



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, 12 December 2006** **TIME:** **9.30 am**

VENUE: **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

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

21 November 2006

Audrey Chan
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8603

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	RP	Dallow, QPM, JP (Deputy Chairman)
	DQ	Battersby, JP
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	C	Harding, JP
	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 AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,
HENDERSON, WAITAKERE, ON TUESDAY, 12 DECEMBER 2006,
COMMENCING AT 9.30 AM.**

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PART A - OPENING OF MEETING

1 APOLOGIES



2 URGENT BUSINESS

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

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

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

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



3 CONFIRMATION OF MINUTES

Hearing Minutes - Tuesday, 11 July 2006
Meeting Minutes - Tuesday, 7 November 2006

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee (Hearing) held on Tuesday, 11 July 2006 and the Planning and Regulatory Committee held on Tuesday, 7 November 2006, as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

4 LEGAL UPDATE (AS AT 29 NOVEMBER 2006)

INTRODUCTION

The following is a list of legal actions in respect of matters which are currently before the Courts and which are ongoing or have been commenced since the date of the preceding report. The list does not include minor prosecutions for dogs, swimming pools, health, parking, and litter although advice on any particular such prosecution can be provided to the Committee if it wishes. References to Council's District Plan were not included in previous reports but will be included separately under the Environment Court heading in all future reports.

SUPREME COURT

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

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

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

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

The appeal was argued on 11 and 12 July 2006. While there can be no assurance of the outcome the arguments presented on behalf of the Council appeared to find some favour with the court and a number of indications were given that the Court of Appeal decision was unlikely to stand. The real uncertainty relates to whether or not the Supreme Court will deal with the matter for itself or refer a further matter back to the Environment Court for further consideration.

It may be some time before we receive the Court's decision.

COURT OF APPEAL

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

Councillors are already aware that Justice Asher handed down a decision on these matters on Monday, 3 April 2006 and have already been given a report in respect of the decision. One of the aspects of the decision was Justice Asher's confirmation that in relation to the challenge by Carter Holt to the licensing provisions of the bylaw, that paper destined to recycling was "waste" for the purposes of both the bylaw and the Local Government Act 1974, and that the Local Government Act 1974 expressly authorised the proposed licensing regime. Carter Holt has appealed this aspect of the decision. This appeal is likely to be heard by the Court of Appeal later in the year or early next year. CHH have notified us that they will be filing their case on appeal. This means the matter is likely to proceed to hearing. This has been set down for hearing in June 2007.

HIGH COURT

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

Council has been served with seven sets of proceedings under the Public Works Act in the High Court claiming Council breached its duty to offer back land on the Te Atatu Peninsula bordering the Waitemata Harbour. Council filed applications to strike out the various claims on the basis that the events which trigger an obligation under the Public Works Act occurred prior to the offer back obligation coming into force. This application was heard by Associate Judge Faire on 9 October 2006.

A striking out application is in the nature of interlocutory proceeding in respect of the claim. A striking out application confronts key issues which need to be dealt with as part of the proceedings in any event and it is helpful to try and deal with these issues before (if at all) the matter proceeds to a hearing.

His Honour declined the applications in a decision delivered on Thursday, 19 October 2006. An application to review the Associate Judge's decision was filed. A judicial conference was held on 23 November 2006 where a timetable was set for the review of current proceedings and to advance the substantive proceeding. A hearing is set down in the week of 26 February 2007.

(Changed) Waitakere City Council v PW Mawhinney (February 2006)

The Council issued a bankruptcy notice against Mr Mawhinney to recover payment of unpaid costs and disbursements awarded in March 2006. The Council was required to obtain substituted service orders as Mr Mawhinney was avoiding service. Mr Mawhinney has now paid costs of \$3,475 in accordance with the bankruptcy notice. The Council has sought indemnity costs against Mr Mawhinney due to additional costs incurred by Council for being forced to make an application for substituted service. This application is due to be determined on 18 December 2006.

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

The Judgment of Fogarty J in relation to Council's strike out application was released on 14 September 2006. The result was a complete success for Council. The Court held that there was no prospect of any of Mr Mawhinney's causes of action succeeding and the claim was struck out in its entirety. The Judgment also contains some helpful remarks about the ability to bring actions based on common law duties against local authorities generally. The appeal period calculated from 14 September expired in October. A substantial costs application in respect of the proceedings from 1999 to date has been lodged with the Court and a timetable for exchange of submissions requested. This action prompted Mr Mawhinney to respond, although he alleged that he had never received a copy of the judgement. We are waiting to see whether an application will be filed to seek leave to appeal out of time.

ENVIRONMENT COURT

(Unchanged) Ritchie's Transport Holdings Limited, A Ritchie, J Ritchie, E Ritchie and J Shaw v Waitakere City Council, and Rex Campbell, s.274 Party (September 2006)

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

A judicial telephone conference was held between the parties to consider the application for stay on 27 September 2006. Mr Campbell, the s.274 party joined the conference by consent. The Court granted the application for stay upon the agreement of all parties, including Mr Campbell, for a 3 week period to permit the parties to resolve the appeal. As a result, the appeal has been put 'on hold'. The Council met with the parties on 16 October to resolve the appeals. As a result the parties agreed for the stay to continue and that Ritchie's would lodge resource consent to address the matters raised in the abatement notice. The Council is due to report back to the Court on 20 February 2007.

(Unchanged) Perceptus Limited & Swanson Heights Limited v Waitakere City Council (June 2006)

Waitakere Resource Consents Limited & Glorit Subdivision Limited v Waitakere City Council (June 2006)

Glorit Subdivision Limited & London & Greenwich General Trading Company Limited v Waitakere City Council (June 2006)

These three appeals are laid by entities associated with Mr Mawhinney and/or his land interests against the Council's decision under Section 358 of the Resource Management Act declining subdivision consents and certificates of compliance. Council has filed an application to strike out the appeals. Mr Mawhinney is yet to file his submission in opposition.

(Changed) David Paul Leaky v Waitakere City Council (May 2005)
All Seasons Properties Limited v Waitakere City Council (May 2006)

These are appeals by two parties against a decision of Council to grant consent to a proposed medical centre located at 382, 384 & 386 Te Atatu Road and 9 Karamu Street, Te Atatu Peninsula. The activity is a non-complying activity. The appeals allege that the location of these premises in a residential area will adversely affect the integrity of the District Plan. The Court has made timetabling orders and all parties are now preparing evidence. A preliminarily hearing has been scheduled for February/March 2007.

(Changed) Weddings Etc Limited v Waitakere City Council (January 2006)
Weddings Etc Limited v Chapman (November 2006)

Following the Environment Court decision of costs award against Cassels reported last month, Cassell's have appealed the costs judgment to the High Court. Council will have limited involvement in this matter and will abide the Court's decision. The matter against Council has now settled.

(Changed) Waitakere Resource Consents Limited v Waitakere City Council (December 2005)

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the Resource Management Act. In essence the application contends that through a 'sequence' of activities, the establishment of 77 barns/residential units are a permitted activity under the District Plan. The application includes the creation of various 'allotments', the creation of barns and sheds, the conversion of barns to dwellings, terraces, decks and pergolas, earthworks, clearance of vegetation, driveways, establishment of lawn, and vesting of land as road.

The matter has been on hold for a considerable period pending the determination of Dilworth Structure Plan proceedings (RMA 886/98). The proceedings have recently been reactivated and Council has filed a strike out application with the Court. Mr Mawhinney has filed a notice of opposition. Judge Whiting has placed the matter on hold until the 31 January 2007 as a result of other hearing commitments.

(Changed) Denver Holdings Limited v Waitakere City Council (October 2005)

An appeal by the applicant (Denver) against certain conditions imposed on a resource consent for a medium density housing development at 23 Denver Avenue, Sunnyvale. A related appeal by Mr J Baran against the Council's decision to grant the consent has since been withdrawn. The appeal has been placed "on hold" at the appellant's request. The appellant and Council have met recently to discuss the conditions on appeal with a view to resolving the appeal by consent, if possible (the appeal relates primarily to conditions requiring further clarification of the development, staging of landscaping works, financial contributions and fees payable). The Court has now issued a consent order which confirms the agreed amendments to certain conditions of consent.

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

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Brittens property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. Council sought final orders to require that the Britten's undertake appropriate remedial works to stabilise the affected area and to pay the costs incurred by the Council in its initial remedial operation undertaken in July/August 2005.

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

The enforcement proceedings are now 'on hold', with a further report to the Court required by January 2007 to permit resolution through the mediation process.

**(Changed) Auckland Regional Council v Waitakere City Council (May 2005)
Waitakere Ranges Protection Society Inc v Waitakere City Council (May 2005)
("the Duncan Appeal")**

An appeal by the Auckland Regional Council and Waitakere Ranges Protection Society Inc against a decision of the Council to grant consent to a subdivision by M and K Duncan, relating to the property at 46 Christian Road, Swanson. Both Auckland Regional Council and Waitakere Ranges Protection Society Inc oppose the consent on the basis of the density of the proposed subdivision and alleged precedent effect. These appeals have been on hold since September 2005, by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006 the Court directed that these appeals be set down for hearing and has made timetabling orders for exchange of evidence.

Following an extra-ordinary meeting of the Planning and Regulatory Committee, the Council has decided to abide by the Court's decision and call no evidence. This appeal is set down for the week of 12 March 2007, concurrently with the Ashton appeal.

(Changed) M and C Brickell, W Ashton and L Schwab v Waitakere City Council (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the Resource Management Act 1991 against a decision of the Council to refuse to grant consent to a 7 lot subdivision at 54-56 Christian Road, Swanson. The Auckland Regional Council and Waitakere Ranges Protection Society Inc have lodged applications with the Court in support of the Council as Section 274 parties. These appeals were 'on hold' since September 2005 by direction of the Court, to allow time for resolution of the appeals on the Swanson Structure Plan. At a judicial conference held on 13 September 2006 the Court directed that these appeals will be set down for hearing and has made timetabling orders for exchange of evidence. Council has filed its evidence. This appeal is set down for the week of 12 March 2007, concurrently with the Duncan appeal.

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

A further appeal in the High Court by Glorit Subdivision Limited/Peter Mawhinney in relation to a refusal by Council to issue Certificates of Compliance for boundary changes to 27 separate Certificates of Title. This appeal was struck out by the Environment Court in December 2005 and Mr Mawhinney's application to rehear has also been dismissed by Judge Shepherd. Both decisions have been appealed to the High Court; the matter has not yet been set down for hearing. The Council has commenced liquidation proceedings in the High Court against Glorit Subdivision Limited, a bankruptcy notice has been served upon Mr Mawhinney in respect of unpaid costs in the Environment Court.

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

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (Resource Management Act 886/98) have been concluded.

PLAN CHANGE HEARINGS

**(Changed) Anne Grace v Waitakere City Council (March 2006)
Te Atatu Residents' and Ratepayers' Association Inc v Waitakere City Council
(March 2006)**

These appeals relate to Council's decisions on Plan Change 12 which concerns the Open Space Environment. The appeals have been resolved following mediation and further discussions between the parties. The Court issued a Consent Order on 7 November 2006. Plan Change 12 is now going through the formal process of being made operative in accordance with the First Schedule to the Resource Management Act.

**(Changed) Te Atatu Residents' and Ratepayers' Association Inc v Waitakere City Council
(2004)**

Te Atatu Residents' and Ratepayers' Association Inc is appealing Council's decision on the proposed Plan Change 2. This Plan Change concerns the identification and use of the Harbourview-Orangihina park land. The Plan Change identifies the majority of the land as Open Space Environment and a 2.5ha area at the southern end of the park as Marae Special Area. Te Atatu Residents' and Ratepayers' Association Inc opposes that identification and use for the land and seeks that the park be identified as distinct Special Area. The Court heard the appeal on 5 and 6 December 2005, however it issued an interim decision deferring a final determination until Plan Change 12 had been resolved. Council is now seeking that the Court makes a final determination on Plan Change 2.

(Changed) I & Z Farac v Waitakere City Council (March 2004)

A site-specific reference has been filed by Mr and Mrs Farac, relating to their property at 172A Don Buck Road, Massey. It has sought to rezone all (or part) of the property as 'Living 2 Environment'. The Council retained consultants to assess the Farac proposal. As a consequence, the Council requested further information from the appellant (outstanding matters relate to stormwater and geotechnical issues regarding development of the subject land). Council has not yet received a response from the Faracs. Due to these delays, the Court has now directed that this matter be set down for hearing during the fortnight commencing 23 April 2007. Council filed a reporting on 1 December 2006 to propose a timetable in preparation for the hearings.

DISTRICT COURT

(New) J and P Cottingham - 122 Lone Kauri Road, Karekare

Charges have been laid under the Resource Management Act and Building Act in respect of the use of numerous unauthorized minor household units on the site. The matter is set down for a first call on 11 December 2006.

(Changed) Waitakere City Council, Fistonich, Walker - Henderson Valley and Laingholm Roads

This prosecution relates to the removal of six houses from the above addresses without building consent for the Twin Streams Project. The Council contracted out and approved the removal of the buildings without ensuring that building consents had been obtained prior to the removal. Fistonich and Walker are the contractors who undertook the removal of the houses without consent. The matter was set down for a first call on 1 December 2006. At the time this report was being finalised, the Council intended to enter a guilty plea and the other defendants intended to enter not guilty pleas.

(Unchanged) Stil Investments Limited - 40 Stottholm Road, Titirangi (August 2006)

Charges have been laid under the Building Act for re-cladding the exterior of the house, alterations to decks and safety barriers, connection of basement to the first floor and the conversion of a laundry into a bathroom. These works were done without building consent and they are not Building Code compliant. Stil investments entered a guilty plea. The matter has been set down for a sentencing hearing on January 18 2007 at 11.45.

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

Charges have been laid under the Building Act for internal alterations to the dwelling and excavation underneath the dwelling without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was set down for 1 December 2006.

(Unchanged) J Bell, G Payne - 3175 Great North Road (August 2006)

Charges have been laid under the Building Act for removal and replacement of pile foundations without building consent. The matter was called on 15 September 2006 but was adjourned to permit disclosure to be completed. The matter was set down for 1 December 2006.

(Changed) Illingworth Plumbing Limited, S Wilson - 66 Paturoa Road, Titirangi (August 2006)

Charges were laid under the Building Act for the conversion of a basement approximately 50m² into a separate living area without building consent. The work comprised of a new floor, removal of existing support beams that support the second floor of the dwelling, replacement of the beams to a standard which is not Building Code complaint, alteration of and replacement of plumbing and drainage in the area. The defendants intimated guilty pleas when the matter was called on 15 September 2006. Illingworth Plumbing Limited and S Wilson were called to enter their plea on 27 October 2006 and to be sentenced. The guilty pleas were confirmed.

Illingworth Plumbing Limited was convicted and fined \$3,000 and ordered to pay court costs of \$130 and solicitor's costs of \$226. Illingworth Plumbing Limited was given a 50% discount on the penalty imposed due to the early guilty plea and the company's co-operation to upgrade the works undertaken to meet the building code.

Mr S Wilson was convicted and discharged due to satisfying the Court that the conviction, if it were to remain, would be disproportionate to the offence. The Court gave weight to the Mr Wilson's good character, this being his first offence, his considerable co-operation with the Council from the outset in applying for further applications to upgrade the unauthorised works to meet the Building code, particularly the cladding of the basement. Mr Wilson was ordered to pay \$2,000 in prosecution costs to the Council. This has been paid in full.

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

Charges have been laid under the Building Act for converting the house into two separate households. No consent has been obtained for this work. The defendants have been previously prosecuted and convicted for similar unauthorised work. The matter was called on 15 September 2006. Q Potts intimated a guilty plea but the matter was adjourned for him to seek legal advice. This was set down to be called on 1 December 2006.

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

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

The matter was listed for mention in the Auckland District Court on 13 October 2006. The Court adjourned the matter to 11 December 2006 as the defendant was seeking further disclosure.

(Changed) Rogers Earthmoving Limited, LM and KP Rogers, GP Fitzpatrick - 312 Lincoln Road (April 2006)

Charges were laid under the Building Act for erection of a structural retaining wall that is not building code compliant and built without building consent, as well as a change of use from residential home to a business without building consent.

The Council was asked to review the file by the defendants as they believed they were not informed of the requirements to file a notice of change of use under the Building Act. They were of the opinion that the resource consent applied for and granted was sufficient. The defendants further allege that the retaining wall is building code compliant and in any case is exempt under schedule 1 of the Building Act as it is under 1.5metres. The matter is now being reviewed, with the defendants providing further information to substantiate their views. The matter is "on hold" until 18 January to permit the defendants to present the relevant information to the Council.

(Changed) Property Solutions Group Limited, Pratt G, Power R - 77E Colwill Road, Massey (April 2006)

Property Solutions Group acted in an advisory capacity to the owners of the property. They advised the owners to complete the development undertaken underneath the house even though no building consent had been granted. The company, its director and primary advisor have been charged under the Building Act. The matter was set down to be called on 1 December 2006.

(Unchanged) JA and GR Drew - 42 Christian Road, Swanson (April 2006)

Charges laid under the Building Act for the conversion of the basement area of the house into a minor household unit. Building work was undertaken to create bedroom, bathroom, lounge area, including alteration and building of structural walls. The work is not building code compliant and no building consent was granted for the work. The defendants have requested for the Council to review this matter as they are of the opinion the works undertaken is exempt from requiring building consent under schedule 1 of the Building Act. As a result the matter was adjourned to 1 December 2006.

(Changed) WB and LA Henderson - 1/21 Arawa Street, New Lynn (April 2006)

Charges laid under the Building Act for significant alteration work undertaken at the property. This work extended the living area of the property. Structural walls were removed and replaced. None of the work meets the Building Code. No building consent was granted. The new owners of the property have removed the unauthorised works and replaced them with work in accordance with a building consent. The role of the defendants in undertaking the work is being reviewed. The matter is "on hold" until 18 January 2007.

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

This matter relates to breaches of the Resource Management Act and Building Act. Both matters were called on 31 March 2006 at the Waitakere District Court. Mr Gordon entered a not guilty plea to both charges. The Resource Management Act matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court. This matter will proceed to a jury trial. The Resource Management Act matter was set down to be called on 26 April for pre-hearing issues to be considered. At the call-over on 26 April 2006 Mr Gordon entered not guilty pleas to all the charges. The matter was set down for depositions on 15 June 2006. In respect of the Building Act matters, a defended hearing was set down for 30 October to 1 November 2006. The matter was to be heard with other similar offences to which Mr Gordon has pleaded not guilty to. However, Mr Gordon is unwell and will not be able to attend Court. The matter has been adjourned for a new date to be given by the Registrar for next year. The Resource Management Act charges have been set down for five days at the Auckland District Court before a jury in May 2007.

(Changed) McGuigan Syme Chilcott Limited, G Pitts, M Engel, - 71 Riverlea Road, Whenuapai (August 2005)

Charges laid under the Building Act for unauthorised building work undertaken to construct concrete foundations and timber framing as well as failing to stop work following the direction of an authorised officer. A building consent was lodged, but work commenced prior to the consent being granted. The matter was called on 19 May 2006 where all but the owner of the site, Mr Engel, entered a guilty plea. As the engineering company McGuigan Syme Chilcott Limited entered a guilty plea, charges against the directors of the company were withdrawn. Sentencing was set down for McGuigan Syme Chilcott Limited, G Pitts and D Owens Builders Limited on 28 September 2006. The matter was heard but a decision was only given in respect of D Owens Builders Limited as the other two parties were seeking to be discharged without conviction. The court determined that it was not in a position to determine the application for discharge without the decision on the substantive hearing in respect of the property owner, Mr Engel. As a result, the matters of McGuigan Syme Chilcott Limited and G Pitts will not be determined until February 2007.

Mr Engel's matter was put forward to 7 November 2006. He changed his plea to enter a guilty plea. He was then convicted but discharged. Mr Engel was ordered to pay costs to the Council of \$500, which was substituted for a donation of \$500 to the Karekare surf life rescue at the request of Mr Engel and at the Court's direction.

RECOMMENDATION

That the Legal Update (as at 29 November 2006) report be received.

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



5 REVIEW OF GAMBLING VENUE POLICY

PURPOSE OF THE REPORT

The purpose of this report is to advise the Planning and Regulatory Committee about the review of Waitakere City Council's Gambling Venue Policy (the Policy) that has been operative since May 2004, and to set out how the review will be conducted. It is a requirement of the Gambling Act 2003 that any such policy held by the Council is reviewed at a three year interval.

BACKGROUND

Waitakere City Council introduced a Gambling Venue Policy in May 2004, in compliance with the provisions of the Gambling Act 2003 (s.101). The Policy sets limitations on the operation of the gambling industry within the City through the use of caps. Currently, the Policy states:

- a) No more than 38 gambling venues are permitted in the City; and
- b) No more than 501 gambling machines are permitted; and
- c) No more than 9 gambling machines are permitted at new venues (licenses issued after 17 October 2001).

The Policy applies to Class IV gambling venues (venues with electronic gambling machines) and to New Zealand Racing Board (TAB or Board) venues. For the caps to be enforced the Council requires gambling venue operators to obtain consents for these venues and machines. Once consents have been obtained, an application needs to be made to the Department of Internal Affairs to obtain the necessary licences to operate gambling venues and machines.

City Services Regulatory Group currently administers the Policy with the licensing inspectors having responsibility for responding to queries about gambling venues and machines. Most enquiries are by existing license holders of venues (such as a Trust or Club), who wish to learn about establishing, disestablishing or relocating a gambling venue or about changing the number of machines that they have.

The review of the Policy needs to begin before May 2004 in order to comply with the provisions of the Gambling Act 2003 (section 102), which states that a review is needed at three years after the adoption of a Gambling Venue Policy.

This legal requirement provides a valuable opportunity for the Council to update the Policy to take account of any changes in the local gambling industry and to make improvements at an operational level so that customers receive good service.

STRATEGIC CONTEXT

Policy decisions regarding the regulation of gambling venues must have regard to all effects that gambling can have on our community, whether these be positive or negative. Harms that are associated with gambling are extensive and include social and economic costs to families and communities, whereas benefits such as entertainment value and socialising can be difficult to quantify.

Given the range of impacts that gambling may have, a number of Council's strategic priorities will be of relevance to the review, particularly those that cover the areas of community safety, economic development, and health and wellbeing of individuals and communities. These priorities include: 'sustainable development with the emphasis on long-term benefits for communities'; 'first call for children' which focuses on the welfare of young people, and 'safe city' by promoting the importance of keeping communities.

Further consideration will be given to the compatibility of the revised Policy with the four well-beings of social, cultural, environmental and economic, by carrying out a quadruple bottom line assessment.

The Policy will also be developed with regard to Council's Liquor Licensing Policy as there are connections between liquor licensing and gambling venue licensing as well as benefits to be gained from creating a consistent regulatory environment.

ISSUES

1. Summary of the Review

The review of the Policy is estimated to take approximately nine months, and will consist of a number of steps that are indicated in the Table below. Changes will be made to the Policy to allow amongst other things, a greater emphasis on the Council's service delivery to customers.

The review will be informed by research that is being carried out by the University of Auckland which is due to be completed by the end of 2006. The research findings drawn mainly from interviews will aid an understanding of the gambling industry in Waitakere City and provide some exploratory data that could provide some useful leads for the Policy. Interviews have been held with key stakeholders, including existing holders of Gambling Venue Licenses, staff from the Department of Internal Affairs, and interest groups such as the Problem Gambling Foundation and Waitakere Association of Gambling Action.

To help ensure that any revised Policy will be user friendly, officers who will be responsible for implementing the Policy and responding to the needs of customers will be involved in the review process. The review will be led by the Strategy unit, with the support of officers from other units of Council including:

- Legal Services - to examine legal issues in relation to the Policy and to ensure compliance with the Gambling Act; and
- City Services - to consider implementation issues such as responding to customers and processing consents; and
- Public Affairs - to assist with communications, especially during consultation; and
- Safe Waitakere - to consider safety aspects and potential linkages with its own work.

Table: Key steps of the Policy review and timeline.

Date	Milestone	Details
July - October 2006	Data gathering.	Research conducted by the Centre for Gambling Studies (University of Auckland).
November 2006 - February 2007	In-house consultation.	Consult with Councillors and with officers to ensure that key issues in the community and from a planning and regulatory perspective are noted.
February - March 2007	Rewrite policy.	Examine the research findings and review existing policy and amend where appropriate.
April 2007	Approval of draft policy before consultation.	Present draft policy to the Planning and Regulatory Committee to seek approval to commence formal consultation.

Date	Milestone	Details
May - June 2007	Public consultation - followed by submissions and hearings.	The Gaming Act (section 102), requires the use of special consultative procedure if there are any changes or revisions to a gambling policy.
June - July 2007	Review public feedback.	Examine feedback from members of the public and other key stakeholders.
August 2007	Seek approval to finalise policy.	Present final draft of the policy to the Planning and Regulatory Committee for adoption.

2. Consultation

A consultation plan will be developed to help ensure that key stakeholders have the opportunity to become involved during the revision of the Policy and to ensure that the Council complies with the relevant provisions of the Gaming Act 2003.

When consulting on the draft Policy, use will need to be made of the Special Consultative procedure as required by the Gaming Act 2003 (s.102), if a Council wishes to amend or replace a Gambling Venue Policy. As part of the consultation, it is anticipated that a range of key stakeholders including Councillors will be invited to attend a workshop to discuss issues of relevance to the Policy. Members of the public will have the opportunity to give feedback through Hearings.

Potential stakeholders have a range of diverse interests in the gambling industry. Some work in the industry, such as license holders and operators of gambling venues, whilst others research and monitor the size of the industry or seek to address the impact of the industry upon the community and/or individuals. Other stakeholders include the Waitakere Ethnic Board, Waitakere Pacific Board, Te Taumatua Runanga and Iwi.

Several stakeholders have contacted the Council to ask to be involved in the review, including: the Charity Gaming Association; New Zealand Racing Board; Waitakere Association of Gambling Action; and Pub Charity.

Waitakere Association of Gambling Action is hoping to work with Council and other organisations in its efforts to tackle gambling relating harm, and Councillors may be interested to hear that there may be an opportunity to become involved with a Gamble Free Day that Waitakere Association of Gambling Action is proposing for the city. While the Council is keen to work closely with the community wherever possible, when developing or reviewing policies, it must maintain a neutral position in order to be able to work with all stakeholders.

3. Regional Perspective

Other local Councils in the Auckland Region are also having to review their Gambling Policies, since they adopted their inaugural policy at approximately the same time as this Council. Officers representing North Shore City, Auckland City, Manukau City and Rodney District have been discussing their gambling policies and the review process. It is unlikely that there will be regional consistency across these Councils as their existing gambling policies vary considerably. For example, Auckland City Council's Gambling Policy states that no more gambling venue consents will be issued.

RESOURCES

There is sufficient budget within the Strategy Unit to cover the costs of the review of the Gambling Venue Policy. The bulk of the budget of \$6,000 is likely to be spent on consultation expenses such as advertising, postage, and catering.

CONCLUSION

The Gaming Act 2003 requires local Councils to review their gambling policies after three years of being adopted. This report seeks the approval of the Planning and Regulatory Committee to conduct the review and it also provides a brief description of the proposed review process, which is estimated to take nine months. Research has been conducted to provide some up-to-date information about the gambling industry. A diverse range of stakeholders have indicated they want to be consulted during the review.

RECOMMENDATIONS

1. That the Review of Gambling Policy report be received.
2. That the Planning and Regulatory Committee approve the commencement of the review of Waitakere City Council's Gambling Venue Policy.
3. That suggestions for key stakeholders who may want to be involved in the Gambling Policy review be raised at the meeting or forwarded to Council officers at a later date.

Report prepared by: Zoe Cuming, Senior Analyst, Social Policy (Strategy Unit).



6 COMMERCIAL SEX STRATEGY

PURPOSE OF THE REPORT

The purpose of this report is to seek approval to make amendments to the Draft Commercial Sex Strategy as a result of public feedback following consultation, and to request that the Planning and Regulatory Committee recommends to the Council that it adopt the amended Strategy.

BACKGROUND

Waitakere City Council is developing a Commercial Sex Strategy (the Strategy), to address issues relating to prostitution as a result of the decriminalisation of prostitution due to the Prostitution Reform Act.

The Planning and Regulatory Committee meeting, 14 March 2006, resolved that:

- “2. *That the revised draft Commercial Sex Strategy and associated District Plan changes be put out for public consultation.*”

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In accordance with this resolution, the public have been given the opportunity to comment on a draft of the Strategy in a recent consultation exercise that occurred from 6 June to 7 July 2006. Some amendments have been proposed to the Strategy to help ensure that the Council can respond to residents' concerns and to ensure that any restraints over the commercial sex industry are appropriate, equitable, effective and reasonable.

Taking into account the feedback received from the public, a number of recommendations to amend the Strategy are presented for consideration by the Planning and Regulatory Committee, prior to the Strategy being presented to Council for adoption.

The objectives of the Strategy are:

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

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

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

The Strategy applies to brothels, businesses of prostitution and commercial sexual services but does not address issues relating to street prostitution, which is in keeping with the scope of the Prostitution Reform Act.

STRATEGIC CONTEXT

The Strategy implements within Waitakere City, the provisions of the Prostitution Reform Act 2003 to decriminalise prostitution and creates a framework that safeguards the human rights of sex workers. The Act covers a range of issues including the welfare and occupational health and safety of sex workers. Several of Council's strategic priorities would be supported by the Strategy, in particular Safe City, which requires a focus on occupational health and safety considerations in addition to the general safety of the community. Safety in the community will be enhanced by influencing prostitution activities to take place on privately owned premises in well-managed brothels and away from public spaces and streets.

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

ISSUES

1. Summary of the Consultation

Initial public consultation on the draft Strategy was carried out in 2005. Further public consultation on the amended draft Strategy occurred between Tuesday, 6 June and Friday, 7 July 2006, and resulted in 130 submissions which were predominantly from residents. This was a higher response rate than for the initial consultation. Some of the characteristics of the submissions this time round included:

- Identical submissions were made by forty four residents from Glen Eden, Henderson, Massey and Te Atatu South.

- Organisations or groups represented included: Medisafe; St Paul's Parish Massey, Te Atatu Residents & Ratepayers Association, and the New Zealand Prostitutes Collective.
- Residents from across the City made submissions and of those who indicated their suburb the level of response was as follows: Henderson = 29; Glen Eden = 14; Te Atatu South = 12; and suburbs with 4 or fewer submitters were: New Lynn; Hobsonville; Titirangi; Te Atatu North; Glendene; Ranui; Swanson; Green Bay and also Auckland City.

Key stakeholders who were invited to make a submission included: Community Boards, brothels already operating in Waitakere City, other local Councils in the Auckland Region, the Auckland Regional Council, Resident and Ratepayer Associations, the Police, local Health providers, local hospitals, Ngati Whatua, Te Taumata Runanga, Waitakere Ethnic Board, Waitakere Pacific Board, Te Whanau o Waipareira Trust, Maori Women's Welfare League, Te Korowai Manaaki, and Tu Wahine.

Submissions could be made through the Council's website, by post, or by telephone. Information about the consultation and the Strategy was posted on the website and key stakeholders were sent this information.

A number of themes emerged from the feedback, some of which also appeared in the earlier feedback session in 2005. The most contentious issue relates to the Strategy permitting small brothels in residential areas, with opposition to this from many of those who gave feedback. Views about the location of brothels in Waitakere City, was also the most prominent issue during the initial feedback. Other significant themes included: signage of brothels; hygiene standards; the impact of prostitution upon the community and the morality of prostitution.

2. Summary of Consultation Feedback and Proposed Changes to the Strategy

A1-A52

In view of the feedback from the public, it is recommended that some minor amendments are made to the Strategy which do not constitute substantive changes. A copy of the Strategy that includes these amendments are attached at pages A1 to A52. The proposed changes are described below, with consideration given firstly to the five approaches of the Strategy (a - e) and one other issue, the morality of prostitution. Some of the proposed changes to the District Plan to give effect to the Strategy are also outlined. The actual proposed plan change relating to Commercial sex activities to implement this strategy, (Proposed Plan Change 24), Section 32 and associated report are presented as a separate item on this agenda for the Committee's consideration.

a) Location Controls According to Environmental Effects

Existing Provisions in the Strategy

- The regulation of the location of brothels in Waitakere City.
To minimise adverse environmental effects constitutes the core of the Strategy. All limitations on the location of brothels would be covered by the provisions of the District Plan. Essentially, "small brothels" (four or less independent sex workers with no manager) will be permitted to operate in residential areas as "home occupations", and "brothels" (those run by an operator regardless of size or with more than 4 independent sex workers) will be confined to industrial and commercial areas, unless a resource consent is obtained to establish elsewhere.

- Sensitive sites.

There are no requirements that brothels should be situated a certain arbitrary distance from “sensitive sites” (i.e. places of worship, schools, early childhood centres and maraes). Instead, the Strategy includes the requirements set out in the Prostitution Reform Act (section 15), with the need to assess (1) the effect of brothels on amenity values and neighbourhood character and (2) whether they would cause a nuisance or serious offence to ordinary members of the public. The cumulative effects of brothels locating in proximity to each other would also be part of the assessment of any resource consent application.

This approach is in contrast to the bylaws created by other Councils such as Auckland City Council and North Shore City that set minimum distance requirements brothels can be located from “sensitive sites”. However, the bylaw of Auckland City Council has been overturned by the High Court and as a result North Shore City Council is reviewing its own bylaw.

Feedback from the Public

- Opposition to brothels in residential areas.

Many submitters (including the bulk submitters) strongly opposed to the establishment of small brothels in residential areas across Waitakere City, for reasons that included:

- safety concerns for residents, especially the exposure of young children to the industry;
- will affect the characteristics of the community;
- perceptions that it will adversely effect on property values;
- perceptions that crime will increase due to the clientele and association with drugs and trouble;
- not in keeping with a clean, green community;
- increased traffic problems due to clients visiting brothels and more pedestrian traffic;
- residential areas should be kept residential.

- Support for brothels in residential areas.

A number of submitters supported the proposal to allow small brothels to operate in residential areas, for reasons that included:

- provides a choice of working environment for sex workers;
- the presence of small brothels provides a choice for sex workers as to where they work;
- at small brothels workers can work for themselves from private homes and retain control of their work, if perhaps they reject the conditions of larger clubs or perhaps if they are excluded from larger clubs due to their personal characteristics;
- small brothels provide a way for sex workers to gradually move out of the industry;
- a range of brothels across the city is helpful towards ensuring the safety of sex workers and their clients;
- brothels that are limited to industrial areas can compromise the safety of sex workers due to lack of safe street lighting, pedestrian and vehicle traffic;
- some clients prefer the discretion offered by small brothels;
- it is in keeping with the intent of the Prostitution Reform Act.

- Proximity to sensitive sites.
A limitation on how close brothels could be located to schools, kindergartens, places of worship and parks was suggested by some submitters so that certain groups in society would not be exposed to the activities of brothels.
- Regional Impact.
There were concerns that Waitakere City could become the 'red light district' of Auckland as small brothels can be established in residential areas, which is not the case in North Shore and Auckland.
- Use of 'red light' districts.
Several submitters suggested that 'red light' districts be established in industrial or commercial areas, so that prostitution can be taken out of residential areas. Some felt that this kind of district could have ancillary services (nightclubs, adult shops & restaurants), and that they would be easier to police and monitor.

Parts of the Strategy that will Remain Unchanged and Reasons Why

- Brothels in residential areas.
It is recommended that small brothels continue to be permitted to operate in residential areas as home occupations and subject to the home occupation rules of the District Plan. Whilst this approach does not have the widespread support of the submitters, it is consistent with the intention of the Prostitution Reform Act 2003 and with recent decisions made in the High Courts regarding the validity of Bylaws enacted by other Councils to regulate the location of brothels.
The legitimacy of brothels operating from suburban homes was discussed by Judge Heath J in his judgement of the case of *J B International Limited v Auckland City Council, 2006*, which resulted in the Council's Brothels and Commercial Sex Premises Bylaw being overturned. Judge Heath stated:
"It is [also] clear, from the inspection powers conferred on Medical Officers of Health to enter homes [s27], that Parliament intended that some brothels would operate from suburban homes. The purpose of inspection is to ensure that health and safety requirements are being met. Health and safety is a purpose identified in s3(b) of the Act."
Judge Heath's reasons for overturning Auckland City Council's Bylaw were as follows:
"In my view, a bylaw that effectively forbids the operation of a small owner-operated brothel in a suburban home is ultra vires the bylaw making power contained in s.14 of the Act [the PRA]. It can also be characterised as unreasonable. That is because, contrary to Parliament's clear intentions, all brothels (including small owner-operated brothels) are excluded from virtually all areas within the Isthmus (including suburban residential areas where homes may be used as small owner-operated brothels) due to the way in which the location of brothels has been defined."
The reasonableness of this approach is therefore still valid and there are other reasons too, which have been explained in the Strategy (see Section 6: Factors taken into consideration in the development of the Strategy). These reasons in brief include:
 - a need to prove the business causes some adverse environmental effect as provided for by the Resource Management Act;
 - the difficulties with enforcing the prohibition of brothels in residential areas which reduces the likelihood of the Council successfully closing down brothels that should not be operating;
 - not all brothels will comply and it is likely that some small brothels will remain in residential areas and work 'underground'.

- “Sensitive Sites”.
The Strategy does not make use of “buffer zones” or arbitrary distances to restrict the location of brothels across the City, or prohibit all brothels in residential areas as it was considered that this was not intended by the Prostitution Reform Act and would be in conflict to the Prostitution Reform Act.
Support for this position is found in the recent High Court judgment regarding the Auckland City Council bylaw (*JB International Limited v Auckland City Council, 2006*). Judge Heath expressed a preference for defining explicitly the areas where brothels can and cannot be located rather than regulating brothels by using distance restrictions from identifiable landmarks (i.e. “sensitive sites” such as schools and places of worship). The ‘areal’ approach was considered to be more transparent and certain to those who wish to establish a brothel and those who live in the relevant area. Auckland City Council had made extensive use of specifying minimum distances to the extent that brothels could legitimately operate within very limited pockets in the city.
- District Plan as a Regulatory Tool.
It is recommended that the District Plan continues to be used as the mechanism by which the location of brothels will be regulated on the basis of their environmental effects.

Proposed Changes to the Strategy

- Terminology.
 - It is recommended that some of the terms in the Strategy are amended to reflect the intent of the Prostitution Reform Act. Changes include using the definitions of the Prostitution Reform Act where possible in the Strategy and in the District Plan so that new terms are created only where necessary.
 - Two types of brothels are defined in the Strategy; “*brothels*” and “*small brothels*”.
 - *Small brothels* will be limited to a maximum of four workers, one of whom lives on the site (compared to other home occupations which are allowed five workers) to be consistent with the Prostitution Reform Act definition of a Small Owner Operated Brothel which allows up to 4 independent sex workers.
 - *Brothels* are managed by a licensed operator and can comprise any number of sex workers or more than 4 independent sex workers.
 - In the District Plan, *small brothels* would fall under the definition of ‘*retail services*’ when considered as ‘*home occupations*’ in the residential areas of the City. This means that *small brothels* would need to meet existing District Plan performance standards such as a limit to the number of vehicle trips, site size and location.
 - A new term “*commercial sex activities*” has been introduced into the District Plan to cover both brothels and small brothels but not small brothels that are a home occupation.
- New Performance Standards for Retail Services that are a Home Occupation
Other changes recommended to the District Plan rules are that a limit should be imposed on the hours of operation for retail services that are home occupations, and that all home occupations should be clearly numbered in accordance with the existing Waitakere City Bylaw. It is also recommended that any signage in the residential zones in relation to commercial sex activities is a prohibited activity under the District Plan.

- Brothels are discouraged from residential areas but no longer prohibited.
It is recommended that the status of brothels in the residential zones that are not home occupations, be non complying activities rather than prohibited. This will allow resource consent applications (usually notified) to be made and an assessment of the effects to be undertaken. However, the non-complying activity status clearly signals that Council does not consider that the activity is appropriate in the Human Environment and would not be consistent with the objectives and policies of the District Plan. The previous use of Prohibited activity status (meaning that no application can be made at all) is considered contrary to the intent of the PRA and incompatible with the rationale of the Strategy to manage the location of brothels through environmental effects.

b) Signage Controls

Existing Provisions in the Strategy

- Existing provisions control the size, location, amount of signage of brothels (via the District Plan) and there are proposals for additional requirements such as signage at all public entrances of small brothels operating as home occupations to ensure that the right property is visited and sets standards for signage for all commercial sex activities. The Strategy also relies on the district plan rules to control the contents of signs.

Feedback from the Public

- Concerns about effects of signage.
There was resistance to requiring brothels in residential areas to have signage, due to the potentially damaging effects, such as:
 - exposure of children to inappropriate signage;
 - could be incompatible with the nature and character of residential neighbourhoods;
 - could take away the privacy of the sex worker and perhaps compromise their safety;
 - could take away the privacy of clients who often choose small brothels as they are more discrete than the larger outfits.
- Strong controls required.
There was widespread support for strong controls to be imposed on signage for brothels in commercial and industrial areas. Signage needs to be discrete, and not include images, graphic images, neon lights, obscene or inappropriate wording.

Recommended Changes to the Strategy

- Home businesses are numbered.
It is recommended that all retail services (which would include small brothels) that operate as a "home occupation" should be adequately numbered for ease of identification. This would be achieved through a change to the District Plan.
- Signage of brothels is prohibited in residential areas.
It is recommended that any signage (apart from street numbers for identification) relating to any brothels in the residential areas of the City, including those operating as a "home occupation", should be a prohibited activity under the rules of the District Plan.

- The content of signage is controlled.
It is recommended that the signage provisions relating to the contents of signs associated with prostitution are strengthened through a bylaw as provided for in Section 12 of the Prostitution Reform Act (as the District Plan under the Resource Management Act cannot control content of signage). There are no limits on the signage controls that Councils can place on commercial sexual services through a bylaw as provided for in Section 13 of the Prostitution Reform Act.

c) Controls on Hygiene Standards

Existing Provisions in the Strategy

In the Strategy it is proposed that Council will be able to set hygiene standards for brothels that operate in Waitakere City, through a new bylaw which will apply to all premises that involve hygiene issues.

Feedback from the Public

- Health risks may be greater at small brothels that are run from homes as prior to any health and safety inspection, the Medical Officers of Health are required to obtain a consent. In other brothels, such Officers can enter the premises to carry out inspections at any reasonable time. Also, small brothels (termed small owner operated brothels in the Prostitution Reform Act - Small Owner Operated Brothels) are not regulated in the same way as other brothels as their operators need to have obtained a certificate from the District Court.
- Hygiene requirements should be stricter than for other premises also regulated by hygiene controls as brothels produce some types of rubbish that should be sterilised and disposed of in a special manner.
- Concerns that the Council by imposing hygiene standards through a bylaw will duplicate the role and responsibilities of the Medical Officers of Health as set out in Sections 24 - 28 of the Prostitution Reform Act. Any new hygiene bylaw created by the Council will need to be in keeping with the provision of the Prostitution Reform Act and not duplicate the work of the Medical Officers of Health.

Recommended Changes to the Strategy

- It is recommended that the new hygiene bylaw takes account of the hygiene issues that are unique to brothels, particularly the safe disposal of rubbish and sterilisation of some waste.
- There will be special requirements upon brothels. Consideration will also be given to setting hygiene standards for small brothels that operate from homes for the benefit of workers and clients.

d) Urban Design Standards and Guidelines

Existing Provisions in the Strategy

- The standards and regulations regarding the design, quality and location of brothels within the City may tighten as the result of a wider project by the Council to strengthen the regulations regarding urban design and development in the City. Currently, the Council has publicly notified Plan Changes 17 and 18 which amend the District Plan rules in relation to principles of urban design and development. A decision is yet to be made on these proposals.

Feedback from the Public

- There was no feedback of any significance to report on this part of the Strategy.

Recommended Changes to the Strategy

- It is recommended that brothels be discouraged from establishing at ground level in town centres, due to the proposed urban design standards for town centres in the District Plan not being appropriate for brothels. For example, the standards require that a large amount of display space and glazing is to be provided at ground level to ensure active street frontages and good public and private space integration. These changes to the urban design would be achieved by new District Plan rules and policies.

f) Response and Monitoring Measures

Existing Provisions in the Strategy

- The strategy places an emphasis on the need for the Council to respond effectively and appropriately to issues regarding the commercial sex industry. One way of achieving this is to maintain constructive working relationships with others who have some involvement in the industry, such as the police, the New Zealand Prostitutes Collective and other Councils in the Auckland region.

Feedback from the Public

- Brothels in Rented Properties.
Several submitters made reference to problems they had observed in small brothels which were suspected or known to be rented properties. These problems should be resolvable if the landlord concerned could be identified and contacted. In some instances it is possible to track down the identity of the landlord.
- Underage Sex Workers.
It was claimed that young people had been observed working in a brothel (no mention was made of where). In addition, there is the potential problem that people who are not eligible to work in New Zealand may enter the industry (as with any other industry).

Addition to the Strategy

- Working Collaboratively with Landlords.
The Council intends to work closely with housing providers and landlords across Waitakere City if any issues arise in relation to prostitution to try to ensure a solution is achieved. The City's largest landlord, Housing New Zealand Corporation, has indicated that it will be willing to investigate any complaints that may come through to the Council, and to take action where appropriate and where it is able.
- Liaising with the Department of Labour.
It is proposed that the Strategy is expanded so that the Council can examine how, if at all, it could assist other agencies in preventing young people (aged 17 or less), and those without eligibility to work being employed as sex workers. It is illegal to employ anyone under 18 to work as a prostitute (as provided for in Section 20 of the Prostitution Reform Act), or to employ persons who are ineligible to work in New Zealand.

g) Opposition to the Legitimacy of Prostitution

Existing Provisions in the Strategy

- The Strategy states (see Section 1: Background Information) that it is not the Council's role to re-criminalise prostitution or to enter into a debate about the morality of prostitution. This is compatible with the intentions of Parliament not to "endorse or morally sanction" prostitution or its use, see section 3 of the Prostitution Reform Act.
- However under Section 15 of the Act, in considering resource consents in relation to prostitution, Council must have regard to whether the business of prostitution is likely to cause a nuisance or serious offence to ordinary members of the public using the area or is incompatible with the existing character or use of the area. These considerations have been included as part of the assessment criteria used in determining the outcome of a resource consent.

Feedback from the Public

- A recurrent theme of the feedback was opposition to the Prostitution Reform Act as it decriminalised prostitution and legalised the sex industry. There were some requests for the Council to call for a referendum to repeal the Act. Opposition to the Act was for a variety of reasons, including:
 - that sex is a spiritual activity and should not be devalued;
 - that the safety of children will be compromised by protecting the sex workers;
 - it contributes to a decline in the moral and social standards of our community;
 - it is not in keeping with Christian beliefs;
 - prostitution is an 'evil influence' and it is 'filth' in our community;
 - it is morally abhorrent that it is a debatable issue;
 - immoral behaviour that goes against decent social and family values;
 - will create temptation for young people to enter into undesirable behaviour;
 - opens up problems for future generations.

3. The Strategy Does Not Cover Street Prostitution

The Strategy applies to *brothels, businesses of prostitution and commercial sexual services*, so it does not address issues relating to street prostitution in public places which is in keeping with the Prostitution Reform Act. Street prostitution in Waitakere City is being considered during the review of the Mobile or Travelling Shops and Hawkers Bylaw. As a result of this review the Bylaw may introduce a licensing system for persons soliciting or loitering for the business of prostitution in public places. If this is the case, the Council will have the power, if it so chooses, to operate the licensing system to help control the occurrence of street prostitution in public places in the City.

In some areas of Auckland problems exist with street prostitution although at present this is not a local problem according to local police, nor is it anticipated that it will become a problem in the near future.

4. Implementation of the Strategy

The implementation of the Strategy will occur gradually over time as the five approaches that are designed to achieve the objectives use a variety of regulatory and non-regulatory tools. Responsibility for implementation of the Strategy lies with City Services, Legal Services and to a lesser extent Strategy. Details about the implementation of the Strategy are contained in the Table below. Overview of the regulatory framework of the revised Commercial Sex Strategy

Approaches in the Strategy (5 in total)	Regulatory Tool	Responsibility for Implementation and Estimated Time to Complete
Manage the adverse environmental effects of brothels through location controls	Resource Management Act -Changes to the District Plan Small brothels only in residential areas (home occupations) & brothels in commercial /industrial areas.	City Services (Resource Management). Could take up to two years depending on submissions and appeals.
Controls on signage	Creation of a new Signage Bylaw to regulate content of signs.	Strategy Unit to determine the specifics of the bylaw. Legal Services to review. Estimated 1 year to complete.
	Changes to the District Plan . Street numbering of home occupation & retail services (including small brothels). No signs in residential areas. Signs require resource consent in non-residential areas.	Resource Management, City Services. Could take up to 2 years depending on submissions and appeals.
Controls on hygiene standards	Introduction of a new general Hygiene Bylaw to apply to businesses including brothels.	Strategy Unit to determine the specifics that need to be added to the general Hygiene Bylaw. Legal Services to review. 1 year estimated time to complete.
Urban design standards and guidelines	District Plan (includes Resource Management Act) Plan change 18. Urban design rules in Proposed Plan Change 18 - brothels to be above ground level in town centres & require consent.	City Services (Resource Management). As part of LG(A)AA process this could take up to 2 years depending on hearings and appeals.

Approaches in the Strategy (5 in total)	Regulatory Tool	Responsibility for Implementation and Estimated Time to Complete
Monitoring and response measures	Changes to Council's response system to log comments, views & complaints. Liaising & working with other organisations & agencies to address prostitution related issues in the City.	City Services with input from Strategy. 2 months.

RESOURCES

Within the Strategy Unit there is sufficient budget to complete the development of the Strategy in response to the Prostitution Reform Act. The implementation of the Strategy is provided for in the relevant work programmes across Council.

CONCLUSION

This report presents a revised draft of Waitakere City Council's Commercial Sex Strategy to the Planning and Regulatory Committee, and seeks approval for the Strategy to be presented for adoption to Council. The recommended changes to the Strategy are based on the findings of a recent public consultation exercise. Due to the regulatory framework of the Strategy it will need to be implemented over time.

RECOMMENDATIONS

1. That the Commercial Sex Strategy report be received.
2. That the public are thanked for their interest in terms of their views, feedback and suggestions.
3. That the Planning and Regulatory Committee endorse the proposed changes to Waitakere City Council's draft Commercial Sex Strategy.
4. That the Planning and Regulatory Committee recommend to Council that it adopt the Commercial Sex Strategy as attached at pages A1 to A52.

A1-A52

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



PART C - DISTRICT PLAN / STRUCTURE PLANS

7 PROPOSED PLAN CHANGE 24 - COMMERCIAL SEX ACTIVITIES

PURPOSE OF THE REPORT

The purpose of this report is to present to the Planning and Regulatory Committee a report and Proposed Plan Change relating to the commercial sex industry in Waitakere City. This report seeks approval from the Committee for the Proposed Plan Change to be publicly notified.

A53-A153

A copy of the Section 32 Analysis Report for the Proposed Plan Change, including appendices on Commercial Sex Strategy, Proposed Plan Change and previous Council agenda reports, as attached at pages A53 to A153.

BACKGROUND AND ISSUES

The Proposed Plan Change seeks to insert into the District Plan a policy and rule framework to administer the environmental effects arising from the commercial sex industry in Waitakere City.

The 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 just another "commercial" activity, meaning that sex workers have the same status in law as their clients; and labour laws and health and safety regulations can be applied.

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

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

1283/2004

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

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

385/2006

Following receipt of comments on the Draft Strategy, the Draft Plan Change was amended to reflect the revisions to the Strategy and any consequential amendments arising from those revisions. This has led to the completion of the Proposed Plan Change, and this report that seeks approval to take the next step in the Resource Management Act's statutory process by publicly notifying it.

STRATEGIC CONTEXT

As a result of the decriminalisation of prostitution, the Council's approach has been to develop a Commercial Sex Strategy (the Strategy). This Strategy seeks to address issues relating to prostitution in the City. The Strategy was last considered by the Committee in May 2006, and is also to be considered in a separate item on this Agenda.

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

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

The objectives of the Strategy are:

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

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

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

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

STATUTORY CONSIDERATIONS

Resource Management Act 1991

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

Changes to the Waitakere City District Plan

The Proposed Plan Change does not seek to amend any of the Objectives of the District Plan. The Proposed Plan Change consists of:

- a new Policy (numbered 11.52);
- amendments to two existing Policies (numbered 11.11 and 11.18);
- an amendment to the Introduction to the Rules (relating to notification of resource consent applications);
- two new City Wide Rules relating to the commercial sex industry;
- a new Prohibited Activity Rule;
- amendments to existing Non-residential Activities/Home Occupation Rules, including the introduction of new performance standards;
- six new Definitions; and
- amendments to two existing Definitions.

There are no changes to the Natural Area Rules or the District Plan Maps Section.

Section 32 of the Resource Management Act 1991

Council's obligations under section 32 are divided into five parts that comprise the following:

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

A65-A79

An evaluation under each of the above subsections has been undertaken, as attached at pages A65 to A79. The evaluation fulfils Council's requirements with regard to section 32 of the Resource Management Act.

The section 32 analysis identified that the Proposed Plan Change would enable the Council to manage the introduction of a new activity within the City efficiently and effectively, whilst meeting the purpose of the Act by establishing a policy and rule framework to address any adverse effects from commercial sex activities. The section 32 analysis also concludes that the Proposed Plan Change would achieve the purpose of the Act while ensuring that amenity values are protected.

Further, it is intended that the evaluation will be available for public inspection at the same time as the Proposed Plan Change is publicly notified (in accordance with section 32(6)).

Actual or Potential Adverse Effects on the Environment

Under section 31 of the Act, Council's function includes "*the control of any actual or potential effects of the use, development, or protection of land*". Section 76(3) requires that in making a rule, a territorial authority is to have regard to the actual or potential effect of activities on the environment. This matter is addressed in the section 32 Report and it is considered that there are no adverse environmental effects that will be generated by the Proposed Plan Change. This is because the Proposed Plan Change establishes a framework to avoid, remedy or mitigate the adverse effects arising from the business of prostitution in the City.

In summary, it is considered that there are no adverse environmental effects that will be generated by including the policy and rule framework for commercial sex activities in the District Plan. Any adverse environmental effects from applications to establish commercial sex businesses will be avoided, or mitigated through compliance with the provisions of Proposed Plan Change 24 and the other District Plan provisions.

CONSULTATION

Clause 3 to the First Schedule to the Resource Management Act requires consultation during the preparation of a Proposed Plan Change.

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

Reports on the implications of the PRA were presented to the August 2003 meeting of the (then) Environmental Management Committee, the October 2003 Council meeting, the July 2004 meeting of the (then) Environmental Management Committee, the August 2005 and March 2006 meetings of the Planning and Regulatory Committee. Workshops on 6 October 2003 and 31 May 2004 were attended by staff, Councillors, Community Board Chairs, Public Health Representatives and Police, and a work programme to progress Council policy on the matter was identified.

An internal staff team met with representatives from the New Zealand Police, Auckland Regional Public Health Service, the New Zealand Prostitutes Collective and owners of massage parlours located in Waitakere City. Members of the public and the wider community have on two occasions been given the opportunity to express their views about earlier drafts of the Commercial Sex Strategy and as part of the second round of consultation, the Draft Plan Change.

The first feedback period held from 31 January 2005 - 14 March 2005 resulted in a total of 184 submissions. Other contributors at this stage included Councillors and Community Board Chairs, and there were opportunities for specific groups to give input, including representatives of local Iwi, the Te Taumata Runanga, the Pacific Islands Advisory Board and the Waitakere Ethnic Board.

Following this feedback, further work was carried out with the Councillors to revise the Strategy and this was reported to the Planning and Regulatory Committee in August 2005.

A second consultation exercise that occurred from 6 June to 7 July 2006 gave stakeholders a further opportunity to comment on a revised draft of the Strategy. In total, 130 submissions were received predominantly from residents, with identical submissions made by 44 residents from Glen Eden, Henderson, Massey and Te Atatu South. Organisations or groups that gave feedback included: Medisafe; St Paul's Parish Massey, Te Atatu Residents & Ratepayers Association, and the New Zealand Prostitutes Collective. As a result of the comments and suggestions received, the draft Commercial Sex Strategy and the Draft Plan Change were amended. These amendments seek to help ensure that the Council can respond to residents' concerns and that any regulatory mechanisms that apply to the commercial sex industry are appropriate, equitable, effective and reasonable.

Where the commentators on the Draft Plan Change and/or the Commercial Sex Strategy provided a mailing address, they will be sent a copy of the Proposed Plan Change to enable them to make a submission if they wish.

The usual statutory requirements (contained in Clause 5 of the First Schedule of the Resource Management Act 1991) regarding the notification of the Proposed Plan Change will be met. The submission period will be 20 working days. As the submission period will occur during the Christmas break, the Working Day exclusion will apply. This means that the days between 20 December 2006 and 10 January 2007 will not be counted as working days for the purpose of the submission period.

CONCLUSION

The purpose of this report is to present to the Planning and Regulatory Committee a proposed Plan Change relating to a policy and rule framework for commercial sex in the City.

It is considered that the Proposed Plan Change will help to meet the objectives of the Council's Commercial Sex Strategy, and address an emerging issue in the City that was precipitated by the enactment of the Prostitution Reform Act 2003.

The Proposed Plan Change is considered necessary to achieve the purpose of the Resource Management Act and is the most appropriate in terms of effectiveness and efficiency of Council exercising its function. In addition, the proposed Plan Change enhances the existing District Plan policies and objectives for non-residential activities and home occupations. It is considered that any adverse environmental effects generated as a result of commercial sex activities will be addressed by the Proposed Plan Change.

RECOMMENDATIONS

1. That the Proposed Plan Change 24 - Commercial Sex Activities report be received.
2. That pursuant to the First Schedule to the Resource Management Act 1991, the Proposed Plan Change 24 to the Waitakere City District Plan, to insert provisions relating to commercial sex activities as attached at pages A95 to A119, be publicly notified.

A95-A119

Report prepared by: Eryn Shields, Principal Planner.



8 REMOVAL OF DESIGNATION - 43 WOODSIDE ROAD

PURPOSE OF THE REPORT

The purpose of this report is to seek Council approval to remove a designation on 43 Woodside Road, Henderson.

BACKGROUND

Designation "WCCA31" applies to part of 43 Woodside Road being Lot 2 DP 68272. The land is privately owned Living Environment and is currently used for residential purposes. Because the lot is approximately 1.8 hectares it has potential for further subdivision and development.

The purpose of the designation is identified in the District Plan as being for "roading and access purposes". It was intended that the designated part of the lot fronting onto Woodside Road would be purchased by Council for road access into the interior of Lot 2 DP68272 when further development took place.

Subdivision and land use resource consents have recently been approved for 43 Woodside Road. These have provided for alternative access to the new lots via a new road connecting to Universal drive across 38 Universal Drive. A pedestrian access way connecting to Woodside Road will also be vested with Council.

Consequently there is no need for Council to purchase the land for road access and therefore no reason for the designation to be retained.

A154-A156

Plans indicating the location and extent of the designation, together with a draft 'Notice of Removal of Designation' in the form prescribed by the Resource Management Act, as attached at pages A154 to A156.

STRATEGIC CONTEXT

The Council has the power under the Resource Management Act to designate land for public works. The effect of a designation is that it allows the Council to acquire land and undertake any activity that is in accordance with the purpose of the designation, without the need to comply with any rules in a district plan.

The Council intends to acquire the land that is currently subject to the designation for a new road access. However, as a more satisfactory outcome has been achieved via the resource consent process, there is no need to retain the designation, and there are no strategic implications that would arise from the removal of the designation.

ISSUES

The procedure for effecting the removal of the designations is straightforward. The Council simply resolves that the designation is no longer required and removes it from the District Plan without further formality.

Section 182 of the Resource Management Act applies to any proposal to remove a designation. This section of the legislation states as follows:

"182. Removal of designation -

- (1) If a requiring authority no longer wants a designation or part of a designation, it shall give notice in the prescribed form to-
 - (a) The territorial authority concerned; and*
 - (b) Every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and*
 - (c) Every other person who, in the opinion of the requiring authority, is likely to be affected by the designation.**
- (2) As soon as reasonably practicable after receiving a notice under subsection (1), the territorial authority shall without further formality, amend its district plan accordingly.*
- (3) The provisions of the First Schedule shall not apply to the removal of a designation or part of a designation under this section.*
- (4) This section shall apply, with all necessary modifications, to a notice by a territorial authority to withdraw its own designation or part of a designation within its own district.*
- (5) Notwithstanding subsection (2) to (4), where a territorial authority considers the effect of the removal of part of a designation on the remaining designation is more than minor it may, within 20 working days of receipt of the notice under subsection (1), decline to remove that part of the designation.*
- (6) A requiring authority may object, under section 357, to any decision to decline removal of part of a designation under subsection (5)."*

The removal of the designation does not in itself mean that that road access will not be supplied, as road access is ensured by the conditions of existing resource consents. Because the Council no longer wishes to use the land for the designated purpose, then the designation is inappropriate and should be removed.

RESOURCES

There are no additional or unbudgeted resources required in order to remove the designation.

CONCLUSION

The existing designation WCCA31 is no longer consistent with the Council's intended purpose for land designated at 43 Woodside Road. The designation should therefore be removed from the District Plan.

RECOMMENDATIONS

1. That the Removal of Designation - 43 Woodside Road report be received.
2. That the Chief Executive Officer be authorised to execute the Form attached at pages A154 to A156 on behalf of Council to request the removal of designation WCCA31 (applying to Lot 2 DP 68272) from the District Plan, and that notice be given accordingly pursuant to S.182(1) of the Resource Management Act 1991.
3. That upon execution and receipt of such notices, designation WCCA31 be removed from the District Plan without further formality.

A154-A156

Report prepared by: Christopher Turbott, Senior Planner: Policy Implementation.



9 UPDATE ON RODNEY DISTRICT PLAN APPEALS PROCESS

PURPOSE OF THE REPORT

The purpose of this report is to update the Planning and Regulatory Committee on the status of Waitakere City Councils submissions to the Proposed Rodney District Plan 2000 (PRDP2000) and to seek the Committees delegated authority to appeal any relevant decisions to the Environment Court, and/or where necessary become involved in appeals lodged by others, as interested parties.

BACKGROUND

Waitakere City Council has made several submissions, and further submissions to the PRDP2000, which was notified in November 2000.

The initial submissions were discussed by this Committee at the meeting of 12 June 2001, and lodged that month, and further submissions discussed by this Committee on the meeting of 26 June 2002.

The submissions relate to cross-boundary issues and primarily focussed on the following areas:

- Need to strengthen the natural area provisions in order to protect Waitakere's water quality, ecology and landscapes.
- Rural subdivision provisions to align better with Waitakere City Council's District Plan provisions and avoid adverse effects on water quality, ecology, rural amenity and landscapes, as well as managing rural growth and local expectations.
- Future Urban Growth areas, that could impact on Waitakere City Council via increased traffic and related impacts and/or expectations for Waitakere City Council to advance our growth planning to align with raised expectations from the provision of Future Urban Zones just over the boundary (Redhills and Riverhead in particular).
- Town Centre and Transport Strategy to ensure Rodney settlements do not become dormitory suburbs, with traffic impacts on Waitakere City.

A157-A161

A summary of our submissions and why they were made as attached at pages A157, and the Rodney District Council's summary of Waitakere City Council's submissions and further submissions are attached at pages A158 to A161.

Some 8000 initial submission points were received on the PRDP2000, of which Waitakere City Council lodged 9 primary submissions and several further submissions.

Due to the large amount of submissions received, Rodney District Council decided to hear and decide on issues it deemed of most concern to its submitters and the wider community first (such as Minor Household Units, signage, parking etc). Waitakere City Council did not submit/further submit on these issues, as they will not result in significant cross-boundary impacts.

Decision Notices on sections of the PRDP2000 matters that Waitakere City Council has submitted on that could have significant impact on this City are now starting to be released.

There is a 30 working day appeal period following the date of the Decision Notice on which any person making a submission or further submission can appeal the Councils decision (on that submission) to the Environment Court (Schedule 1, clause 14). Once an appeal is lodged the Council has a further 30 working days to become an interested party (Section 274) to those appeals.

STRATEGIC CONTEXT

Waitakere City shares its northern boundary with Rodney District. There are considerable cross-boundary relationships, covering a whole spectrum of Environmental, Social, Cultural and Economic matters.

Access to the Upper Waitemata Harbour and to the West Coast beaches crosses the Territorial Authority boundary, and several water catchments and Ecological Districts are also shared.

The proposed Waitakere Ranges Heritage Area Boundary also includes portions of Rodney District.

Rodney District Council, along with North Shore City Council and the Auckland Regional Council are partners with Waitakere City Council in the Northern and Western Sectors Agreement which is a Memorandum of Understanding addressing growth management issues required to implement the Regional Growth Strategy, including transport and infrastructure.

Given the considerable amount of interface and inter-dependence between the two territorial areas, the way Rodney District manages the sustainable development of the area under its jurisdiction via the Proposed Rodney District Plan 2000 will have implications for the sustainable management of Waitakere City, particularly on and near the northern boundary.

ISSUES

Decisions and Potential Appeals

A162-A179

Decision Notices received to date generally accept our submissions, and have recommended some amendment to the PRDP2000 to this end. (The relevant sections of the two most recent Decision Notices are attached at pages A162 to A179.)

However, this may not be the case with future Decision Notices and it should be noted that the Rodney District Council's decision to amend the PRDP2000 in line with our submissions is open to appeal by other parties. It is therefore important that Waitakere City Council is ready to either appeal directly or become involved in other appeals at short notice in order to support Rodney District Council in any relevant Environment Court hearings.

A party lodging an appeal to a decision is required to serve notice of the appeal on the respondent (ie. Rodney District Council) as well as any party who has made a submission or further submission on the same matter. However, this may not always occur, and it may be some time following the lodgement of papers with the Environment Court before we are informed, if at all. Even if it does occur, we only have a short time in which to join proceedings.

In summary, due to the statutory timeframes involved, Waitakere City Council is required to move relatively quickly to either:

- Appeal a decision (where appropriate) directly to the Environment Court to ensure our submission is accepted (or other such relief required to give effect to it).
- Join an appeal by a third party, either in support or opposition (where appropriate) to ensure we can influence the proceedings, usually as a s274 party.

Additionally the Resource Management Act 1991 provides some weight to Waitakere City Council's position as a Territorial Authority:

Section 74(2)(c) requires that a Territorial Authority "...shall have regard to... (c) the extent to which the District Plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities".

Section 75(2)(f) also provides that "A District Plan may state...(f) the process for dealing with issues that cross territorial authority boundaries".

It is also indicated elsewhere in the Resource Management Act 1991 (Schedule 1) and has been accepted in recent case law that a neighbouring Territorial Authority may have a standing and interest greater than the public generally, and this has been used to join proceedings after the statutory timeframe, especially where the appellant has not informed affected submitters' (or indeed the respondent Council) directly.

However, to minimise the chance of having to join proceedings late, (and potential additional legal costs) the Long Term and Environmental Strategy Group are in regular contact with the Rodney Strategy and Policy Administration Officer in charge of co-ordinating the "Schedule of Appeals" to ensure we are as up to date as possible.

Additionally, a letter asking Rodney to inform us directly should the matter be appealed has been sent. A similar letter can also be sent to the Environment Court Registrar requesting we be informed of any appeals. Further similar letters will be sent as each relevant decision notice is received.

Timing

To ensure Waitakere City Council is involved in the potential appeal process, a statutory timeframe must be followed, which will require swift action. This timeframe may not align with meetings of this Committee, and it is requested that this Committee delegates its authority to the Chair to authorise the lodgement of appeals, or to join proceedings initiated by others as a Section 274 party.

RESOURCES

Monitoring of the Decision Notices and liaising with Rodney District Council is part of the existing work programme of the Strategic Unit, and requires no additional budget.

Provision is also made in the 2006/2007 and 2007/2008 budgets to cover legal costs should the Council need to pursue issues in the Environment Court.

CONCLUSION

Rodney District Council is starting to release decisions on the Proposed Rodney District Plan 2000, relating to matters on which Waitakere City Council has submitted, or further submitted.

These early decisions are generally favourable to our position, though future decisions may not be.

These decisions are open to appeal, and Waitakere City Council must act quickly to maintain an interest in any possible proceedings.

RECOMMENDATIONS

1. That the 'Update on Rodney District Plan Appeals Process' report be received.
2. That delegated authority be given to the Chair of the Planning and Regulatory Committee to approve the lodgement of appeals to the Environment Court under Section 120 of the Resource Management Act, or to join proceedings under Section 274 Resource Management Act, in respect of decisions of the Rodney District Council on the Proposed Rodney District Plan 2000, where those decisions impact on Waitakere City.

Report prepared by: Kyle Balderston, Strategic Advisor: Sustainable Management.



PART D - ENVIRONMENTAL MANAGEMENT

10 DRAFT SUBMISSION ON AN APPLICATION FOR FIELD TESTING GENETICALLY MODIFIED FOOD PLANTS

PURPOSE OF THE REPORT

The purpose of this report is to provide an opportunity for the Planning and Regulatory Committee to consider a draft submission to the Environmental Risk Management Authority on an application to field test genetically modified food and forage plants.

BACKGROUND

The Council declared Waitakere GE free in field and food in November 2001. On lifting of the moratorium on release of genetically modified organisms in 2003, the Council registered its interest to the Environmental Risk Management Authority (ERMA), as regulator for genetically modified organisms under the Hazardous Substances and New Organisms Act 1996, that it wished to be notified of any applications for field use of genetically modified organisms. The first application for field testing genetically modified organisms has been received by ERMA and the Council has been notified to provide the opportunity to submit the Council's comments.

A180-A181 The application has been lodged by Crop & Food Research in Canterbury. The application is to assess performance in the field of pest-resistant brassica crops (cabbage, broccoli, cauliflower and kale) in the Lincoln region over a ten year period. The application summary as attached at pages A180 to A181. Submissions close on 12 December 2006 and can be emailed.

The application is to field trial brassica crops that have a *Bt* gene inserted. The *Bt* gene has been synthesised in the laboratory but is copied from a soil bacterium *Bacillus thuringiensis*. These genetically modified organism plants containing the *Bt* gene are able to produce large crystalline proteins that convert into active toxins that kill susceptible insects (caterpillars) which eat the host plant material. The toxins kill the insect by disruption of the midgut cells. This is the same mechanism used to eradicate the Painted Apple Moth from Waitakere; only in that exercise the aerial spray contained *Bacillus thuringiensis* product (Foray 48 B) that became ingested by the painted apple moth caterpillars as it covered plant material after each spraying. The toxin is only produced by specific caterpillars (of the family Lepidoptera) after ingestion of the *Bt* generated protein, so no detrimental effects on non-target organisms is expected.

In this technique, using genetic modification, the gene marker responsible for the production of the protein that becomes toxic after ingestion, is inserted into the genetic material of the host plants. The plants are then able to produce the proteins and so are protected from caterpillar attack as any foraging caterpillar is killed within 48 hours of starting to eat the plant material. The specific *Bt* gene used protects the plants specifically from cabbage white butterfly and the diamond back moth.

STRATEGIC CONTEXT

Waitakere was declared GE free in field and food by the Council in 2001. Remaining GE free is one of the goals under the Strong Innovative Economy strategic platform.

ISSUES

The application is for field trials at Lincoln in Canterbury over a ten year period. The applicant, Crop & Food Research, has its head office at Lincoln but also has regional offices throughout New Zealand including at Mount Albert in Auckland. As there is no possibility that any field trials under this application will be located in Waitakere, the Council may consider not submitting on this application.

The proposed field trials are for growing genetically modified food crop plants, which is specifically contradictory to Waitakere's policy statement for Waitakere (GE free in field and food). However, the application documents notes that the maize crops grown commercially world wide in 2005 and containing the same modified gene (Bt) have been approved for human consumption in several countries including New Zealand.

Bacillus thuringiensis has been used for biological control of insects for more than 30 years. In New Zealand, commercial products containing the bacterium are used for caterpillar control in orchards and on vegetables and are also used by organic growers. The difference in this application is that the bacteria gene has been incorporated into the host plant genetic material so that the plant is able to produce the toxin generating protein itself.

The purpose of using genetically modified organism plants in this manner is to reduce the use of insecticides, particularly as insects develop resistance to chemicals over time, and avoiding chemical residues in the environment.

Precautions included in the application are:

- Plants will only be grown in the field for a five-month period up to marketable production;
- Crops will be destroyed, or moved to a secure indoor area for flower and seed production;
- Regular monitoring to ensure no caterpillars are surviving on the plants and no open flower buds are visible.

Options

- 1 The Council could decide to not submit on this application as the field trials will not be located in Waitakere.
- 2 The Council could submit in opposition to the application on the basis that all growing of genetically modified food plants in the field is of concern to the Council and is contrary to the Council's GE free in field and food philosophy.
- 3 The Council could find support for the application as it will contribute to the reduction of chemical insecticide use, which is complementary to the Council's own goal of reducing its use of herbicides.

If the Council wishes to ensure Waitakere is GE free and decides to submit in opposition to the application, reasons could include:

- The release of genetically modified (transgenic) plants, even in containment, damages the export marketability of organic product from New Zealand including from Waitakere organic businesses.
- Urging ERMA to apply the precautionary principle because of the following low probability but potentially high impact risks:
 - The risk that additional genetic material may also have been inadvertently transferred to the plants but expression of that material may be masked at present.
 - The risk that soil bacteria in the field trial plots could incorporate genetic material from the brassica plants and could similarly transfer the material to other plants. The subsequent transfer of caterpillar resistance may or may not be a desirable outcome if the caterpillars were lepidopteran larva of desirable species (native butterflies or Monarch butterflies).

Applying the precautionary principle would find that the application should be declined.

A182 If the Council decides to submit in opposition to the application, a draft submission is attached at page A182.

RESOURCES

There are no resource implications in either submitting or not submitting on the application.

CONCLUSION

The application for field trials of food plants genetically modified with a synthesised bacterial gene for insect resistance is to be located at Lincoln in Canterbury. The Council may wish to object to the granting of this application as it is for field trialling genetically modified food plants. However, the purpose of the genetic modification is to reduce the use of chemical insecticides, and is using a genetic marker analogous with bacterial material acceptable for use as insecticide in organic growing.

The risk of pollen escape could occur but the close scrutiny planned will minimise any flower production. The trial plants (brassicas) are not closely related to other native members of this family so inter-crossing via pollen is not possible. Any risk of plant material being carried off site will be monitored closely. No detrimental effect on non-target insects is expected.

RECOMMENDATIONS

1. That the Draft Submission on an Application for Field Testing Genetically Modified Food Plants report be received.
2. That the submission on the Application for Field Testing Genetically Modified Food Plants, attached at page A182, be endorsed and forwarded to the Environmental Risk Management Authority.

A182

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

