



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE

I hereby give notice that a Meeting of the Planning and Regulatory Committee will be held on:-

DATE: **Tuesday, 7 December 2004** **TIME:** **9.30 am**

VENUE: **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

2 December 2004

Charlie Inggs
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8854

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairperson)
	RP	Dallow, QPM, JP (Deputy Chairperson)
	DQ	Battersby, JP
	JP	Booth, OBE
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	PA	Hulse
	JP	Lawley
	CA	Stone

Mayor, RA Harvey, QSO, JP (ex officio)

(Quorum 5 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY, 7 DECEMBER 2004, COMMENCING AT 9.30 AM.

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PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

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

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

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



3 CONFIRMATION OF MINUTES

First Meeting - Tuesday, 16 November 2004

RECOMMENDATION

That the minutes of the First Meeting of the 2004-2007 Planning and Regulatory Committee held on Tuesday, 16 November 2004, as circulated, be taken as read and now be confirmed.



4 **PRESENTATION**

TE ATATU RESIDENTS AND RATEPAYERS ASSOCIATION

PURPOSE OF THE REPORT

The Te Atatu Residents and Ratepayers Association have written to the Chairperson requesting an opportunity to address the Planning and Regulatory Committee on the subject. The Chairperson has agreed to set aside 30 minutes for the Te Atatu Residents and Ratepayers Association to make a presentation and for the Committee to ask any questions.

RECOMMENDATION

That the presentation by the Te Atatu Residents' and Ratepayers' Association be received.

Report prepared by: Charlie Inggs, Committee Secretary.



PART B - REGULATORY / ENFORCEMENT

5 **LEGAL UPDATE (AS AT 25 NOVEMBER 2004)**

INTRODUCTION

The following is a list of legal actions in respect of matters within the scope of the Planning and Regulatory Committee, which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include references to Council's District Plan, minor prosecutions for dogs, swimming pools, health and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. The dates referred to in the headings are the dates on which appeals, information or proceedings were first filed in Court.

ENVIRONMENT COURT

Prema Trust Limited v Auckland Regional Council & Waitakere City Council (July 2003)

This was an application by Prema Trust for approval to establish a natural healing centre and hospital in Grassmere Road, Henderson Valley. The application attracted significant community opposition and was declined by both Council and Auckland Regional Council. The Environment Court has recently released its decision, following a 5 day hearing in August 2004. The Environment Court has upheld the Council and Auckland Regional Council decision, and refused approval to Prema Trust. The decision has confirmed the importance of the protection of amenity values in the Foothills Environment, and the need to prevent urbanisation outside the Metropolitan Urban Limits.

Kitewaho Bush Reserve, Peter Mawhinney and Others v Waitakere City Council

Following the Council's success in the High Court (where it won its appeal, and successfully defended the cross-appeal - see agenda item 11 below, for more information), the Council has reignited its costs application against Mr Mawhinney et al in the Environment Court.

Council has filed a claim with the Environment Court seeking costs of up to \$140,000 on an indemnity basis plus disbursements. Mr Mawhinney has counterclaimed for his costs of \$44,525.00 (although no particulars have been provided) and disbursements of approximately \$8000 against both Council and the Auckland Regional Council. It is considered that Mr Mawhinney's costs application is without merit given that Mr Mawhinney lost on all issues (including the legitimacy of Section 91 deferrals) and was found (by the Environment Court and High Court) to have abused the processes of the Court. In addition costs were awarded against Mr Mawhinney in the High Court and in the Court of Appeal.

A hearing of the costs application will take place in February 2005.

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

Appeals filed by the applicant Messrs Selak and their neighbours, Messrs Collett & Nye. Both appeals relate to the operation of the Selaks' Go-kart track on their property at Kennedy's Road, Whenuapai. The Selaks have appealed a condition disallowing use of the track on Sundays and public holidays. The Colletts & Nyes have appealed Council's decision to allow the Go-Kart activity. Mr Selak has put forward a new proposal, involving additional mitigation of the noise impacts of the Go-Kart track, which is to be considered by all parties and may result in settlement of these appeals. A further reporting date is scheduled for December 2005.

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

This is an appeal against 29 consent conditions imposed on a subdivision consent previously held by Abacus. Progress on this appeal had been deferred awaiting the outcome of the declaratory proceedings referred to above. The matter has previously been adjourned, but has now been set down to be heard in February 2005. Abacus and Mr Mawhinney are required to file evidence with the Court by 26 November 2004.

Juderon Family Trusts v Waitakere City Council (December 2003)

An appeal against the Council's decision confirming the consent conditions regarding financial contributions payable in respect of a proposed subdivision. The parties attended a Court-assisted mediation on 7 September 2004, however no resolution was achieved. The parties are in discussions regarding timetabling for a hearing on this matter.

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

A reference against the Council's decision approving Plan Change 2, which re-identifies the Harbourview land on the Te Atatu Peninsula from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area. A Court assisted mediation occurred on 16 July 2004 and 20 October 2004. Progress has been made regarding some issues. This matter will be the subject of a confidential item on the December 2004 agenda.

I & Z Farac v Waitakere City Council

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

Save Hobsonville Against the Mismanagement of its Environment Society Inc v Waitakere City Council (February 2004)

An appeal against the Council's decision granting consent to Vodafone to construct a telecommunications facility including a tower at 11 Scott Road, Hobsonville. The consent has since been surrendered and the appeal is to be withdrawn.

Auckland Regional Council v Waitakere City Council (September 2004)

An appeal by Auckland Regional Council against a decision by the Council to grant approval to a subdivision by Mr P Lipsham, relating to the property at 146-148 Parker Road, Oratia. Timetabling orders are yet to be made for the exchange of evidence in this matter, which is expected to proceed to a hearing in mid 2005. A Notice of Reply has been lodged.

CDL New Zealand Limited v Waitakere City Council (October 2004)

An appeal against Council's decision granting subdivision consent; the appellant opposes the financial contribution condition in respect of stormwater. Council is to file a notice of reply and it is expected that the matter will proceed to a mediation shortly.

Trichon v Waitakere City Council (October 2004)

An appeal against an abatement notice issued by Council in respect of unauthorised earthworks. The matters were referred to a Court-assisted mediation on 17 November 2004 and it has since been agreed that the Trichons' consultants will provide further information with the purpose of advancing the resource consent application for stabilisation of the earthworks and additional development of the site (as proposed by the Trichons). Council is opposing the appeal which was filed 6 months out of time. (Council initiated a prosecution against the Trichons for contravening the abatement notice – see below in respect of the District Court matter.)

HIGH COURT

Waitakere City Council v Kitewaho Bush Reserve Company Limited, Peter Mawhinney & Others (Appeal filed 22 January 2002)

These proceedings have now been concluded following the release of the Court of Appeal decision in September 2004 declining Mr Mawhinney's application for special leave. In effect therefore the judgment of Randerson J in the High Court which vindicates the Council on all issues has been upheld.

The only outstanding issue is costs in the Environment Court (see above). Costs in the High Court and Court of Appeal have already been assessed and set. Mr Mawhinney has since made payment of \$55,865.92 to Council in respect of those costs awards.

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

This is a civil claim for approximately \$6.7 million by Mr Mawhinney (who has been substituted as plaintiff for the Kitewaho companies) against Council alleging that he has suffered losses as a result of Council improperly delaying the processing of the subdivision consents. These applications were also the subject of the Declaratory Proceedings.

The Civil Proceedings had been deferred until the resolution of the Declaratory Proceedings, but since the release of the Court's decision in that case the Civil Proceedings have been reactivated.

There has recently been a settlement conference before Associate Judge Sargisson in an attempt to reach a negotiated settlement. Although no settlement was reached, some progress was made in defining the issues in the case and it has been agreed to have another half day conference when the Court can accommodate the parties.

In the meantime, we are pushing on with our security for costs application which is to be heard by the Court on 21 December 2004. Mr Mawhinney is required to file his notice of opposition and affidavits in support of his opposition by 7 December 2004. As part of the application for security, we will be requesting an 'unless order', ie that the proceedings should be struck out unless the required security is paid into Court within the stipulated period. If the Judge is not minded to make an order, the proceedings will be stayed until any security awarded is paid.

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

An appeal by Council to the High Court (from an Environment Court decision) regarding a decision by Council relating to a requirement to construct and vest Marinich Drive, an arterial road that passes through Estate's subdivision in Ranui Station Road. The appeal was heard before Justice Venning on 29 June 2004. A decision was received from the Court on 30 July 2004. This decision was in Council's favour and reversed the decision of the Environment Court. Since the release of the decision Estate Homes has been granted leave to appeal to the Court of Appeal (on two issues, out of an original 7 pursued). A hearing will take place in the Court of Appeal in mid 2005.

Estate Homes Limited v Waitakere City Council (Sturges Road)

This is an arbitration concerning the valuation of reserve land, Lockington Green at Sturges Road, Henderson. The value of the reserve is to be offset as a credit against payment of reserve contributions by the developer, Estate Holmes. The arbitration was to have happened on 21/22 October 2004, but was adjourned at the last minute as Estate Homes served substantial rebuttal evidence on the Council only 24 hours prior to the commencement of the hearing (in breach of the timetable). The matter was to be heard on 24/25 November 2004. A decision is awaited.

PROSECUTIONS - DISTRICT COURT

I & A Covich - 40 Sunnyvale Road, Massey (May 2003)

Charges were laid against Mr and Mrs Covich alleging that the Covich's operated a cleanfill in contravention of an abatement notice requiring them to cease this activity. Mr and Mrs Covich pleaded not guilty and elected trial by jury. A depositions hearing took place on 11 November 2003, with counsel for the Covichs conceding that there was a case to answer. The matter was set down for a trial during the week beginning 20 September 2004 but the Covichs changed their pleas to guilty and the matter was the subject of a restorative justice conference on 16 November 2004. Sentencing has been deferred to a date yet to be advised.

MT Yeo & MTY Properties Limited - various properties (May 2003)

Charges were laid against Mr Yeo and his company MTY Properties regarding alleged unauthorised building work, failure to comply with notices to rectify, and unsafe buildings, in respect of seven properties owned by the defendants. On 9 November 2004 Mr Yeo pleaded guilty to seven charges in respect of allowing the use of buildings that were insanitary and had inadequate fire protection measures (charges against MTY were withdrawn as the company has been struck off the register). Mr Yeo was fined \$49,000 in total.

R Fowler - 7 Woontons Lane, Titirangi (August 2003)

Charges were laid against Mr Fowler for alleged offences under the Building Act (unauthorised building work) and Resource Management Act (breach of various district plan rules, including doing building work on the road reserve and in a stability sensitive area). A defended hearing occurred on 8 July 2004 following which the defendant was found guilty on all charges of contravening District Plan Rules and undertaking building work without building consent. Partial sentencing occurred on 26 July, at which time his Honour Judge McElrea made the enforcement order sought by Council ordered the defendant to pay legal costs and the costs of Council's expert witnesses (in accordance with the specified maximum fees payable under the Costs in Criminal Cases Act). Council has since carried out the required remedial work has invoiced Mr Fowler for the expense. Sentencing on the four charges under the Resource Management Act has been adjourned to 8 December 2004 to allow time for a psychological report to be done. The Judge has indicated that the offending will be taken very seriously by the Court given that the defendant has wilfully re-offended; the Judge has stated that a fine will be imposed in respect of the Resource Management Act offences.

Dovey Place Developments Limited, Neslo Construction Limited & Foundation Engineering Limited - Dovey Place, Massey (February 2004)

Charges were laid against the owner of a number of properties at Dovey Place (Dovey Place Developments Limited) and the contractors responsible for the foundation and building works for undertaking the construction of five houses without building consent. On 27 September 2004, the Court heard a pre-trial argument by two of the defendants who alleged that Council had filed the information outside the 6-month statutory time period; the Court found in Council's favour and accepted that Council did not have sufficient knowledge of the offences until early September 2003. A further pre-trial issue has been raised by another defendant (Lance Olsen) regarding the validity of information where the contracting company has been struck off the register; this will be heard on 9 February 2005.

The charges against Foundation Engineering Limited were called on 26 November 2004 at which time the company pleaded guilty to undertaking the building work associated with the foundations and floor slabs of the five houses without consent. The company was convicted and fined \$5,500 plus costs (the Judge noted that a more significant fine would have been imposed had it not been for the fact that the building contractor has misled the company as to the existence of building consents for the properties).

T, D & S Watford - 55 Derwent Crescent, Titirangi (March 2004)

Charges have been laid alleging failure to comply with a notice to rectify building work. The matter has been adjourned for call in court on 24 January 2005.

A & J Kumar - 23 Roberts Road, Te Atatu (March 2004)

Charges have been laid alleging unauthorised building works and failure to comply with a notice to rectify building work. The defendants are preparing to lodge a building consent application to remove the unauthorised works. The matter has been adjourned to 24 January 2005.

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

Charges have been laid alleging unauthorised building works. The defendants have entered not guilty pleas and the matter has been adjourned to 24 January 2005 for a defended hearing date to be set.

Yamms Investment Limited - 76-78 State Highway 16, Whenuapai (March 2004)

Charges laid under the Building Act in respect of the defendant's failure to provide a current building warrant of fitness to Council. The matter has been adjourned to 24 January 2005 as the defendant is to complete works to the building.

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

Charges laid under the RMA alleging contravention of District Plan Rules, as the property being used to store vehicle wrecks and undertake vehicle repairs, without the requisite resource consent, and for contravention of an abatement notice in respect of such activities. The matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 29 November 2004 with pleas to be entered then.

Future Developments Limited & P Slimo - 221 Scenic Drive, Titirangi (June 2004)

Charges have been laid under the RMA alleging various District Plan breaches and under the Building Act alleging various instances of unauthorised building work and allowing the use of an unsafe building (in respect of fire safety concerns) for residential purposes. The defendants have entered not guilty pleas and the matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 29 November 2004.

Auckland Reblocking & Houselifting Limited - 137 Titirangi Road, New Lynn (June 2004)

Charges laid under Building Act alleging unauthorised building work. The matter was called in the District Court on 26 November 2004 at which time the defendant entered a guilty plea and was convicted and sentenced to pay a fine of \$5,000 plus court costs. The Judge emphasised the safety focus of the Building Act and the need for deterrence.

M Trebilco - 137 Titirangi Road, New Lynn (June 2004)

Charges laid under Building Act alleging unauthorised building work. The matter has been adjourned to 24 January 2005.

J & G McGee - 884 West Coast Road, Oratia (June 2004)

Charges laid under the Resource Management Act alleging contravention of an abatement notice issued in respect of unauthorised earthworks in the Managed Natural Area. The matter has been transferred to the Auckland District Court to be dealt with by an Environment Judge; next call on 29 November 2004.

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

Charges laid under Resource Management Act alleging contravention of an abatement notice which required the installation of erosion/sediment control, removal of earth deposited at the site and revegetation works. Matter adjourned for first call on 24 January 2005.

G S & V M Trichon - 70 Tirimoana Road, Glendene (July 2004)

Charges laid under Resource Management Act alleging contravention of an abatement notice which required the stabilisation of the filled area or in the alternative the removal of the fill deposited at the site and revegetation works. The prosecution matter has been adjourned to 24 January 2005.

MJS & YC Seymour - 39 Onedin Place, Titirangi (July 2004)

Charges laid under Building Act for alleged unauthorised building work. The matter was called on 29 October 2004 at which time the defendants entered not guilty pleas; a defended hearing is scheduled for 15 February 2005.

MG & KL Trubuhovich and Taylor Built Limited - 18 Brigham Creek Road, Whenuapai (August 2004)

Charges laid under the Building Act and the RMA in respect of the unauthorised construction of numerous poly/shade houses, which were built without building consent and which breach various District Plan Natural Environment Rules. Matter adjourned for first call on 24 January 2005.

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

Charges laid under the Building Act for unauthorised building work (including extension to house and change of use of lower level of dwelling to create separate residential unit). The matter has been adjourned to 24 January 2005.

C Nisbett, Progress Construction Limited (Directors: PB Christensen, KG Mormon, IF Stead) - Dovey Place, Massey (September 2004)

Charges laid under the Building Act for continued building work on two unauthorised houses. The matters have been adjourned to 24 January 2005.

EA Haines - 80 Hobsonville Road, Hobsonville (September 2004)

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. The matter has been adjourned to 24 January 2005.

DP Kiely - 60 Wisely Road, Hobsonville (September 2004)

Charges laid under the Resource Management Act in respect of unauthorised removal of protected trees. The matter has been adjourned to 24 January 2005.

J & M Activities Limited (Directors: MR Hannett & JM Timoteo) - 77 Fruitvale Road, New Lynn (September 2004)

Charges laid under the Building Act for using/permitting the use of an unsafe building. The matter has been adjourned to 24 January 2005.

Ngee Properties Limited (Director: GW Chappell) - 21 Enderby Drive, Te Atatu Peninsula (September 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of a garage to a residential unit). The matter has been adjourned to 24 January 2005.

AR & NT Dean - 30 Edmonton Road, Henderson (September 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including the conversion of the basement area of a house to form a residential unit). The matter has been adjourned to 24 January 2005.

BA Collins & S Newby - 169 Kauri Road, Whenuapai (October 2004)

Charges laid under the Building Act in respect of alleged unauthorised building work (including additions to house, plumbing and drainage work, partitioning, new cladding etc). The matter was called on 26 November 2004 at which time Mr Collins pleaded guilty to undertaking building work without consent and was convicted and fined \$4,500 plus costs; Mr Newby pleaded guilty to permitting building work without consent and was convicted and fined \$3,500 plus costs.

RECOMMENDATION

That the Legal Update Report be received.

Report prepared by: Brigid McDonald, Contract Solicitor.



PART C - DISTRICT PLAN / STRUCTURE PLANS

6 DISTRICT PLAN APPEALS UPDATE TABLE

PURPOSE OF THE REPORT

The Principal Advisor: District Plan will provide a verbal update to the Planning and Regulatory Committee on progress in dealing with the appeals on the Proposed District Plan.

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

RECOMMENDATION

That the District Plan Appeals Update Table be received.

Report prepared by: Owena Schuster, Committee Secretary.



PART D - ENVIRONMENTAL MANAGEMENT

7 WAITAKERE'S GROWTH AND TRANSPORTATION INTEGRATION PROGRAMME – JOINT HEARINGS PANEL

PURPOSE OF THE REPORT

The purpose of the report is to inform Council of its statutory obligations in relation to a joint hearings panel under the Local Government (Auckland) Amendment Act 2004 (LG(A)AA 2004). This report also recommends that an independent commissioner be appointed to represent Council on the joint hearings panel.

BACKGROUND

The Local Government (Auckland) Amendment Act 2004 recognises the need for better alignment across the region's planning documents (Regional Growth Strategy, Regional Policy Statement, Regional Land Transport Strategy, District Plans and Sector agreements) regarding the issues of land use and transport integration and intensification. The Local Government (Auckland) Amendment Act 2004 requires changes to the Regional Policy Statement and District Plans to achieve this improved alignment and to ensure that the significant investment in the transport network system is supported by the associated land use planning.

Waitakere City is using this opportunity to take a lead role and better align its District Plan with the Regional Growth Strategy and to better express in statutory documents the future shape of the City. Council has previously been briefed on this programme and has provided in principle support.

The Local Government (Auckland) Amendment Act 2004 requires that a joint panel be established by all Councils in the region to hear submissions on the proposed changes to the various planning documents. This applies to all of the region's seven Territorial Local Authorities (TLAs) and the Auckland Regional Council. Clauses 41 and 42 state:

Delegation of Powers

The Auckland local authorities must jointly appoint a panel of 3 or more hearings commissioners to hear any submissions lodged on the proposed land transport and land use changes.

Each Auckland local authority must, under section 34A of the Resource Management Act 1991, delegate to the panel its powers, functions, and duties to hear submissions and make recommendations on the proposed land transport and land use changes.

Time and Place of Hearings

- (1) The panel may hear submissions on a proposed land transport and land use change as if the change were a change to a single document.
- (2) The panel must use its best endeavours to hear all submissions from a person on proposed land transport and land use changes at the same time and place.

STRATEGIC CONTEXT

Council's Growth and transportation integration programme contains two sets of changes: a proposed change to the Regional Policy Statement to move the Metropolitan Urban Limit; and second, a set of changes to the Waitakere City District Plan. The Act requires that all changes be heard by the same panel. The panel make recommendations to Council, which make the final decision. These proposed changes will give effect to Council's strategic objectives for urban consolidation (intensification) and improve the transportation network and services.

ISSUES

Panel Size

The panel must have a minimum of three commissioners. There is no maximum. If each Council appoints one commissioner there would be eight commissioners on the panel. One option is that the panel consist of only independent commissioners. It is suggested that membership of independent commissioners be limited to a maximum of five and that they be engaged based on a regionally agreed set of selection criteria. This option is based on a pragmatic approach given the extensive time commitment that would be required by the commissioners (anticipated that the hearings will occur over a four to six month period plus deliberations).

Panel Membership

The region's councils need to agree on a formula for deciding on the panel composition. The panel could be comprised of independent commissioners, Councillors or a combination of both. One option is for independent commissioners, who have the necessary technical skills and political understanding, to be contracted to work on behalf of the region view. An alternative is to appoint a Councillor as Waitakere City Council's representative on the panel. This is the option that was used for the joint hearings panel that heard submissions on the Regional Growth Strategy. Although Council would have representation and therefore perceived public accountability, it would have only one vote in eight in making decisions.

Appointment of Commissioners

As there is no clear agreement about the membership of the panel, a process for its selection is yet to be developed. If the region's councils were in agreement on the use of independent commissioners then the suggestion is that the Regional Growth Forum (which has representation from each council) would be delegated to appoint a panel. Another approach would be to agree on a list of candidates (maximum 8) and for each Council to nominate someone from that list as their representative. There could be some duplication through this process but this would mean a smaller panel.

The Role of the Panel

The role of the panel is to hear submissions, deliberate and make recommendations to the region's councils. The final decision on whether to adopt the panel's recommendations remains with Council. Preliminary advice has been that if the Council rejects the panel's recommendations the Council must re-hear the relevant submissions before making a final decision.

Hearings Process Options

There is a spectrum how the hearings may proceed. At one end of the scale, to have the shortest possible sitting time the panel could meet every day and include some out-of-office hours to accommodate submitters. If this process was adopted then the hearing might be concluded within a short period (approximately 3 - 4 months). At the other end of the scale is a staggered hearings process with sitting days grouped on particular topics and a break between topics. This process could take over twelve months to complete. The challenge is to find a process that will allow all the submissions to be heard within a reasonable amount of time and efficiently.

The actual duration of the hearing cannot be determined until it is known how many submissions will be received and the range of issues that will be raised. There is the potential that the panel sitting time to balloon out over a twelve month period. To meet the requirements of the Act it is necessary to provide a level of commitment to ensure that the duration of hearings is minimised.

Cost of the hearings

The scale of the hearing process cannot be fully identified at this stage. There is also a need to facilitate the hearing process within a reasonable time to ensure implementation of the Act is successful. To assist with the hearing panel making its recommendations within a reasonable time additional funds for the hearing process should be sought from the Central Government. It has been suggested that the hearings process could be funded through an advance on the \$1.2 billion dollars transport package if all Councils agreed to this being a priority.

Duration of the hearing

There is a direct relationship between the scope of the proposed plan changes and the scale and complexity of the hearing process. There is the perception that the high number of proposed plan changes across the region (approximately 27) will generate a large number of submissions that will take a long time to process. The level of complexity is also increased through the cross-submission process and the ability for submitters to comment on all of the proposed plan changes.

RESOURCES

It is important to maintain a level of consistency of representation throughout the whole hearings process. This means that it would be desirable if the same representative were available for the whole time the panel was sitting. This represents a significant commitment of one person's time over an extended period. In all likelihood a backup nominee would be required to attend hearings in case of sickness or the inability for the key representative to attend. If the commissioner was also a Councillor some consideration and arrangements should be made to excuse them from council duties during this period.

Waitakere's participation in the joint hearing process will consume considerable Council resources in officer and councillor time. The broad scale nature of the discussions and range of issues means that there could be implications for Waitakere through all the hearings. An officer should be present during the hearings to monitor and report back to Council any implications from discussions during the course of the hearings. A considerable amount of officer time would also be required in the lead up to the hearing in processing the submissions and organising for submitters to make a presentation to the panel.

Administrative and technical support for the panel will affect how efficiently it will operate and the duration of the hearings. The hearings need a central location with dedicated support facilities and resources, both administrative and technical. It is suggested that each Council offer a dedicated resource to a group that processes the submissions for the hearings and then acts as technical support during the hearings.

CONCLUSION

The Act requires a hearing panel be established. Council has a choice as to how it is represented on that hearings panel. Given the extensive time commitment potentially required, a full time independent commissioner as Council's representative is recommended. It is anticipated that the hearings process will last at least for four months. The exact duration of the hearing will not be known until the number and scope of submissions is determined. Preparation for the hearing panel should commence now in order to give a clear indication of how submissions will be processed when the changes are notified. Without adequate resources there is a risk that the hearings process will not be fully resolved for several years, meaning that the intended improved integration between land use and transportation would not be achieved in the region for some time.

RECOMMENDATIONS

1. That the Waitakere's Growth and Transportation Integration Programme - Joint Hearings Panel report be received.
2. That Council agree to appoint an independent commissioner to represent Waitakere City Council on the joint panel as established under the Local Government (Auckland) Amendment Act 2004.
3. That this position be reported to 8 December 2004 Regional Growth Forum meeting.
4. That a further report that identifies a list of potential candidates, the proposed selection process and criteria, be brought to a Council meeting early in the new year.

Report prepared by: Yvonne Rust, Principal Advisor, Urban Policy.



8 PROSTITUTION REFORM ACT 2003: WORK PROGRAMME UPDATE AND DRAFT POLICY STATEMENT

PURPOSE OF THE REPORT

This report presents the draft document prepared for the Planning and Regulatory Committee that seeks to engage with the public on the policy issues arising from the decriminalisation of prostitution by the Prostitution Reform Act 2003 (PRA).

The key decision for the Committee, concerns a proposed policy statement that will, if approved, be made available for public comment.

The draft Policy Statement will be circulated under separate cover on Friday, 3 December 2004.

BACKGROUND

The Prostitution Reform Act 2003 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 a "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 openly applied.

The Prostitution Reform Act 2003 creates two types of brothels. The first is a Small Owner-Operated Brothel where there are no more than four sex workers, and where each worker retains control over his or her individual earnings. Small owner-operated brothels do not require certification or licensing (by the District Court) of their premises. The other type of brothel is where there are 5 or more sex-workers, with an operator who manages or controls the business. An operator of such a brothel is required to obtain a certificate from the District Court.

Reports on the implications of the Prostitution Reform Act 2003 were presented to August 2003 and July 2004 meetings of the Environmental Management Committee, and to the October 2003 Council meeting.

An internal staff team comprising officers from Consents, Legal Services, Strategy & Development, Field Services and Resource Management was formed to work through the various issues arising from the decriminalisation of prostitution. The team has been considering various options for the Council's response to the Prostitution Reform Act 2003. The team has met with representatives from the Police, Auckland Regional Public Health Service, the New Zealand Prostitutes' Collective and owners of one the massage parlours located in Waitakere City.

A workshop attended by staff, Councillors, Community Board Chairs, Police and Health Service representatives was held on 6 October 2003. A further workshop was held on 31 May 2004, and identified a work programme to progress the Council's policy on this matter.

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.*
3. *That a draft policy statement be prepared for consideration by the Environmental Management Committee for use in public consultation.”*

1283/2004

STRATEGIC CONTEXT

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

The Council's approach to the Prostitution Reform Act 2003 acknowledged that a great number of activities associated with the sex industry were not covered by the Prostitution Reform Act 2003. This includes activities such as adult book and video shops, strip clubs, “peep shows”, and adult cinemas. Consequently the Council saw the need to address this matter in a holistic fashion, as the activities not included in the Prostitution Reform Act 2003 have the potential to cause nuisance and similar effects on amenity values as brothels.

ISSUES

The stated purpose of the decriminalisation of prostitution is to make sex work safer and to allow Councils to manage the potential negative outcomes of decriminalisation.

The Prostitution Reform Act 2003 enables the Council to minimise the visibility of prostitution and the activity's potential to cause avoidable offence. It does not allow the Council to place constraints on the industry based on moral reasons. Council must view prostitution as it does any other lawful business activity.

Integrated Approach

Council staff consider that an integrated approach to this matter is required. The introduction of the Prostitution Reform Act 2003 requires the Council to consider its broader policy response to the sex industry in Waitakere City. Within this broader policy response, regulation can occur. The nature and extent of any regulation will therefore derive from the policy response, and may well lead to a co-operative approach with the other agencies that have a role in the regulation of the industry, where those approaches are appropriate.

Regulatory Mechanisms Available

The PRA only enables the development of location and signage bylaws for brothels. It does not enable bylaws for other activities related to the sex industry. Consequently it is considered important that any new bylaw or existing bylaw be integrated with changes to the District Plan, to ensure that the Council addresses all of the effects on amenity values potentially created by all the activities that occur within the sex industry.

The Council is required to consult with the public on both draft bylaws and draft District Plan changes. To not do so would present the possibility of challenges to any bylaws or District Plan Changes on the basis of poor process. Consequently it was considered appropriate that a document be prepared and comment from the public be sought. Given the need for an integrated approach, the document seeks to explain the following matters:

- The intention of the Prostitution Reform Act 2003;
- The Council's proposed strategic policy approach in relation to the commercial sex industry;
- The role that bylaws can play in regulating the commercial sex industry;
- The role that the District Plan can play in regulating the commercial sex industry; and
- The role of other agencies in regulating the sex industry (such as the NZ Police, the Ministry of Health, and the District Court).

The purpose of the document and the identification of roles and responsibilities is to inform those members of the public with an interest in the matter, and to try to focus discussion on matters that Council has some ability to influence.

The purpose of any bylaw or District Plan change is not to achieve a social "good" or achieve a "moral viewpoint" about prostitution activities, rather, that both may be used to address matters such as nuisance and environmental issues like health, public safety, signage, and location of brothels.

Comments from the public on the document, while not binding the Council to a particular approach, will be useful to enable the Council to inform itself of views held within the community.

Some interested parties in the community have suggested that Council should replicate the approach taken by the other Auckland Councils in their bylaws, and should do so on a fast track timeline. Such a process would not be appropriate. Council must consider the issues extant within Waitakere City, and must give consideration to the view of the Waitakere City community in its decision making and bylaw processes. Officers are particularly mindful to ensure that any regulatory mechanisms proposed to be utilised by Council are well thought out, coordinated and within the bounds of Council's powers under law.

Timeframes

Following the approval of the document by this Committee, it was expected that it would be made available for public comment. Given the imminent festive season, direction on the feedback time period is sought. Two options are proposed. Option A is for Council to seek feedback over the festive time (from Monday, 14 December 2004 to Monday, 14 February 2005). Option B is to seek comments from the public early in the new year (from Monday, 31 January to Monday, 14 March 2005). In terms of achieving maximum public response, option B is preferred.

Key stakeholders such as the local police, the New Zealand Prostitutes Collective, Ministry of Health, the District Court and Community Boards will be specifically invited to give comment to the draft policy statement.

Following the feedback period, the strategic policy document will be reviewed, and amended if appropriate, and any suggested bylaw and/or District Plan changes will be forwarded to the Planning and Regulatory Committee for approval to publicly notify. The timing of the comments period will determine when the Planning and Regulatory Committee will be considering these matters.

RESOURCES

Work associated with District Plan changes is covered by existing budgets. The Special Consultative Procedure required for bylaws under the Local Government Act 2002 has a budget of \$15,000 in 2004/2005. The cost of the special consultation procedure will be advised when any draft bylaw is presented for the consideration of the committee. There is potential to reduce the costs of the consultation exercise, if it can be included as part of the Annual Plan consultation process, or in conjunction with other bylaw and District Plan work that needs to be publicly notified.

CONCLUSION

The decriminalisation of prostitution raises a complex set of issues relating to the residential and urban sectors of Waitakere City. It requires a holistic approach and a realistic assessment of what the effects of the Prostitution Reform Act 2003 might be, and work to put them into perspective with other issues confronting the City, such as drugs, alcohol, crime and violence.

The development of a broader Council policy on the sex industry is required, and based upon that policy, an appropriate regulatory response can be determined. This regulatory response may include a bylaw on location and signage, and a District Plan change to manage the environmental effects of the sex industry.

This agenda report seeks the approval of a document that will facilitate the receipt of public comments on Council's policy and regulatory options for dealing with issues relating to prostitution. Following this process, the statutory requirements for bylaws and plan changes can be commenced with confidence that the correct process has been followed.

RECOMMENDATIONS

1. That the Prostitution Reform Act 2003 Work Programme Update and Draft Policy Statement report be received.
2. That the Planning and Regulatory Committee approve the draft policy statement and make the document available for public comment.

3. That the Planning and Regulatory Committee consider the timeframe for public comments to be received, and indicate its preference for Option A (Monday, 14 December 2004 to Monday, 14 February 2005), or Option B (Monday, 31 January to Monday, 14 March 2005).
4. That officers report to the Planning and Regulatory Committee on the proposed next steps regarding Council policy for the sex industry and regulatory options in light of the comments and feedback received.

Report prepared by: Zoe Cuming; Senior Analyst: Social Policy and Eryn Shields: Principal Planner.



9 WASTE BYLAW DETERMINATION REPORT

PURPOSE OF THE REPORT

The purpose of this report is to provide the Planning and Regulatory Committee with the outcome of initial work into determining the appropriateness of the bylaw mechanism requiring waste handlers to be licensed for operating within the north-west region comprising Waitakere City, North Shore City and Rodney District Councils. The Councils have identified that it may be possible to develop a bylaw requiring waste handlers to provide information on waste movements and to levy waste collected to fund waste minimisation initiatives.

This report provides a summary of a waste policy analysis now completed to determine the appropriateness of the bylaw mechanism, to achieve the Councils' objectives, as required under section 155 determination requirements within the Local Government Act 2002.

This report also provides information on the planned public consultation process, in order to satisfy the requirements of the Special Consultative Procedure of the Local Government Act 2002. This includes the outcome of a Waste Industry Workshop held to discuss the Councils' proposed licensing mechanisms for waste operators and waste levy systems prior to their finalisation.

This report is being presented to the Committee in order that it may make a recommendation to Council on the issue at 15 December 2004 meeting.

BACKGROUND

Council has key objectives for waste management: they are to impose appropriate levels of service in waste collection; to collect information on waste generation and disposal; to provide revenue for waste minimisation, and to provide equitable allocation of costs to waste generators and incentives for behavioural change.

Waitakere City Council shares a Memorandum of Understanding with North Shore City and Rodney District Councils that proposes a cooperative approach to waste policy work, specifically in relation to waste management plans, waste bylaws and regulatory functions. The three Councils share the long term goal of zero waste to landfill and there are operational, geographic and cultural similarities between the three Councils that could lead to economies of scale for implementing waste minimisation plans.

The Memorandum, supported and signed by the city's Chief Executive Officer, specifies that the parties will "Collaborate in the research, drafting, legal review, finalisation and consultation on a model solid waste bylaw that will give power to implement waste operator licensing, to collect a resource efficiency levy and other statutory powers in relation to waste management afforded to territorial local authorities".

In addition, Part 8 section 158 of the Local Government Act 2002 places a requirement on Territorial Local Authorities to review their bylaws within five years of adoption of the act ie. by June 2008. If this process is not undertaken then the bylaw in question will cease to have effect. For these reasons, a joint investigation has been undertaken on the development of a new solid waste bylaw.

Consultants were engaged by the three Councils to undertake the role of waste management policy assessment for each of the Councils, to establish whether a Waste Bylaw is the best mechanism for achieving Councils' objectives. These objectives include imposing appropriate levels of service in waste collections; to collect data on waste generation and disposal; and to provide more equitable allocation of costs to waste generators. This has required the development of a waste operator licensing system and investigations into a waste levy to fund waste minimisation initiatives.

A key task is to ensure that the drafting of any combined Waste Bylaw has continuity and consistency and meets legislative and Council reporting requirements. Liaison has been undertaken and continues with the Councils' appropriate operational, strategic and legal staff as well as with staff of the Ministry for the Environment.

STRATEGIC CONTEXT

The regulatory framework for waste management relies on the Local Government Act 1974, the Health Act, the Resource Management Act and the Hazardous Substances and New Organisms Act. Waitakere City developed a Waste Management Plan in 2003 under Part XXXI of the Local Government Act 1974. The Ministry for the Environment and Local Government New Zealand developed the New Zealand Waste Strategy in 2002 which focuses on waste minimisation.

The issue of waste is of concern to Councils around New Zealand eg. North Shore City Council has submitted a remit to Local Government New Zealand seeking stronger central government leadership in regards to waste management through various legislative changes; Christchurch City Council has recently implemented a Cleanfill Licensing Bylaw 2003.

Waitakere City's Long Term Council Community Plan 2003 vision for solid waste is that by 2020 Waitakere will be a clean and attractive city that turns all its waste into resources. The City has made good progress on waste minimisation with kerb-side recycling, composting of green waste, establishment of a re-use centre, education and cleaner production programmes. However, further initiatives will be required to achieve this goal by 2020.

A1-A60

Options to achieve these objectives have been assessed in the report attached at pages A1 to A60 to the agenda Report.

That report recommends that a licensing system will enable the collection of more complete data on waste collected and what happens to it, and will provide a vehicle for imposing a waste levy to assist with funding of waste minimisation initiatives. This system is considered consistent with the Council's objective to introduce user pays initiatives in support of its zero waste tolerance strategy, as indicated in the Revenue and Financing Policy.

ISSUES

1.0 Need for more information

The initial waste policy analysis work completed by Hill Young Cooper "**Determination Report: Appropriateness of Bylaw Mechanism - Waitakere City Council, North Shore City Council and Rodney District Council**" is attached in full at pages A1 to A60. In summary the policy analysis has determined that a bylaw is the most appropriate way of providing the necessary financial and regulatory support for achieving the respective waste management plan minimisation targets and the broader objectives of the New Zealand Waste Strategy.

This report confirms that further reduction of waste to landfill requires better information on waste generated and collected in the City, and will also require a means of funding reduction initiatives.

More specifically, with regard to Council objectives, the report recommends that :

- Provision of Information -
Councils require an accurate supply of information in order to set, monitor and achieve waste minimisation outcomes. Bylaws are an available statutory mechanism open to the councils through which they could require the provision of waste information by licensing waste collectors. A bylaw is considered the most appropriate mechanism for the purpose of obtaining adequate information on waste streams.
- Revenue for Waste Minimisation -
The councils require a mechanism that enables them to fund waste minimisation programmes. A waste levy is an appropriate mechanism for achieving this and a bylaw is considered the most appropriate mechanism for implementing any such levy. It is recommended that the councils investigate the most appropriate form a bylaw establishing a waste levy should take.
- Incentives for Behavioural Change -
The councils required a mechanism that creates an economic incentive for people to reduce waste. A waste levy is an appropriate mechanism for achieving this and a bylaw is considered the most appropriate mechanism for implementing any such levy. It is recommended that the councils investigate the most appropriate form a bylaw establishing a waste levy should take.

The report outlines a number of issues to consider and next steps including:

Form of Bylaw -

The bylaw making process requires that the councils, having determined that a bylaw is the most appropriate mechanism to achieve the outcome sought, must now determine the most appropriate form of the bylaw. A subsequent report will be presented to the councils in February 2005 outlining the most appropriate form of bylaw, and the justification for this.

Form of Licensing -

To ensure the appropriateness of the bylaw there is a need to ensure that the licensing conditions will effectively provide the required information.

Form of Waste Levy -

The form of levy has a number of issues that must be worked through before the effectiveness and form of any levy can be concluded e.g. rationale and purpose, basis for charging a levy, how much a levy should be, what impact different levels of levies have on changing people's behaviour, how levy funds collected will be utilised and how the levy will be administered.

Administration and Costs -

Consistency and uniformity of administration of any bylaw and associated licensing and levy provisions is critical. Sub-regional administration and enforcement is an option that needs to be further reviewed and will be reported on in the next report, as appropriate. The impacts of costs to operators and waste generators of implementing the bylaw will be further considered as part of February 2005 report.

2.0 Analysis of Options

The strategic outcomes being sought, together with the available mechanisms, are discussed in the Determination Report as attached. The following Table summarizes the discussion. Whatever mechanism(s) is adopted, it needs to be effective as a means of facilitating the outcomes of the NZ Waste Strategy, and Waitakere's Long Term Council Community Plan 2003.

Outcome Sought	Mechanisms
Information supply from waste contractors of waste generators	<ul style="list-style-type: none"> ▪ Monitoring ▪ Voluntary Code of Practice ▪ Licensing/Regulatory requirement
Waste minimisation funding	<ul style="list-style-type: none"> ▪ Rates ▪ User charges ▪ Waste levy
Change behaviour	<ul style="list-style-type: none"> ▪ Education ▪ Economic instruments

While a number of these mechanisms discussed in the report are likely to be used as part of the suite of solutions to the problem of waste minimisation, there is little doubt that development of a bylaw will be necessary to underpin other non-regulatory approaches, and is an efficient means for designing licensing and funding mechanisms.

3.0 Public Consultation

3.1 Consultation Plan

A draft Public Consultation Plan has been developed that outlines the public consultation process that would be used should Council determine a waste bylaw is the appropriate mechanism to deliver Councils' objectives, in particular a licensing system and waste levy.

The public consultation process would be conducted in accordance with the Special Consultative Procedure of the LGA 2002, Part 6 sections 83 and 86 and the principles of Council's "Community Interaction Policy" and "Community Interaction Guidelines". It sets out proposed consultation processes and a timeframe for completion, lists identified stakeholders and interested parties and outlines roles and responsibilities to ensure completion of the consultation to legislative requirements. The consultation process would run concurrently with the development of the draft Waste Bylaw.

The main stages of the proposed Bylaw Development/Consultation Process are as follows:

Process	Date of Completion
Informal consultation with waste industry groups	November 2004
Preliminary/Information/Determination Report (Stage 1)	December 2004
Commencement consultation with affected key stakeholders and communication regarding public hearings/consultation	December 2004
Determination Report (Stage 2) to Council	Mid – February 2005
Public submission period	Mid – March/mid April 2005
Public Hearings and Hearings Committee Decision Report	May 2005
Waste Bylaw adopted by Council	End June 2005
Printing and distribution of Waste Bylaw	July 2005
Implementation of Waste Bylaw	1 August 2005

3.2 Consultation Mana Whenua

Specific consultation with mana whenua would be conducted through the public submission period and Public Hearings processes. Early communication would be undertaken with appropriate iwi representatives to ascertain if they wish to be involved in the development of the Waste Bylaw.

3.3 Consultation Elected Members

Consultation with Elected Members will be through three reports to the Planning and Regulatory Committee and Council. These reports will be as follows:

a) Preliminary/Information/Determination Stage 1 Report

The Determination Stage 1 Report is the focus of this report.

b) Determination Stage 2 Report

For the February 2005 meeting of Council the second report will:

- Seek recommendation to commence the special consultative procedure for the draft Waste Bylaw and
- Contain an explanatory statement with:
 - Form of Draft Waste Bylaw (Statement of Proposal)
 - Form of Licensing and Levies
 - Discussion of administration and costs
 - Outcome of the policy analysis
 - Confirmed Consultation process

c) Council's Adoption of Waste Bylaw

At the June 2005 meeting of the Council a report will detail the outcome of the Public Hearings process and recommend that the Waste Bylaw is adopted and implemented by 1 August 2005.

Community Boards will be kept informed through the provision of summary reports of all Committee and Council Reports.

3.4 Wider community consultation

Council's Call Centre would be supplied in early March 2005 with some Frequently Asked Questions and Answers (FAQ) in order to respond to public enquiries when the draft Waste Bylaw is released for public submission.

Consultation with the wider community would occur after the release of the draft Waste Bylaw (Statement of Proposal) in March 2005 and through the receipt of submissions. Public Hearings would be held in May 2005 so that people may also make verbal submissions to the draft Waste Bylaw.

A Summary of Information leaflet would be available from Council's service centres and libraries from March 2005 and submissions to the draft Waste Bylaw would be sought from interested parties. The Council's website would also have a copy of the draft Waste Bylaw (Statement of Proposal) and submission form. Publicity through various media would be used to raise awareness of the Waste Bylaw and waste issues in general. It would also be used to encourage submissions on the draft Waste Bylaw.

3.5 Waste Industry Consultation

Initial informal consultation on the concept of a licensing and levy regime has been undertaken with key industry waste groups. This took the form of a workshop facilitated by the Ministry for the Environment. Industry comments are being considered by Council officers and a further workshop is planned for December to respond with more detailed information on the licensing requirements and address issues of concern such as:

- Enforcement
- The necessity of a waste levy; and the
- Implications for industry of implementing a licensing system and a waste levy.

The workshop attendees agreed the main requirements of a licensing and levy regime were:

- Practicality
- Fit for purpose
- Provision of useful information
- Need for consistency of any system
- Fair allocation of funds raised for waste minimisation projects
- Common opportunity

RESOURCES

The staff and financial resources to cover the anticipated project management, policy analysis and consultation, as required under the Local Government Act 2002 Special Consultative Procedure, are available in the current budget of the Long Term Council Community Plan.

CONCLUSION

This report provides a summary of waste policy analysis completed to determine the appropriateness of the bylaw mechanism to achieve the Councils' objectives towards Zero Waste, as required under section 155 determination requirements within the Local Government Act 2002.

The initial waste policy analysis work has determined that a bylaw is the most appropriate way of providing the necessary financial and regulatory support for achieving key Council objectives, including the provision of information, revenue for Waste Minimisation and incentives for behavioural change. The report brings these issues to this Committee for consideration, and requests a decision on the use of the bylaw mechanism in order to begin work on the next step e.g. drafting the bylaw itself.

This report also provides information on the planned public consultation process, developed to ensure compliance with the requirements of the Special Consultative Procedure of the LGA 2002. It provides information on the outcome of a Waste Industry Workshop held to discuss the Councils' proposed licensing mechanisms for waste operators and waste levy systems prior to their finalisation.

If Council determines that a bylaw is the most appropriate mechanism, work will commence towards preparing a draft Waste Bylaw which will be presented to Council in February 2005 in conjunction with the Determination Stage 2 Report for consideration.

This will allow consultation on the bylaw to commence in March 2005. A draft public consultation plan has been prepared in advance.

RECOMMENDATIONS

1. That the Waste Bylaw Determination Report be received.
2. That the Planning and Regulatory Committee recommends to Council that a Waste Bylaw is the most appropriate mechanism for achieving Council's stated objectives of provision of information, revenue for waste minimisation, and incentives for behavioural change.
3. That, subject to Council approval of the mechanism, the draft Waste Bylaw to enable licensing of waste management operators and the implementation of a waste levy system, be prepared for consideration at the February 2005 meeting.
4. That the continuing consultation process outlined in this report be continued pending development of the draft Waste Bylaw, in preparation for the special consultative process which will be required to be undertaken if the draft bylaw is approved.

Report prepared by: Carol Bergquist, Senior Analyst Environmental Policy.



PART E - CONFIDENTIAL ITEMS

10 PROPOSED PLAN CHANGE 2 - RE-IDENTIFICATION OF LAND FROM LIVING ENVIRONMENT AND HARBOURVIEW SOUTH SPECIAL AREA TO OPEN SPACE ENVIRONMENT AND MARAE SPECIAL AREA

11 DISTRICT PLAN UPDATE - MAWHINNEY APPEALS

These items 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 parts of the proceedings of this meeting, namely, Proposed Plan Change 2: Re-Identification of Land from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation of each 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 of each of the matters to be considered.	Reason for passing this resolution in relation to each of the matters.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"> • Proposed Plan Change 2 - Re-Identification of Land from Living Environment and Harbourview South Special Area to Open Space Environment and Marae Special Area • District Plan Update - Mawhinney Appeals 	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> • to protect legal professional privilege. • enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations). 	<p>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.</p>

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)(i) 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, would affect the Council's negotiations.*

