to which the interior of the premises associated with commercial sex activities is not visible or screened from neighbouring buildings and 'the street'. Substituting 'the street' with 'any public place' is more encompassing and whilst a public place includes the streetscape, it also includes areas such as parks/reserves or other public places

from which the interior of the premises associated with commercial sex activities, may potentially be viewed.

**4.2 Relief Sought**

Amend Assessment Criteria 1(e) as follows (additions underlined and deletions ~~struckthrough~~).

**1(e)**

The extent to which the interior of the premises associated with *commercial sex activities* is not visible or is screened from neighbouring buildings and ~~the street~~ any public place.

**4.3 Re-wording of Assessment Criteria 1(g) to relate better with Policy 11.50 and associated Explanation.**

**4.4 Relief Sought**

Amend Assessment Criteria 1(g) as follows (additions underlined and deletions ~~struckthrough~~).

**1(g)**

The extent to which the activity avoids locating ~~is proposed to be located~~ in proximity to other existing *commercial sex activities*

**5.0 My submission seeks amendments to the following Definitions within Proposed Plan Change 24.**

5.1 In order to be consistent with the Definitions under Section 4 of the Prostitution Reform Act, and in order to avoid uncertainty for those interpreting the Commercial Sex Activities Policies, Rules and Assessment criteria, it is recommended that 'prostitution' be defined within the Definitions – Rule Volume 1.

**5.2 Relief Sought**

Add the following definition to the City Wide Rules Definitions

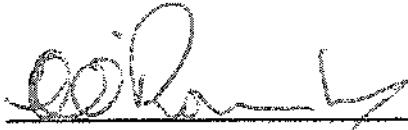
**Prostitution** - means the provision of *commercial sexual services*

6. In addition to the amendments sought specified above, I seek such relief from the Territorial Local Authority that may be necessary to give effect to this submission, including those that are incidental to the amendments sought above.

7. I do wish to be heard in support of my submission.

A101

8. If others make a similar submission I may be prepared to consider presenting a joint submission with those submitters at a hearing.

A handwritten signature in black ink, appearing to read 'H V O'Rourke', is written over a horizontal line.

**H V O'Rourke  
Chief Executive  
Waitakere City Council**

**31 May 2005**

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**APPENDIX A**

**Table Identifying Minor Points of Submission and Relief Sought for Plan 24**

Plan Change Number	Submission	Relief Sought
24	Rule 2 Commercial Sex Activities  Incorrect numbering of Rules and Assessment Criteria and reference within text	<p><b>RULES</b></p> <p>42.0 General</p> <p>42.1 Limited Discretionary Activities</p> <p>42.3 Discretionary Activities</p> <p>42.4 Non-Complying Activities</p> <p><b>ASSESSMENT CRITERIA</b></p> <p>42(a) The extent to which signs are visually appropriate to amenity values and compatible with <b>neighbourhood character</b>.</p> <p>42(b) The extent to which signs create a situation hazardous to the safe movement of traffic.</p> <p>42(c) The extent to which signs are of a height which avoids the sign dominating the neighbourhood and/or nearby structures</p> <p>42(d) The extent to which the design, location, size height and appearance of signs is likely to cause a nuisance or serious offence to ordinary members of the public using the area.</p>

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		<p><sup>42(e)</sup> The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through provision of works and services on or off the site and/or through payment or provision of a <i>financial contribution</i></p> <p><b>WITHIN TEXT</b></p> <p>Assessment of <i>Limited Discretionary Activities</i> applications will be limited to the matters of design, size, scale, appearance, location, compatibility with <b>amenity values</b> and <b>neighbourhood character</b>, <b>safety</b>, level of nuisance or offence and will be considered in accordance with Assessment Criteria 42(a) – 1(e)</p> <p><b>42.2 Discretionary Activities</b></p> <ul style="list-style-type: none"> <li>• Signs associated with <i>commercial sex activities</i> within the <i>Working and Community Environments</i> not meeting the standards in Rule 42.1</li> </ul> <p><i>Discretionary Activities</i> will be assessed as relevant in accordance with assessment criteria 42(a) – 1(e) and any other relevant matter under Section 104 of the Act and Section 15 of the Prostitution Reform Act 2003.</p>
24	<p>Rule 1 – Commercial Sex Activities</p> <p>Underlined words in Rule 1.1 were italicised but do not have associated definitions</p>	<p><b>1.1 Limited Discretionary Activities</b></p> <p>The following are <i>Limited Discretionary Activities</i>:-</p> <ol style="list-style-type: none"> <li><i>Commercial Sex Activities</i> that are located above ground floor level in any existing building within the <i>Community Environment</i></li> <li><i>Commercial Sex Activities</i> on a site within the <i>Working Environment</i> or <i>Working (Lincoln) Environment</i></li> <li><i>New buildings/premises and additions</i> over 100m<sup>2</sup> gross floor area, for <i>Commercial Sex Activities</i> within the <i>Community Environment</i> that meet the performance standards of Proposed City Wide Rule 2, Site Analysis, Proposed City Wide Rule 3, Building Design – Street Frontage and where</li> </ol>

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		<p>relevant, Proposed City Wide Rule 4: Building Design – Mixed Use (Proposed Plan Change 18)</p> <p>Assessment of <i>Limited Discretionary Activities</i> applications will be limited to the matters of scale, intensity, location, compatibility with <b>amenity values</b> and <b>neighbourhood character, safety, screening, planting, landscaping and design, level of nuisance or offence to ordinary members of the public and cumulative effects</b> and will be considered in accordance with Assessment Criteria 1(a) – 1(f)</p>
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MA 09/101 - your file

WAIKARE CITY COUNCIL

28 FEB 2007

24/3/-

To

690953

The Group Manager - Planning & Community Services  
Waikare City Council

Submission on Proposed Plan Change # 24  
Commercial for Activities

From

Margaret McManis  
1161 Seaside Drive Apt  
Waikare City

M. McManis  
28.03.07

Rhonda Aitken  
44 Te Aute Ridge Rd  
Bethels Beach

Rhonda Aitken  
28/2/07

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Part 11 (p2)

We support this amendment

Explanation 11 18 (p3)

change

"small brackets can function - and the effects

to  
"if small brackets are to function as home occupations, then residential areas, then the effects of those activities must be similar to them"

Explanation 11:50 (p4) and page 4

"discouraged" needs to change to "prohibited"

Part 1 (pp5-6)

We support these changes

Part 2 (pp 7-8) 18

signs associated with commercial & activities that do not relate should be prohibited rather than non-complying.

Rules 10-1 (p9)	non residential, <sup>commercial</sup> living and commercial
7-1 (p11)	" " " can include "
8-1 (p13)	" " " <u>prohibited</u> "
10-1 (p15)	" " " rural village "
8-1 (p17)	" " " coastal " "
8-1 (p19)	" " " bush living " "
7-1 (p21)	" " " workplace ranges "

A change the amendment for the requirements for home occupations to "except for small brackets that are limited to low persons, all of whom reside on site"

if necessary on following page

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B. we support the exclusions in dissectionary act rules, as long as it include all the billed

points that follow

6. We support the clauses stating that the use of operations are limited to business areas + 1990

Included Activity date 11/2003

We support the clause prohibiting signs that promote commercial sex/ small business

### Definitions

We propose that small business needs to be further defined with another clause that sex workers included in the home encompasses all needs to resolve w/ that side

If sex workers who want to come under 'home occupation' category, should we be out of their own residences/ places they live why should we have to worry? sex workers

If prostitution is not a good idea in the workers own back yard, it is definitely not a good idea in someone else's area

If the sex worker is ashamed to let their neighbours/family etc know their own problem, then the commercial area are available to them

If the sex worker is concerned about personal safety in their own home, commercial areas are available for them

If the concern is about workers who found no someone residence to use to the increasing volume of

Chief Executive	
Corporate Services	
City Services Morelli	✓
Consultancy Services	
ECO-WATER	
Strategic Group	
Consent Services	
Field Services	



# Waitakere City District Plan Submission on a Plan Change to the District Plan

Office Use Only	
Submission No:	24/41-
Date Received:	28/2/07
File No:	_____

A separate form for each submission in support or opposition is required.

690805

### Submitter Details

Name:	New Zealand Prostitutes Collective		
Address:	P O Box 11-412 Manners St, Wellington		
Name of Agent: <small>(if any)</small>	Catherine Healy, National Co-ordinator		
Address For Service: <small>(if different)</small>	302 Willis St, Wellington		
Phone:	Business 04 382 879	Home	Fax 04 801 562

### Submission Details

1. Name and number of the Proposed Plan Change: Proposed Plan Change 24

2. My submission relates to these specific provisions of the Proposed Plan Change:

As attached

(Continue on a separate sheet if necessary)

3. My submission is that: (Give a summary of the nature of your submission. Indicate clearly whether you support or oppose the specific provisions, or if you want to have them changed. Give your reasons)

as attached

(Continue on a separate sheet if necessary)

Post to The Group Manager: Planning and Community Services, Waitakere City Council, Private Bag 93109, Henderson, Waitakere City  
Resource Management (Forms) Regulations 1991  
(In accordance with Regulation 5 and Form 6A of the Resource Management (Forms) Regulations 1991)

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4. I/We seek the following decision from Council:

(Give precise details of the changes to the Proposed Plan Change that would satisfy your submission)

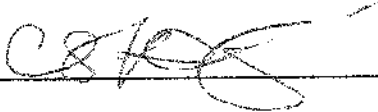
As attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Continue on a separate sheet if necessary)

5. Please indicate whether you wish to be heard in support of your submission. Yes  No

6. If others make a similar submission, would you be prepared to consider presenting a joint case with them at any hearing. Yes  No

Signature of person making submission or Person authorised to sign on behalf of them

Signed  Date 27 February 2007

Address for service of person making submission (State your full postal address)

PO Box 11-412, Mairness St, Wellington  
202 Willis St, Wellington  
\_\_\_\_\_

Telephone No. 04 382 8791 Fax No. 04 801 5690

pcdp@glotae.net.nz

A110

**Submission to Waitakere  
City Council**

**Implementation of the Prostitution  
Reform Act 2003 and Proposed  
Change to the District Plan**

**The New Zealand Prostitutes  
Collective**

## **Introduction**

The New Zealand Prostitutes Collective (NZPC) is a national organisation established by sex industry workers and supporters in 1987.

NZPC has operated a community education programme, including community drop in centres, in six cities throughout New Zealand since 1988.

NZPC currently has contracts with the Ministry of Health, which require us to provide a community education programme focusing on the prevention of HIV/AIDS and other STIs (sexually transmissible infections) to people who engage in commercial sex at a variety of sex work venues, including brothels, massage parlours, escort agencies, private homes, and others sites, (such as the street), throughout New Zealand.

NZPC aims to protect and further the rights and welfare of sex workers, and to generate an exchange of information among them. In this context, NZPC seeks an environment that is conducive to the aims of the Prostitution Reform Act 2003.

NZPC therefore has an interest in any controls that impact on the sex industry. These controls can enhance, or provide a major impediment to, the occupational health and safety of workers in the industry, and affect the social links that facilitate communication and education among sex workers.

## **Bylaws to be consistent with other law**

Some of the aims of the Prostitution Reform Act 2003 (PRA) are to:

*decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that:*

- i. safeguards the human rights of sex workers and protects them from exploitation*
- ii. promotes the welfare and occupational health and safety of sex workers; and*

- iii. *is conducive to public health*
- iv. *prohibits the use in prostitution of persons under 18 years of age.*  
*(subsections 3(a), (b), (c) and (d) of the Prostitution Reform Act 2003).*

Any bylaw or District Plan Change put into place by Waitakere City Council that has a negative effect on any of these purposes would therefore be working against the intention of the PRA.

NZPC believes that it is important not to create bylaws- or any Change to the District Plan- that are inconsistent with the aims and purposes of the Prostitution Reform Act 2003. This would not be practical, and could result in causing significant harm to sex workers, by endangering their occupational safety and health. Doing so may make the bylaw invalid in terms of section 14 of the Bylaws Act 1910. Therefore, we urge council to act consistently with other legislation.

Some people might wish to legislate sex work out of existence. This is simply not possible. NZPC believes the amount of sex work in a society is not governed by laws.

*The Prostitution Reform Act 2003 legislates for the reality faced by sex workers, and seeks to bring, wherever possible, the majority of sex workers within the law.*

## **Bylaws vs. District Plan Changes**

The Prostitution Reform Act 2003 allows councils to create *bylaws* to control signage and the location of brothels:

### **12- Bylaws controlling signage advertising commercial sexual services**

1. A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
2. Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that-

- a. is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
  - b. is incompatible with the existing character or use of that area
3. Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.
  4. Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

**13- Procedure for making bylaws**

1. A bylaw made under section 12 must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
2. Despite subsection (1), a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

**14- Bylaws regulating location of brothels**

Without limiting section 145 of the Local Government Act 2002, a territorial authority may make bylaws for its district under section 146 of that Act for the purpose of regulating the location of brothels

It is silent on the ability of Councils to make changes to their District Plans in order to achieve the same aim. Perhaps Parliament decided that the Act should refer specifically to bylaws, as these can be appealed if and when necessary. For example, if bylaws are inconsistent with the aims of the Prostitution Reform Act 2003, etc.

While any person who is affected by a bylaw may appeal that bylaw through the High Court, NZPC has received advice that a person should have had involvement at Council level by making a submission on the proposed Change before appealing such a Change to a District Plan. Many sex workers will *not* become involved in making submissions to Council as this could require them to make an open declaration of their occupation. Therefore, some may claim that Councils seeking to change their District Plan rather than pass a bylaw have

attempted to subvert the appeal process allowable under a bylaw provision. This in turn would mean that sex workers negatively affected by this Change may be unable to appeal it to the Environment Court. NZPC therefore has concerns about this method of controlling the location of brothels.

It should also be noted that:

**75(3)-** A district plan must give effect to-

(a) any national policy statement, ...

Thus it would not be possible for a District Plan to seek to ban, or effectively ban, sex work from that District.

### **Remaining within the law enables sex workers to avoid harm**

The education and safety of workers in the sex industry depends on the community links that connect sex workers with each other, and with NZPC and other agencies, such as the Police and Sexual Health services. These links encourage communication in the industry and enable the participants to share information and strategies for keeping safe. It is important that sex workers are able to remain within the law and are not forced to deny their activities.

### **Maintaining a safe environment is important for the safety of sex workers**

One of the conditions for people working in the sex industry that contribute to occupational health and safety is a stable working environment. Massage parlours/managed operator brothels have played a significant role in providing a stable environment in the sex industry. The majority of sex workers work from these venues throughout the country.

NZPC would urge that in considering any proposed Change to the District Plan, Waitakere Council allow for this option in the same way that they would allow for bars and other adult entertainment focused businesses. We would advise against effectively restricting brothels to only industrial or business zones as this may result in compromising the safety of sex workers

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and their clients. While we consider industrial areas as an option, the nature of industrial areas is not conducive to providing such facilities as safe street lighting, complementary businesses that could provide a safe haven, public transport, etc.

Smaller, though still significant, numbers of sex workers work for themselves- from private homes or apartments (either alone or with one or two others). Sex workers may choose this option because it may be that they prefer to manage them, or because they are excluded from working in other venues because of age, gender, or size. They may also reject the conditions imposed upon them by managed brothels.

This is also true for Waitakere City. Many sex workers operate in this situation as they prefer to remain in control of whom they see as clients, and see this situation as providing them with more control over their circumstances. Clients often do not want to draw attention to themselves by visiting larger brothels, such as massage parlours, and appreciate the discretion provided by people working from home. It is therefore important that small owner operators working from home are governed by the same conditions that control any other business operated from home. Because such people are captured under the broad meaning of "brothel", zoning brothels away from residential areas makes their situation illegal once again, which is contrary to the aims of the PRA.

NZPC is concerned that the definitions of *commercial sexual services*, *commercial sex activities*, and *business of prostitution* provided in the "Definitions- Rules Volume 1", seems to encompass private operators (*small brothels*), despite the stated exception in the definition of *commercial sex activities*. It should be noted that this latter definition includes, then promptly excludes, *small brothels*, which can, by the definition provided on the previous page, only be *home occupations*. This could lead to some confusion, and NZPC therefore recommends that this is clarified thoroughly. This confusion is added to by the complexity of the District Plan, which is not easy to read, compared to other District Plans we have been involved with. We seek further clarification around these definitions and their effects from Waitakere City Council.

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## **Options reduce exploitation and improve conditions**

It is important to avoid monopoly situations. If all brothels are zoned, regardless of their size, to one area, it may result in larger scale brothels becoming dominant players. Single sex workers, and small groups of sex workers, would not be able to compete with larger businesses if zoned to the same area as they may find it difficult to afford leases or adapt properties to suit their sex work.

Sex workers need to have options beyond working for operators. Having options also serves to minimise the exploitation of sex workers. The threat of being sacked and blacklisted from working in brothels would enable unscrupulous operators to exploit sex workers illegally. However, if sex workers can elect to work for themselves, or with one or two others, the threat of such exploitation is often held in check.

The sex industry does not remain static; it undergoes change, which is motivated by people seeking to improve their working conditions. For some sex workers, this can simply mean a shift from one massage parlour or escort agency to another. It can also entail one or more sex workers electing to work for themselves from their own premises or homes. For owners and managers, change can mean the upgrading of existing premises or establishing new venues. It is important that all of these options remain available.

## **Sex workers working at home are able to leave the sex industry more easily**

Some sex workers who are seeking to exit the sex industry often leave larger brothels as they explore other options, such as study, training, part-time work, etc. These sex workers may continue to have contact with a few clients, whom they see privately, while working from home. They find this is an important transition period that enables them to organise their lives so they may leave the sex industry.

They are able to earn some income, but are also able to avoid the constraints of long hours required in brothels such as massage parlours. The PRA, in allowing for these operators to

remain uncertified, protects their identity. It is important that bylaws do not create a system in which private workers are exposed and “outed” by having to seek resource consent from neighbours who may be antagonistic. “Outed” sex workers often find it difficult to build new working lives outside the sex industry. They are also exposed to the risk of attacks.

The requirements of the “Introduction to the Rules- Amend Notification Guidance” may mean that sex workers who are working from home may be required to obtain Resource Consents, or risk operating illegally. This is, in part, due to the confusion of definitions in the Change, and this is one reason why NZPC seeks clarification of the definitions.

## **Fear of Brothels in the neighbourhood**

It is interesting that many brothels, as defined in the proposed Change, would not be identified as such by their appearance on the outside. Street activity around these brothels would not be noticeable, and people entering- as both clients and sex workers- would not be seeking to draw attention to themselves. Foot and vehicle traffic, and other movement, around the brothel would in many instances be far less than that around many other businesses in the same area. Most clients of brothels do not wish to park their vehicles close by, nor do they wish to loiter in doorways and entrances.

## **Conclusion**

For the reasons given above, NZPC sees the current proposal as rather confusing in its definitions and exemptions. Council has a responsibility to make Changes to the District Plan that are in keeping with the intentions of the Prostitution Reform Act 2003 and the New Zealand Bill of Rights Act 1990. The current draft of the proposed Change, we believe, requires clarification of definitions and standardisation to avoid confusion, prior to any further consideration of the Change.

NZPC would like to speak in support of this submission, and can be contacted at:

New Zealand Prostitutes Collective

PO Box 11-412

Manners St

Wellington

Or by phone on 04 382 8791, by fax on 04 801 5690, or by e-mail on [pcdp@globe.net.nz](mailto:pcdp@globe.net.nz)

Catherine Healy

National Co-ordinator

New Zealand Prostitutes Collective

Chief Executive	<input type="checkbox"/>
Corporate Services	<input type="checkbox"/>
City Services Lease	<input type="checkbox"/>
Consultancy Services	<input type="checkbox"/>
ECD WATER	<input type="checkbox"/>
Strategic Group	<input checked="" type="checkbox"/>
Consent Services	<input type="checkbox"/>
Print Services	<input type="checkbox"/>
	<input type="checkbox"/>

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- 1 MAY 2007

Scenic Drive  
Waikeke City

44 Te Aute Ridge Rd  
R.D. Henderson 697689

30th April '07

WAITAKERE CITY COUNCIL

30 APR 2007

City of Waitakere District Plan

Proposed

Plan Change 24 } Commercial Sex Activities

received

4/5/07

1/5

I wish to support Tjeerd Smilde in seeking the decision that council ban small brothels from operating in residential areas.

My initial submissions re commercial sex activities in Waitakere City were that no commercial sex activities should be allowed in residential areas.

Although, on my most recent submission I had commented on plan change 24 ~~prop~~ proposals, especially concerned that the activities are limited to those who actually reside in the house, my overall preference would be for commercial

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