

wider community have on two occasions been given the opportunity to express their views about earlier drafts of the Commercial Sex Strategy.

The first feedback period held from 31 January 2005 – 14 March 2005 resulted in a total of 184 submissions, with one submission comprising a petition of nearly 200 signatures about a localised issue in Te Atatu South. 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 was amended to help ensure that the Council can respond to residents' concerns and that any restraints over the commercial sex industry are appropriate, equitable, effective and reasonable.

There were a number of issues covered during the feedback, the most contentious of which related to the proposal in the Commercial Sex Strategy to permit small brothels in residential areas. The location of brothels in Waitakere City was the most prominent issue identified during the earlier feedback session in 2005.

Other issues included:

- Signage of brothels
- Hygiene standards
- Enforcement
- The impact of prostitution upon the community and the morality of prostitution
- Terminology
- Monitoring and enforcement
- Impact of prostitution
- Strategic aspects

## **10.2 Feedback from the Public**

### **10.2.1 Brothels in Residential Areas**

#### **Opposition to brothels in residential areas**

There was widespread opposition amongst the submitters to the establishment of brothels in residential areas across Waitakere City. Many submitters made this point (including a bulk submission), and for some submitters it was the only comment that was made about the Strategy. Reasons for submitters opposing brothels in residential areas were numerous, with some opposed to prostitution being decriminalised:

- Safety concerns for residents, especially the exposure of young children to the industry
- Will affect the characteristics of the community
- Immoral behaviour that goes against decent social and family values
- Will create temptation for young people to enter into undesirable behaviour
- Will adversely affect 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
- Opens up problems for future generations
- Increased traffic problems due to clients visiting brothels and more pedestrian traffic
- Residential areas should be kept residential

#### **Support for brothels in residential areas**

At the same time, a number of submitters understood why the Council had proposed to allow small brothels to operate in residential areas. Reasons why submitters are supportive of brothels in residential areas include:

- 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 they can work for themselves from private homes and retain control of their work, if perhaps they reject the conditions of larger establishments or perhaps if they are excluded from larger establishments 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.

However, it is overall considered appropriate that *small brothels* (4 or less independent sex worker) be allowed to establish as home occupations in the residential areas of the City along with other *retail services*. This is considered to be consistent with the intention of the PRA and with recent decisions made in the High Court 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 Ltd 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. There are also 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. It is probable that not all brothels would comply and would remain in residential areas and work 'underground' illegally.

### **10.2.2 Proximity to "sensitive" sites**

An arbitrary limitation on how close brothels could be located to schools, kindergartens, places of worship and parks was suggested by some submitters. This was presented so that certain groups in society would not be exposed to the activities of brothels. This concept itself poses some difficulties as prostitution is now a legal activity.

However the Proposed Plan Changes 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. This was because it was considered that this was not intended by the PRA and would be in conflict to the PRA. A buffer zone or minimum distance approach does not necessarily ensure that people are not exposed to the commercial sex industry and is difficult to implement, for example what is the appropriate distance, what is a "sensitive site"?

Arbitrary distances or buffer zones are not considered to be a transparent effects-based tool to control the location of brothels in the City and could also lead to unnecessary restrictions or an effective banning of all brothels in the City (for example due to the prevalence of "sensitive sites" there may not be anywhere a brothel could locate). This is contrary to the intent of the PRA and the Strategy.

Support for this position is found in the recent High Court judgment regarding the Auckland City Council bylaw (*J B International Ltd 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.

The Proposed Plan Change is effects based and all brothels, apart from brothels that are a permitted home occupation require a resource consent. This allows Council to consider all effects of the activity including effects on the neighbourhood character and amenity values, adjoining sites, nuisance and potential to offend as provided for under section 15 of the PRA.

The effects of small brothels that are permitted home occupations are considered to be no different to other small retail service home occupations. As a result of the sex workers desire for discretion, activities will probably not be noticeable in the neighbourhood or from other home occupations. Although *small brothels* that are permitted home occupations could have up to four sex workers, the District Plan rules for vehicle movements (only 20 per day are allowed) would further restrict the number of sex workers. Most small brothels that are home occupations will probably consist of the one, possibly two sex workers operating from their home.

### 10.2.3 'Red Light' districts

Several submitters suggested that 'red light' districts be allowed to establish 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. There were also 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.

Small brothels that operate as a home occupation are, however, substantially different to brothels with a number of sex workers that operate as an entertainment venue in the commercial areas of the City. The reality is that small brothels with one or two sex workers operating from their home probably currently operate in Auckland City and the North Shore City and will continue to do so. The fact that small brothels can operate as a permitted home occupation will not encourage Waitakere City to become the region's "red light" district.

It was considered that the establishment of "red light" districts anywhere in the City should not be encouraged. They would not be appropriate in the residential environments. They would also not be appropriate in the commercial centres and the Community Environment where Council is trying to encourage attractive and integrated town centres through good urban design and a wide mix of activities. They would also not be appropriate in the Working Environment. Concerns relating to safety were expressed about the establishment of brothels in the Working Environment which is often in isolated land pockets with little traffic after dark. There is also currently a shortage of industrial land in the City.

The proposed rules therefore only allow small brothels that are permitted home occupations in the residential environments and all other brothels would require resource consent either as a non complying activity in the residential environments or as a limited discretionary activity in other environments. This allows Council to assess the cumulative effects of more than one brothel establishing in proximity to another.

## **11.0 Conclusion**

Proposed Plan Change 24 seeks to provide for the business of prostitution and the establishment of brothels in Waitakere City. The proposed changes to the District Plan include amendments to the policies and rules.

The section 32 analysis concludes that the Proposed Plan Change would achieve the purpose of the Act whilst ensuring that amenity values are protected. The Proposed Plan Change puts in place a framework for managing the adverse effects arising from the legalisation of prostitution as required by the Prostitution Reform Act 2003.

# **APPENDIX 1**

## **WAITAKERE CITY COMMERCIAL SEX STRATEGY**

The Commercial Sex Strategy contained in this Appendix is the one that will be considered by the

Planning and Regulatory Committee

at its meeting on

12 December 2006.

If the Committee amends the Commercial Sex Strategy at its 12 December 2006 meeting, the version of the Strategy in this Appendix will be replaced by the amended version, prior to public notification of

Proposed Plan Change 24.

## **APPENDIX 2**

**WAITAKERE CITY DISTRICT PLAN**

**PROPOSED PLAN CHANGE 24**

## Proposed Plan Change 24

### Commercial Sex Activities in Waitakere City

N.B

-new text is underlined

- text to be deleted is ~~struck through~~

#### INTRODUCTION TO THE RULES

##### Amend Notification Guidance

Written Consents and Notification – Discretionary Activities and Non Complying Activities be amended as follows:

Add a new bullet point as follows to No.5, list of Discretionary Activity applications that will generally be notified:

- Any discretionary activity for *commercial sex activities*

## **POLICIES**

### **Amend Policy 11.11**

Signs should be designed so that they do not intrude visually on to the amenity of the surrounding area or detract from surrounding neighbourhood character, and the safety of vehicles and pedestrians on any adjacent roads and state highways. Because of their potential to offend and adversely affect the neighbourhood character and amenity value of the City's residential environment, signage associated with commercial sex activities and small brothels that are home occupations are prohibited in the residential Human Environments of the City.

#### ***Explanation***

Signs have been identified as having considerable impact on both the visual amenity of an area and the safety of road users, where the number and design of signs can be a source of distraction and confusion. This policy manages the dimensions and materials used for signs in different parts of the City and also the location of inappropriate signs.

### **Amend Existing Policy 11.18 and its Explanation**

Non-residential activities (other than retail activities) may be located within residential areas of the City, provided that the individual and cumulative impacts of such a provision do not adversely affect amenity values and neighbourhood character or fragment residential activities to the point that essential residential character is lost, and the safety of residents is harmed.

*In residential areas that provide for apartment-type developments, a broad range of non-residential activities can locate in these areas to provide a mixed use environment for residents, provided that the nature and scale of activities is managed to protect the vibrancy of adjacent town centre cores. (Proposed Plan Change 17)*

#### ***Explanation***

~~Past planning practice has emphasised the separation of residential activities from other activities. While in recent years there has been some easing of these policies to allow such things as home occupations, the establishment of businesses, small factories and restaurants in residential areas has been relatively difficult.~~

Allowing a greater mix of activities at the local level would contribute to a reduction of vehicle trips and associated adverse impacts on amenity from vehicle use. However, such a change must be carefully managed so that the mix of activities contributes to the enhancement of local neighbourhoods, and does not undermine them to the point that further pressures are created to move away from these areas. This would include a careful assessment of cumulative effects of non-residential activities on the essential residential character of any area, and the extent to which it can be fragmented by other activities, before that character is

lost and safety is adversely affected. It also involves careful management of noise, glare, odour and other potential sources of nuisance such as hours of operation.

Because the separation of activities has occurred largely because of past planning controls and because the resulting amenity of these areas is the result of regulation, any shift towards a more sustainable suburban form requires a clear policy direction in the District Plan.

*Provision is made for convenience shops and shops that sell food and beverages within the higher intensity Living (L6) Environment to support the local community, while ensuring that the amenity values of the centre are not lost by retail activities wanting to locate on the edge of the town centre, instead of within the town centre. Smaller scale workplaces (up to 5000m<sup>2</sup> of floor area) are also provided for within the New Lynn Living (L6) Environment to support employment opportunities for residents. (Proposed Plan Change 17)*

The Marina Special Area recognises the unique mix of marina, commercial and residential activities possible on the site. The Plan imposes rules to ensure that development provides a high quality marine village atmosphere while maintaining amenity including, where appropriate, views through and over the site to the harbour and public access and enjoyment of the foreshore.

The Whenuapai Special Area recognises the unique characteristics of the longstanding presence of timber-based and associated activities at Whenuapai. The Plan provides for existing and proposed activities within the Special Area while ensuring that development remains consistent with the character of the site and neighbourhood, and the limitations by the existing infrastructure.

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

## Methods

### **District Plan Rules:**

- Scheduled Sites Rules
- Non-Residential Activities Rules
- City Wide Rules

## **New Policy 11.50- Commercial Sex Activities**

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

### **Explanation**

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

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

All commercial sex activities other than home occupations are discouraged from locating in predominately residential Human Environment(s), so as to maintain the amenity values and neighbourhood character of those Human Environment(s).

The District Plan seeks to ensure that high standards of urban design and safety are provided in the Community Environment. This contributes to the development of high quality pedestrian environments within integrated town centres and their adjoining neighbourhoods. Consequently the District Plan requires a high standard of development (in terms of layout, design and visual appearance) with active street frontages, large expanses of glazing, and display space that provides a high level of public and private interface. Commercial sex activities often seek to operate discreetly, and large areas of ground level display space associated with commercial sex activities may not be desirable to this industry. The alternative (large areas of blank walls) would also not be considered appropriate, as this type of development would not contribute to a high quality Community Environment.

The Policy also seeks to avoid the establishment of "red-light districts" (clusters of commercial sex activities) as these clusters would detract from the quality pedestrian environments within the Community Environment. They could also have the potential to cause offence or nuisance to members of the public and/or be incompatible with the surrounding neighbourhood.

### **Methods**

#### **District Plan Rules:**

- Non-Residential Activities Rules
- City Wide Rules

## Rules

Add the following new City Wide Rules “Commercial Sex Activities” and “Commercial Sex Activities – Signs” to the City Wide Rules Section of the District Plan Rules Volume 1

Rule 1	Commercial Sex Activities
<p style="text-align: center;"><b><u>RULES</u></b></p> <p><b><u>1.0 General</u></b></p> <p><u>The following rules shall apply only to Commercial Sex Activities</u></p> <p><b><u>1.1 Limited Discretionary Activities</u></b></p> <p><u>The following are Limited Discretionary Activities:-</u></p> <p>(i) <u>Commercial Sex Activities that are located above ground floor level in any existing building within the Community Environment</u></p> <p>(ii) <u>Commercial Sex Activities on a site within the Working Environment or Working (Lincoln) Environment</u></p> <p>(iii) <u>New buildings/premises and additions over 100m<sup>2</sup> gross floor area, for Commercial Sex Activities within the Community Environment that meet the performance standards of Proposed City Wide Rule 2, Site Analysis, Proposed City Wide Rule 3, Building Design – Street Frontage and where relevant, Proposed City Wide Rule 4: Building Design – Mixed Use (Proposed Plan Change 18)</u></p> <p><u>Assessment of Limited Discretionary Activities applications will be limited to the matters of scale, intensity, location, compatibility with amenity values and neighbourhood character, safety, screening, planting, landscaping and design, level of nuisance or offence to ordinary members of the public and cumulative effects and will be considered in accordance with Assessment Criteria 1(a) – 1(h)</u></p> <p><b><u>1.2 Discretionary Activities</u></b></p> <p><u>Commercial Sex Activities within the</u></p>	<p style="text-align: center;"><b><u>ASSESSMENT CRITERIA</u></b></p> <p><b><u>1(a)</u></b></p> <p><u>The extent to which the character, scale and intensity of the proposed activity is compatible with amenity values and neighbourhood character</u></p> <p><b><u>1(b)</u></b></p> <p><u>The extent to which the external appearance of premises associated with a commercial sex activity respects the architectural character of the streetscape and prevents the premises becoming a prominent feature in the street</u></p> <p><b><u>1(c)</u></b></p> <p><u>The extent to which entrances and exits to premises associated with commercial sex activities are designed and lit to facilitate the privacy of staff and visitors without compromising personal safety (through avoiding the use of isolated back lanes and poorly lit areas)</u></p> <p><b><u>1(d)</u></b></p> <p><u>The extent to which landscaping does not obstruct the visibility from the public areas of entrances and exits so as to ensure the safety of all staff and visitors to the premises.</u></p> <p><b><u>1(e)</u></b></p> <p><u>The extent to which the interior of the premises associated with commercial sex activities is not visible or is screened from neighbouring buildings and the street.</u></p> <p><b><u>1(f)</u></b></p> <p><u>The extent to which the activity is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the activity is situated.</u></p> <p><b><u>1(g)</u></b></p> <p><u>The extent to which the activity is proposed to be located in proximity to other existing commercial sex activities</u></p> <p><b><u>1(h)</u></b></p> <p><u>The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through provision of works</u></p>

Community Environment not meeting the standards in Rule 1.1

Discretionary Activities will be assessed as relevant in accordance with assessment criteria 1(a) – 1(h) and any other relevant matter under Section 104 of the Act and Section 15 of the Prostitution Reform Act 2003.

### 1.3 Non-Complying Activities

Commercial Sex Activities to which these rules apply which are not a Limited Discretionary Activity or a Discretionary Activity under the above rules shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity

#### NOTES

1. If an activity is not controlled or restricted in any way by any part of the Plan it is permitted, but may require consents under other legislation/ plans.
2. Activities must comply with all other relevant rules of the Plan or be the subject of a resource consent. Check all other rules in the relevant Human Environment and also the Natural Area Rules, the City-Wide Rules and, where relevant, the Subdivision Rules. Relevant rules include all rules of the Community and Working Environments and may include the General Noise Standard Rule 1.7, Sale of Liquor.
3. Words in italics are defined - see the Definitions part of the City-Wide Rules.
4. Words in bold are explained - see the Explanations part of the Introduction to the Rules.
5. The Council may have a guideline to help interpret this rule - check at the Council Offices.
6. For resource consents see the Information Requirements in the City-Wide Rules.

and services on or off the site and/or through payment or provision of a financial contribution.

Note: See also Policies: 9.5, 10.3, 10.5, 11.3, 11.11, 11.18, 11.50

(Policy Section of the Waitakere District Plan)

### RESOURCE CONSENT CONDITIONS

In granting a resource consent Council may impose conditions. Conditions may include any one or more of the following matters:

- Limiting the height of buildings
- Altering the design and scale of buildings associated with commercial sex activities
- Specifying building materials (exterior cladding) and colour to be used
- Requiring the provision of screening or planting
- Requiring the alteration of entrance design or positioning
- The imposition of a bond to ensure satisfaction of conditions of consent
- Requiring onsite or offsite works and services to avoid, remedy, mitigate or offset adverse effects.
- Such other matters provided for in section 108 of the Act.

Provided that, in the case of Limited Discretionary Activities, conditions may only be imposed in respect of the matters specified above to which the Council has restricted the exercise of its discretion.

**RULES****1.0 General**

The following rules shall apply only to signs associated with *commercial sex activities* that are not a *Prohibited Activity* under City Wide Rule, Prohibited Activities Rule 1.

**1.1 Limited Discretionary Activities**

The following are *Limited Discretionary Activities*:-

(a) Signs associated with *commercial sex activities* in the *Community Environment* and the *Working Environment* which:

- (i) do not protrude above or beyond the outline of a *building* or which are located below the verandah (*canopy*);
- (ii) which are not flashing or moving; and
- (iii) which are illuminated only where the sign is not visible from the *Living Environment, Bush Living Environment, Coastal Villages Environment, Countryside Environment, Foothills Environment, Open Space Environment, Rural Villages Environment* or *Waitakere Ranges Environment* or any *Special Area*.

Assessment of Limited Discretionary Activities applications will be limited to the matters of design, size, scale, appearance, location, compatibility with **amenity values** and **neighbourhood character, safety**, level of nuisance or offence and will be considered in accordance with Assessment Criteria 1(a) – 1(e)

**1.2 Discretionary Activities**

- Signs associated with *commercial sex activities* within the *Working* and *Community Environments* not meeting the standards in Rule 1.1

**ASSESSMENT CRITERIA****1(a)**

The extent to which signs are visually appropriate to amenity values and compatible with **neighbourhood character**.

**1(b)**

The extent to which signs create a situation hazardous to the safe movement of traffic.

**1(c)**

The extent to which signs are of a height which avoids the sign dominating the neighbourhood and/or nearby structures

**1(d)**

The extent to which the design, location, size height and appearance of signs is likely to cause a nuisance or serious offence to ordinary members of the public using the area.

**1(e)**

The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through provision of works and services on or off the site and/or through payment or provision of a *financial contribution*.

Note: See also Policies: 5.3, 9.5, 10.3, 10.5, 10.20 10.28, 11.3, 11.7, 11.32

(Policy Section of the Waitakere District Plan)

**RESOURCE CONSENT CONDITIONS**

In granting a *resource consent* Council may impose conditions. Conditions may include any one or more of the following matters:

- altering the size, height, scale and/or location of signs
- Specifying the design and wording of signs
- Requiring the provision of screening or planting
- The imposition of a bond to ensure satisfaction of conditions of consent
- Requiring onsite or offsite works and services to avoid, remedy, mitigate or offset adverse effects.

Discretionary Activities will be assessed as relevant in accordance with assessment criteria 1(a) – 1(e) and any other relevant matter under Section 104 of the Act and Section 15 of the Prostitution Reform Act 2003.

### **1.3 Non-Complying Activities**

(i) Signs associated with commercial sex activities to which these rules apply which are not a Limited Discretionary Activity or a Discretionary Activity under the above shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity

#### **NOTES**

1. All signs associated with commercial sex activities must comply with Council Bylaw for Signs
2. If an activity is not controlled or restricted in any way by any part of the Plan it is permitted, but may require consents under other legislation/ plans.
3. Activities must comply with all other relevant rules of the Plan or be the subject of a resource consent. Check all other rules in the relevant Human Environment and also the Natural Area Rules, the City-Wide Rules and, where relevant, the Subdivision Rules.
4. Words in italics are defined - see the Definitions part of the City-Wide Rules.
5. Words in bold are explained - see the Explanations part of the Introduction to the Rules.
6. The Council may have a guideline to help interpret this rule - check at the Council Offices.
7. For resource consents see the Information Requirements in the City-Wide Rules.

- Such other matters provided for in section 108 of the Act and section 15 of the Prostitution Reform Act 2003

Provided that, in the case of Limited Discretionary Activities, conditions may only be imposed in respect of the matters specified above to which the Council has restricted the exercise of its discretion.

## EXISTING DISTRICT PLAN RULES

### Living Environment

#### Amend Rule 10 Non Residential Activities, Living Environment

#### Rule 10

##### 10.1 Permitted Activities

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for small brothels that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building* which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended); and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* are confined to front sites with individual driveway access and a minimum net site area of 450m<sup>2</sup> , shall be are of goods produced on the site and the hours of operation are between 0700 and 1900 daily and ;
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*.

##### 10.2 Limited Discretionary Activities

Activities meeting the following performance standards are *Limited Discretionary Activities*:

- *Non-Residential Activities* including *home occupations* not meeting the standards in Rule 10.1, but excluding commercial sex activities and small brothels that are a home occupation not meeting the standards in Rule 10.1, where:
  - the activities are located within a *building* originally erected as a *dwelling*, and there are no *retail sales*
  - the activities are associated with an existing *Non-Residential Activity* on the *site* , do not involve *retail sales*, and do not increase the *gross floor area* of *buildings* on the *site* to more than 250m<sup>2</sup> .

Assessment of *Limited Discretionary Activity* applications made under this rule will be limited to matters of scale, *design*, retention of *vegetation*, *screening* and *planting*, hours of operation and location and will be considered in accordance with assessment criteria 10(a) -10(d).

##### 10.3 Discretionary Activities

Activities meeting the following performance standard are *Discretionary Activities*:

- ~~Non- Residential Activities other than a home occupation meeting the standards in Rule 10.1~~ but not meeting the standards in Rule 10.2, provided there are no retail sales; but excluding
- Home occupations meeting the standards in Rule 10.1
- commercial sex activities, and small brothels that are a home occupation not meeting the standards in Rule 10.1.

*Discretionary Activity* applications will be assessed having regard to Assessment Criteria 10(a)-10(d) and any other matters that are relevant under section 104 of the Act.

**Note: See limitations on front sites under the Traffic Generation Rule 11.1**

#### **10.4 Non-Complying Activities**

*Non-Residential Activities* to which these rules apply (other than *Scheduled Activities on Scheduled Sites*) which are not a *Permitted Activity* or a *Limited Discretionary Activity* or a *Discretionary Activity* under the above rules shall be deemed to contravene a rule in this Plan and shall be a *Non-Complying Activity*

#### **Add the following to Assessment Criteria 10(a)**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values** and **neighbourhood character**.

#### **Amend Note at End of Assessment Criteria**

Note: See also Policies 10.14, 10.27, 11.1, 11.12, 11.18, 11.31, 11.50

## **Countryside Environment**

### **Amend Rule 7 Non-Residential Activities, Countryside Environment**

#### **Rule 7**

##### **7.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for small brothels that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building* which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended); and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* shall ~~be~~ are of goods produced on the site and the hours of operation are between 0700 and 1900 daily and;
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*.

##### **7.2 Controlled Activities: No Changes**

##### **7.3 Limited Discretionary Activities**

Activities meeting the following performance standards are *Limited Discretionary Activities*:

- *Non-Residential Activities* including *home occupations* not meeting the standards in Rule 7.1 but excluding commercial sex activities and small brothels that are a home occupation not meeting the standards in Rule 7.1 where:
  - the activities are located within a *building*, and there are no *retail sales* provided that the total floor space occupied by the Non- Residential Activity does not exceed 250m<sup>2</sup> ; or
  - the activity involves *retail sales* of horticultural produce where the *retail floor space* does not exceed 75m<sup>2</sup>.

Assessment of *Limited Discretionary Activity* applications made under this rule will be limited to matters of scale, retention of *vegetation*, *screening*, *landscape treatment*, duration, hours of operation, *design* and location and will be considered in accordance with assessment criteria 7(a) -7(e).

##### **7.4 Discretionary Activities**

Activities meeting the following performance standard are *Discretionary Activities*:

- *Non- Residential Activities*, including *home occupations* that do not meet the standards in Rule 7.1, 7.2 and 7.3. provided there are no *retail sales*, but excluding

commercial sex activities and small brothels that are a home occupation not meeting the standards in Rule 7.1

*Discretionary Activity* applications will be assessed having regard to Assessment Criteria 7(a)-7 (e) and any other matters that are relevant under section 104 of the Act.

## 7.5 Non-Complying Activities

*Non-Residential Activities* to which these rules apply which are not a *Permitted Activity*, a *Controlled Activity*, a *Limited Discretionary Activity* or a *Discretionary Activity* under the above rules shall be deemed to contravene a rule in this *Plan* and shall be a *Non-Complying Activity*

### Delete Assessment Criteria 7(c) as follows

~~The extent to which Non Residential Activities fragment the neighbourhood character of the surrounding area~~

- **Add a new Assessment Criteria 7 (c) to read as follows:**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values** and **neighbourhood character**.

### Amend Note at End of Assessment Criteria

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

## **Foothills Environment**

**Amend Rule 8 Non- Residential Activities, Foothills Environment** as follows

### **8.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons except for *small brothels* that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building* which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended; and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* ~~shall be~~ are of goods produced on the site and the hours of operation are between 0700 and 1900 daily; and;
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*.

**8.2 Controlled Activities:** No Changes

### **8.3 Limited Discretionary Activities**

Activities meeting the following performance standards are *Limited Discretionary Activities*:

- *Non-Residential Activities* including *home occupations* not meeting the standards in Rule 8.1 but excluding *commercial sex activities* and *small brothels* that are a *home occupation* not meeting the standards in Rule 8.1, where:
  - the activities are located within a *building*, and there are no *retail sales*, provided that the total floor space occupied by the Non- Residential Activity does not exceed 250m<sup>2</sup> ; or
  - the activity involves *retail sales* of horticultural produce where the *retail floor space* does not exceed 75m<sup>2</sup>.

Assessment of *Limited Discretionary Activity* applications made under this rule will be limited to matters of scale, retention of *vegetation*, *screening*, *landscape treatment*, duration, hours of operation, *design* and location and will be considered in accordance with assessment criteria 8(a) -8(e).

**8.4 Non-Complying Activities:** No Changes

**Delete Assessment criteria 8 (c) as follows**

~~The extent to which *Non-Residential Activities* fragment the rural character of the surrounding area~~

**Add a new Assessment Criteria 8 (c) to read as follows:**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with the **amenity values** and rural character of the surrounding area.

**Amend Note at End of Assessment Criteria**

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

## **Rural Villages Environment**

### **Amend Rule 10 Non- Residential Activities – Rural Villages Environment**

#### **Rule 10**

##### **10.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for small brothels that are limited to four persons, are engaged in the *home occupation* at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended); and*
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*.
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* are confined to front sites with individual *driveway* access and a minimum net site area of 450m<sup>2</sup> and shall be are of goods produced on the site and the hours of operation are between 0700 and 1900 daily and;
  - *retail sales* are conducted from buildings on the *site*

##### **10.2 Limited Discretionary Activities**

Activities meeting the following performance standards are *Limited Discretionary Activities*:

- *Non-Residential Activities* including *home occupations* not meeting the standards in Rule 10.1 but excluding commercial sex activities and small brothels that are a home occupation not meeting the standards in Rule 10.1 where:
  - the activities are located within a *building* originally erected as a dwelling, and there are no *retail sales*, or
  - the activities are associated with an existing *Non- Residential Activity* on the *site*, do not involve *retail sales*, and do not increase the *gross floor area* of buildings on the *site* to more than 250m<sup>2</sup>.

Assessment of *Limited Discretionary Activity* applications made under this rule will be limited to matters of scale, *design*, retaining of *vegetation*, *screening*, *landscape treatment*, hours of operation, and location and will be considered in accordance with assessment criteria 10(a) -10(d).

##### **10.3 Discretionary Activities**

Activities meeting the following performance standard are *Discretionary Activities*:

- *Non- Residential Activities*, including *home occupations* that do not meet the standards in Rule 10.1 and 10.2. provided there are no *retail sales*, but excluding

Commercial Sex Activities and small brothels that are a home occupation not meeting the standards in Rule 10.1.

*Discretionary Activity* applications will be assessed having regard to Assessment Criteria 7(a)-7 (e) and any other matters that are relevant under section 104 of the Act.

#### **10.4 Non-Complying Activities**

*Non-Residential Activities* (other than those on *Scheduled Sites*) to which these rules apply which are not a *Permitted Activity*, or a *Limited Discretionary Activity* or a *Discretionary Activity* under the above rules shall be deemed to contravene a rule in this *Plan* and shall be a *Non-Complying Activity*.

#### **Add the following to Assessment Criteria 10(a)**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values** and **neighbourhood character**

#### **Amend Note at End of Assessment Criteria**

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

## **Coastal Villages Environment**

### **Amend Rule 8 Non- Residential Activities, Coastal Villages Environment**

#### **Rule 8**

##### **8.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for *small brothels* that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building* which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended); and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*.
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* are confined to front sites with individual *driveway* access and a minimum net site are of 450m<sup>2</sup>, shall be are of goods produced on the site and the hours of operation are between 0700 and 1900 daily and;
  - *retail sales* are conducted from buildings on the *site*

##### **8.2 Discretionary Activities**

Activities meeting the following performance standard are *Discretionary Activities*:

- *Non- Residential Activities* including *home occupations* not meeting the standards in Rule 8.1, where the activities are located within a building originally erected as a dwelling, and there are no *retail sales*, but excluding *commercial sex activities* and *small brothels* that are a *home occupation* not meeting the standards in Rule 10.1.

*Discretionary Activity* applications will be assessed having regard to the matters set out in Assessment Criteria 8(a)-8 (e) and any other matters that are relevant under section 104 of the Act.

##### **8.3 Non-Complying Activities**

*Non-Residential Activities* to which these rules apply which are not a *Permitted Activity*, or a *Discretionary Activity* under the above rules shall be deemed to contravene a rule in this *Plan* and shall be a *Non-Complying Activity*.

**Add the following to Assessment Criteria 8(a)**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values, neighbourhood character,** and the **natural landscape**

**Amend Note at End of Assessment Criteria**

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

## **Bush Living Environment**

### **Amend Rule 8 Non-Residential Activities, Bush Living Environment**

#### **Rule 8**

##### **8.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for *small brothels* that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended)*; and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* are confined to front sites with individual *driveway* access and a minimum net site are of 450m<sup>2</sup>, and are shall be of goods produced on the site and the hours of operation are between 0700 and 1900 daily and;
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*; and
  - *retail sales* are conducted from buildings on the *site*

##### **8.2 Discretionary Activities**

Activities meeting the following performance standard are Discretionary Activities:

- ~~*Non- Residential Activities other than home occupations meeting the standards in Rule 8.1*~~ where the activities are located within a *building* originally erected as a *dwelling* and there are no *retail sales*; but excluding
- *Home occupations meeting the standards in Rule 8.1*
- *Commercial Sex Activities, and small brothels that are a home occupation not meeting the standards in Rule 8.1.*

*Discretionary Activity* applications will be assessed having regard to the matters set out in Assessment Criteria 8(a)-8 (e) and any other matters that are relevant under section 104 of the Act.

##### **8.3 Non-Complying Activities**

*Non-Residential Activities* to which these rules apply *which are not a Permitted Activity, or a Discretionary Activity* under the above rules shall be deemed to contravene a rule in this *Plan* and shall be a *Non-Complying Activity*.

**Add the following to Assessment Criteria 8(a)**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values, neighbourhood character** and the **natural landscape**

**Amend Note at End of Assessment Criteria**

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 9.8, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

## **Waitakere Ranges Environment**

### **Amend Rule 7 Non-Residential Activities Waitakere Ranges Environment**

#### **Rule 7**

##### **7.1 Permitted Activities**

Activities meeting the following performance standards are *Permitted Activities*:

- *home occupations* meeting the following requirements:
  - no more than five persons, except for small brothels that are limited to four persons, are engaged in the *home occupation*, at least one of whom resides on the *site*; and
  - the *home occupation* is carried out within an existing *building* which is clearly marked with the relevant street number in accordance with By-Law No.4 Chapter2 Public Places 1972(Clause 244 as amended); and
  - the *home occupation* does not involve traffic generation involving a *heavy traffic vehicle* exceeding two vehicle movements per week; and
  - the *home occupation* apart from the parking of one vehicle, is screened from the adjoining *sites* and the *road*; and
  - except where goods are primarily ordered by mail or electronic transaction and redistributed by post or courier, any *retail sales* and *services* are shall be of goods produced on site and from buildings on site and the hours of operation are between 0700 and 1900 daily and;

##### **7.2 Controlled Activities: No Changes**

##### **7.3 Discretionary Activities**

Activities meeting the following performance standard are Discretionary Activities:

- *Non- Residential Activities*, including a *home occupations* not meeting the standards of Rule 7.1 and 7.2, where the activities are located within a *building* originally erected as a *dwelling* and there are no *retail sales* but excluding commercial sex activities and small brothels that are a home occupation not meeting the standards in Rule 10.1.

*Discretionary Activity* applications will be assessed having regard to the matters set out in Assessment Criteria 7(a)-7 (g) and any other matters that are relevant under section 104 of the Act.

##### **7.4 Non-Complying Activities**

*Non-Residential Activities* to which these rules apply which are not a *Permitted Activity*, a *Controlled Activity* or a *Discretionary Activity* under the above rules shall be deemed to contravene a rule in this *Plan* and shall be a *Non-Complying Activity*

**Add the following to Assessment Criteria 7(a)**

The extent to which the character, scale, hours of operation and intensity of *Non-Residential Activities* are compatible with **amenity values, neighbourhood character** and the **natural landscape**

**Amend Note at End of Assessment Criteria**

Note: See also Policies 1.2, 1.3, 1.18, 4.1, 4.7, 9.8, 10.1, 10.3, 10.14, 10.27, 11.1, 11.8, 11.10, 11.17, 11.18, 11.30, 11.31, 11.50

**1.0 Prohibited Activities**

The following activities shall be *Prohibited Activities* throughout the district of Waitakere City:

- (i) The manufacture, production, use, storage and disposal of radioactive material in excess of 10 terabequerel (1x10<sup>13</sup>Bq)
- (ii) The use of radioactive material for the purposes of power generation or heat generation
- (iii) The extraction of *minerals* in the *Green Network*
- (iv) open ground that is not grassed or vegetated with an appropriate ground cover of *vegetation* within 3 months of the completion of *earthworks* activity resulting in that unvegetated open ground
- (v) The use of waste oil to control *dust*
- (vi) The farming of mustelids, rodents, wallabies and possums
- (vii) The farming of deer in those Deer Free Areas identified by the Department of Conservation
- (viii) Any *new dwelling*, school, or hospital within the Ldn 65dBA Noise Contour as shown on the 'RNZAF Base – Noise control area' map in the Maps Section
- (ix) Any sign, apart from a street number placed in accordance with Bylaw No 4, Chapter 2 Public Places 1972 (Clause 244 as amended), associated with premises kept or habitually used for the purposes of Commercial Sex Activities and/or Small Brothels operating as home occupations located in or visible from any part of:
  - (a) all Living Environments;
  - (b) the Bush Living Environment;
  - (c) the Waitakere Ranges Environment;
  - (d) the Foothills Environment;
  - (e) the Countryside Environment;
  - (f) the Rural Villages Environment;
  - (g) the Coastal Villages Environment;

See also Policies 4.6, 10.26 11.11, 11.18, 11.50

(Policy Section of the Waitakere District Plan)

<p>(h) <u>the Boating Special Area;</u> (i) <u>the Corbans Estate Special Area;</u> (J) <u>the Harbourview North Special Area;</u> (k) <u>the Marina Special Area;</u> (l) <u>the Monterey Park Special Area;</u> (m) <u>the Hobsonville Base Village Special Area;</u> (n) <u>The College Special Area</u></p>	
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## DEFINITIONS – Rules Volume 1

### Amend the definition of Retail Services as follows

#### Retail Services

Means an activity which provides a service to people and businesses and includes the business of prostitution, but does not include retail sales

### Amend the definition of Home Occupation as follows

#### Home Occupation

“means any commercial activity, profession or service (except for commercial sex activities) carried out on a site.....”

### Add the following six definitions to the City Wide Rules Definitions

**Brothel**– means any premises kept or habitually used for the purposes of the business of prostitution: and

- (i) does not includes small brothels; and
- (ii) does not include premises at which accommodation is usually provided on a commercial basis, if the commercial sexual service occurs at that premises under an arrangement initiated elsewhere; and
- (iii) does not include activities associated with hospitals; healthcare services; chemists; community welfare facilities; and premises where therapeutic massage is offered by a qualified practitioner.

**Business of Prostitution** is providing or arranging the provision of commercial sexual services

**Commercial Sexual Services** means sexual services that

- (A) involve the physical participation by a person in sexual acts with, and for the gratification of, another person; and
- (B) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the service or another person).

**Sex worker** – means a person who provides commercial sexual services

**Small Brothel** - means any premises kept or habitually used for the business of prostitution

- (i) at which not more than four sex workers work; and
- (ii) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel; and

(iii) does not include activities associated with hospitals; healthcare services; chemists; community welfare facilities; and premises where therapeutic massage is offered by a qualified practitioner.

**Commercial Sex Activities** means *brothels and small brothels (except for small brothels that are a permitted home occupation in all Living Environments, Countryside Environment, Foothills Environment, Rural Villages Environment, Coastal Villages Environment, Bush Living Environment, Waitakere Ranges Environment, Harbour View North Special Area, and the Hobsonville Base Village Special Area).*

## **APPENDIX 3**

**WAITAKERE CITY COUNCIL**

**RELEVANT AGENDA REPORTS 2003 - 2006**