

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON TUESDAY, 10 JUNE 2008, 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 CONFLICTS OF INTEREST

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



4 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 13 May 2008
Hearing Minutes - Tuesday, 13 May 2008

RECOMMENDATION

That the minutes of the Meeting of the Planning and Regulatory Committee held on Tuesday, 13 May 2008 and the Minutes of the Planning and Regulatory Committee (To Hear Submissions On The Requirement For A Designation Under Section 168 Of The Resource Management Act 1991 For Two Primary Schools Together With An Early Childhood Education Centre At 232-236 Metcalfe Road And 92 Simpson Road, Ranui), as circulated, be taken as read and now be confirmed.



PART B - REGULATORY / ENFORCEMENT

5 LEGAL UPDATE (AS AT 30 MAY 2008)

GLOSSARY

Ritchies Transport Holdings Limited	(Ritchies)
Rodney District Council	(RDC)
Waitakere City Council	(WCC)
Auckland Regional Council	(ARC)
Resource Management Act 1991	(RMA)
Department of Building and Housing	(DBH)
Weathertight Home Resolution Service	(WHRS)
Waitakere Ranges Protection Society Incorporated	(WRPS Inc.)
Notice to Fix	(NTF)
Certificate of Acceptance	(COA)
Building Act 2004	(the Building Act)
Metropolitan Urban Limit	(MUL)
Public Works Act 1991	(the Act)

EXECUTIVE SUMMARY

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

RECOMMENDATION

It is recommended that the Planning and Regulatory Committee resolve to:

Receive the Legal Update (As at 30 May 2008) report.

COURT OF APPEAL

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

This appeal was heard before the Court of Appeal on 14 June 2007. David Kirkpatrick appeared as Senior Counsel on behalf of the Councils. Bell Gully acted for Carter Holt. Carter Holt argued that recyclable material obtained privately does not enter the waste stream and is therefore not waste. Mr Kirkpatrick argued for the Councils that all waste is governed by Part 31 of the Local Government Act 1974 including privately collected recyclable material. The decision has recently been released in favour of Carter Holt. Declaratory orders have now been made by the Court (as agreed between the parties). The only outstanding matter was is resolution of costs. Carter Holt has now directly contacted the Mayors Office to discuss among other things; the costs of the High Court, and appeal hearings. The Mayor advised he did not wish to discuss legal matters and no further action has been taken. Carter Holt has not yet lodged a claim for costs.

Council will now need to revisit its Waste Management Policy and the current licensing regime under its Waste Bylaw. As part of the process Council has made submissions on the supplementary order paper to the Waste Minimisation. The Bill now has a new definition of waste in line with that sought by Council. A further paper has been sent direct to the Ministers prior to the Bill's second reading on 18 June 2008.

HIGH COURT

(Unchanged) J E Burgess v WCC and Auckland Regional Council (ARC)

This is a judicial review of the Council's decision (as well as the ARC's) to grant consent to a 15 lot subdivision and residential development on a non-notified basis at a site situated on 25 Kashmir Road and 47A Withers Road, Glen Eden. The applicant, Ms Burgess, contends that in respect of the Waitakere City decision there were adverse effects on her and the environment and therefore the consent ought to have been notified to permit her an opportunity to make submissions. The Council refutes that there were any adverse effects on Mr Burgess or the environment and that it correctly reached a decision not to notify the application. The property is situated in the Living Environment with no protection afforded to the vegetation on the property. Once the development is complete it will blend into the surrounding area with minimum lot sized of 452m². The property has been a vacant site nominated for development for some 15 years. The parties have filed their statements of evidence but are continuing to pursue settlement discussions.

In the interim the property has been sold and the consent holder is seeking not to be involved in the review. It has given effect to that part of the consent relating to vegetation clearance. The matter has been allocated to the standard track proceedings and set down for a 2 day hearing in the week of 11 May 2009.

(Changed) WCC v C P Brunel and the Cove Limited (December 2006)

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

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

Council has claimed costs for both hearings. The Court has not yet issued a decision on the matter of costs. A decision anticipated at the end of April 2008 has still not been secured.

(Changed) C W Williams and others v WCC (February 2006)

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

Associate Judge Faire declined the applications. An application to review the Associate Judge's decision was heard before Williams J on 26 February 2007. The Court issued a decision upholding the decision of the Associate Judge Faire concerning the application of Section 40 the Act. A Court of Appeal hearing was held in April 2008 to hear Council's appeal against the High Court decision. A Judgment of the Court is awaited.

Substantive hearings involving Mr Mawhinney

(Unchanged) Mawhinney and Glorit Subdivision Limited v WCC (February 2006)

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

Mr Mawhinney's appeal was heard in the High Court before Venning J on 7 December 2007. Judgment was received just before Christmas and the appeal was dismissed on all grounds.

We have received a costs Judgment this month awarding Council above scale costs of \$12,120 plus disbursements. The cost judgment records that a number of unmeritorious points were taken and that uplift from a normal award of cost is appropriate. We made demand for payment which was not received. A bankruptcy notice was issued. Upon learning of the bankruptcy notice Mr Mawhinney paid the full cost award plus costs of the bankruptcy notice.

Debt Recovery proceedings involving Mr Mawhinney

(Changed) WCC v P W Mawhinney (February 2006)

An indemnity cost application was made as Council was required to obtain substituted service of a bankruptcy notice on Mr Mawhinney last year. Council was awarded indemnity costs. The full costs sought of \$2491.00 were fixed on 15 February 2008. The full amount of \$3,291.38 (which includes disbursements and costs) has been paid by Mr Mawhinney.

(Changed) WCC v Glorit Subdivision Limited and Mawhinney (March 2006)

On 6 November 2007, Associate Judge Abbott awarded costs to Council and consolidated a previous cost award. Council is owed \$5,042.37 by Mr Mawhinney. Demand for payment was made and Mr Mawhinney has paid a total amount of \$5,512.37 including costs and disbursements. This matter is now at an end.

ENVIRONMENT COURT

(Changed) Ritchies Transport Holding Limited (Ritchies) v WCC

Ritchies appealed the Council's decision to grant consent on 23 April 2008. The appeal relates to the period of time for which consent has been granted to run bus depot operations at 619 Swanson Road. The decision of the Council through Commissioners was to permit Ritchies to continue operating from the site for 2 years with a higher level of activity. The appeal seeks to increase this time period to 3 years. No other parties have applied to join this appeal.

At the same time Ritchie's have applied to push the commencement date of the consent forward, instead of waiting for the appeal to be resolved. The Council has agreed to this and a draft order has been forwarded to the Court. This will mean that the abatement notice can be cancelled and the new consent will be the basis of monitoring.

The appeal is likely to be referred to mediation in the first instance. We are working to ensure that the mediation can be held as soon as possible. The matter has been placed on the Environment Court's standard track list.

**(Changed) J Hsu and D Chapman v WCC
Weddings ETC Limited v WCC**

Both these appeals relate to the grant of consent for the site known as Cassel's to extend its hours of operation as a wedding and function centre.

Mr Hsu and Mr Chapman appeal the Council's decision to grant consent. Weddings ETC Limited appeals the conditions of consent, seeking clarification around certain conditions. Mr Chapman has also joined this appeal seeking additional conditions of consent.

Both appeals are likely to be referred to mediation in the first instance, although the consent holder, Wedding ETC Limited, is at this stage opposed to mediation. They have informed the Court that this opposition is due to the long and litigious history of this matter. The matter has been placed on the Environment Court's standard track list.

**(Changed) Protect Piha Heritage Society Incorporated v WCC and ARC
Preserve Piha Limited v WCC**

The appellant Protect Piha Heritage Society Incorporated (the appellant) has appealed the joint decision of WCC and the ARC to grant consent for the establishment of a café at Piha in a residential environment at 20 Seaview Road, Piha. The appellant was a submitter against the application when it was notified and presented submissions in opposition to the grant of the application at the resource consent hearing in November 2007. In the first instance the appellant would like to see the joint decision of the Councils cancelled and resource consent refused. In the alternative the appellant would like to see the consent lapse in 2012, and if unexercised, the consents to lapse in 2009; for an archaeological report be commissioned on the heritage status of the old post office that occupies the site; compliance conditions to be included to ensure noise conditions are able to be complied with; that the café only operate 10.00 am to 5.00 pm, and be closed on Sundays and public holidays; that only 35 persons shall be provided for and that there be no seating outside; that no liquor is consumed on site; that no takeaways are to be sold; that there be no music played outside; that no odour is emitted from the property at any time.

In the second instance, Preserve Piha Limited (the applicant) who was the applicant for the consent, appeals the conditions imposed on the consent by WCC. Specifically the applicant opposes condition 11: food preparation being limited to reheating of pre-prepared food, and condition 41: all activities on site are to comply with the noise standards approved.

There are now 14 Section 274 parties. The majority of these support the granting of consent.

These matters have been joined together by the Environment Court and standard track directions have been issued. Notices of reply have been served. The matter was before an Environment Court Commissioner for mediation on Monday, 26 May 2008. Mediation was not successful and the matter is proceeding to a hearing, most likely in early September 2008. An evidence exchange timetable has been agreed.

(Unchanged) Hall v WCC (November 2007)

This is an appeal against the Council decision to grant resource consent to subdivide a property at 587 West Coast Road into two lots. The property is within the Oratia Structure Plan. The appellant was the applicant for consent and would like the removal of three conditions from the consent. These conditions relate to financial contributions, under-grounding of power and telecom services, and removal of certain buildings within 6 months of grant of consent. The appellant would like these conditions removed from the consent.

The Environment Court has issued standard track directions and it has been directed to mediation. A notice of reply has been filed. The appellants have also lodged an objection to the conditions under Section 357 of the Resource Management Act (RMA). The Council is of the view that the matter is best resolved through the objection process and has communicated this to the appellant and the Court. The matter is currently 'on hold' until the outcome of the objection process has been finalised.

(Unchanged) WCC v Estate Homes Limited (28 March 2002) (Ranui Station Road)

This matter relates to the powers of Council to require developers to construct roading that ensures connectivity between individual subdivisions and the broader roading network. It involves important legal questions relating to the costs of infrastructure, and the extent to which developers should be required to meet those costs, in reciprocation for the benefits arising from the right to subdivide, and connect into the pre-existing infrastructure, constructed and owned by Council.

Council ultimately succeeded on an appeal to the Supreme Court, resulting in a referral back to the Environment Court on the question of whether the developer should pay for a collector rather than local road. The Environment Court determined that the developer should only pay for a local road, on the basis that this was proportionate to the demand that would be placed on the roading system by its development. Council has appealed this ruling, alleging that the Environment Court has committed the same error that led to the Supreme Court intervening. A hearing took place before Priestley J on 27 February 2008 and the decision is expected before June 2008.

**(Unchanged) ARC v WCC (May 2005)
Waitakere Ranges Protection Society Incorporated (WRPS Inc.) v WCC (May 2005)
(the Duncan appeal)**

An appeal by the ARC and WRPS 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 the ARC and WRPS 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.

The Council decided to abide by the Court's decision and called no evidence. The appeal was heard on 12 and 13 March 2007. The Court has reserved its decision. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

(Unchanged) M and C Brickell, W Ashton and L Schwab v WCC (June 2005)

This is an appeal by the applicants M and C Brickell, W Ashton and L Schwab under Section 121 of the RMA against a decision of the Council to refuse to grant consent to a seven-lot subdivision at 54-56 Christian Road, Swanson. The WRPS Inc. has lodged applications with the Court in support of the Council as Section 274 parties. This appeal was heard on 14 to 16 March 2007. The hearing resumed on 23 May 2007 in order that the Court could hear the evidence of a witness for a Section 274 party that was not available during the March 2008 hearing.

The hearing has now been completed. The Court has reserved its decision. It is to be noted that the decision of the Court on this matter is dependent on the outcome of the Swanson Structure Plan. Until that matter is resolved, it is unlikely that the Court will give its decision in respect of this matter.

(Changed) WCC v R and G Britten - 19 Church Street, Swanson (October 2005)

An application by the Council for interim and final enforcement orders in respect of a land slip that occurred at the Britten's property in Church Street, Swanson. The Council seeks interim orders requiring the cessation of all vehicular use of the access road that was affected by the slip/instability and prohibiting any earthworks in the vicinity of the slip. 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 initiated a mediation process with Mr Britten in an attempt to find an alternate resolution to expedite the matter. As a consequence of that process the parties are working towards concluding an agreement for the completion of remedial work in accordance with the Council resolution at its meeting held on Thursday, 20 July 2006.

Mr Britten has been granted resource consent to undertake the remedial works.

The contract commenced on Monday, 3 March 2008. The remedial works include: concrete fill, buttressing, and reinstatement of vegetation. The works on the property have commenced.

The remedial works are now 95% complete, however some further time is required to implement a restoration planting plan. We wrote to the Court this month to seek a further reporting date in early October to ensure the planting plan is carried out during the winter planting season.

(Changed) Ritchies v WCC, and Rex Campbell, Section 274 Party (September 2006)

This is an appeal against an abatement notice issued to Ritchies. The appeal relates to the requirement of the abatement notice to reduce the buses parked on the boundary, reduce daily traffic movements, undertake mitigation measures in respect of noise and ensure the hours of operation are between 6.00 am and 9.00 pm. The requirements are those set out in the Ritchies resource consent (RMA 991374).

As a result of the decision on consent and the application by Ritchie's to commence the operation of the consent, the Council will be making an application to cancel the abatement notice as the consent granted by the Council addresses the matters raised in the abatement notice.

(Unchanged) WCC v RDC (April 2007)

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

WCC's appeal has been resolved by consent order. The appeal concerned a decision by RDC which addressed WCC's concerns, but which had not been properly worded in changes to the RDC text.

WCC's officers have attended workshops and mediations on matters regarding which WCC has a Section 274 interest.

(Unchanged) The Tree Council and the Sunnyvale Protection Society v WCC (June 2007)

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

A Court assisted mediation occurred on 19 September 2007, at which agreement in principle was reached. The parties have had further discussions regarding the applicant's proposed changes to the development. The Court issued an order under Section 116 of the RMA to allow the partial commencement of the consent (removal of some vegetation and initial earthworks). A further consent order will be sought once the applicant has revised its development plans in accordance with the mediated agreement.

(Changed) WCC v ARC, IMF v ARC and NZ Steel v ARC

This is an appeal regarding ARC's decision to grant resource consents to WCC for the discharge of stormwater and wastewater for the Hobsonville Peninsula, Waiarohia Stream, Totara Creek and New Lynn East catchments. The appeals seek changes to some of the consent conditions. It is expected that WCC's issues can be resolved through mediation/negotiation. An initial mediation to address all appeals occurred on 16 October 2007. Since then there have been some discussions between the various parties, including caucusing between experts on technical matters. A further mediation date is likely to be scheduled some time mid 2008, to allow internal discussions and a caucusing of experts to take place. It is hoped that these matters can be resolved by mediation/negotiation. There have been meetings this month between Council officers to advance matters. A Memorandum of Understanding between the parties is in the process of being finalised in respect of the Hobsonville Peninsula Catchment Consent.

Mawhinney Matters in the Environment Court

(Unchanged) Perceptus Limited v WCC

This is a new proceeding lodged in the Environment Court by Mr Mawhinney on 21 January 2008. The Council was not served until 13 February 2008. The proceedings involve Mr Mawhinney seeking an enforcement order under Section 314 of the RMA directing the Council to give public notice on the Council's decision to reserve control over roads under the subdivision rules. The Council amended the subdivision rules in 2001. Council is opposing the application on substantive and procedural grounds. Evidence from the Applicant is awaited.

(Changed) Perceptus Limited and Swanson Heights Limited v WCC, Waitakere Resource Consents Limited and Glorit Subdivision Limited v WCC, and Glorit Subdivision Limited and London and Greenwich General Trading Company Limited v WCC

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 RMA declining subdivision consents and certificates of compliance. Council filed an application to strike out the appeals. A decision was released in April 2008 striking out this appeal and granting costs to the Council. A costs application has been lodged with the Court and Mr Mawhinney has 15 working days to reply.

(Changed) Waitakere Resource Consents Limited v WCC (December 2005)

This is an appeal against a refusal to issue a certificate of compliance under Section 139 of the RMA. 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.

Council's strike out application was heard before Judge Whiting and Commissioner McConally on 6-7 September 2007. Various aspects of Mr Mawhinney's appeal were abandoned during the hearing. A decision striking out all aspects of this appeal was released this month by the Environment Court. Council has also been granted costs. An application seeking costs has been lodged with the Court and Mr Mawhinney has 15 working days to reply.

(Changed) Abacus Developments Limited and Mawhinney v WCC (February 2000)

This case has been placed in the 'on hold' list by the Environment Court, until the Dilworth Structure Plan proceedings (RMA 886/98) have been concluded. Mr Mawhinney has recently applied to reactivate this matter on the basis that it should be determined in advance of the completion of the structure plan proceedings (which are part heard). A Joint Memorandum has been filed with the Court opposing this application. The Court has set the matter down for a judicial conference on 4 June 2008 to consider this application.

Plan Change Hearings

Local Government (Auckland) Amendment Act Plan Change Appeals

(Unchanged) This is a summary of appeals against Plan Changes 13 to 18. The appeals will be set out in a summary format as to who the appellants are and which plan changes have been appealed. There are currently 27 appeals. Further reports will be provided as time goes by. These appeals are set out as Annexure 1 to this report at pages A1 to A3 of this agenda.

A1-A3

In addition to appeals on Council's Plan Changes 13-18, Council has filed an appeal regarding some decisions on ARC Change 6 to the Auckland Regional Policy Statement. Council is also an interested party in respect of appeals filed by other parties where those other appeals affect or interlock with Council's appeal. Progress reports will be included in further legal updates in due course.

On 7 March 2008 the Auckland territorial local authorities agreed and filed a memorandum with the Environment Court setting out that each Council has summarised the points of relief arising out of each appeal and that the appellants and all Section 274 parties would be invited to comment on those summaries. As a result on the same day the Council wrote to all appellants and Section 274 parties who had appealed the WCC plan changes seeking that they review the manner in which the appeals had been summarised and provide feedback to the Council by 18 April 2008. The appellants and Section 274 parties were informed that the Auckland territorial local authorities would then make any relevant amendments and report to the Court by or soon after 2 May 2008.

The period for seeking changes to summary tables has now closed. Some late submissions were received which have been considered and amendments made. Accordingly a third version of summary tables and topic tables will be released. The appeals have been separated into topics by each Council having its own topic groups and the region as a whole creating a topic for Commercial Appeals which address the appeals by the five large format retail appellants as to whether retail should be located in city centres or corridors.

A judicial conference was held on 23 May 2008 where all parties, including the Councils, put forward their strategies for managing the appeals.

WCC communicated the position it has maintained since the appeals commenced which was to expedite any hearings in relation to the Metropolitan Urban Limit (MUL) shift and plan changes 14 and 15. The Court accepted this position and the matter is set down for hearing, if one is needed, in late January – early February 2009. The parties are to report back to the Court on 1 August 2008 as to whether any aspects of the appeals relating to the topic MUL Issues have been settled and otherwise propose an evidence exchange timetable for a hearing in late January – early February 2009.

In respect of all other appeals, the topic classified and refereed to above as Commercial Appeals has been set down for a hearing, if one is necessary, in the early part of the second quarter of 2009. The parties are required to report back to the Court on 31 July 2008 as to progress made in resolving these appeals.

In respect of all other appeals to the Waitakere City Proposed Plan Change, the Council is to report back to the Court by 1 September 2008 as to the progress of resolving these appeals and at that stage the parties can seek formal court assisted mediation and/or a hearing.

DISTRICT COURT

(New) Albert Edward Gunn – 3 Dovey Place, Te Atatu (June 2008)

This matter relates to a current prosecution against the previous owner of the “Abbey Heights Rest Home”.

It was discovered through evidence that Mr Gunn undertook the building works at the rest home. This information has only recently been received by Council.

Informations have been laid against Mr Gunn pursuant to Section 40(1) of the Building Act 2004 (the Building Act) for unauthorised building works undertaken at the property. We are awaiting a date to be set down by the court for a first call.

(Unchanged) Cullen and Ko – 4 Kauri Point Road, Laingholm (April 2008)

The defendants have allegedly carried out unauthorised building work on the property including: internal alterations, the construction of two lean-to additions to form a bathroom and living room, a timber deck, the demolition of a garage, and construction of a utility shed. All work was undertaken without building consent. Informations have been laid with the Court.

(Unchanged) M and S Naicker – 12 Cushla Place, Massey (April 2008)

This matter relates to unauthorised building works undertaken by the defendants that included: the enclosure of a basement under a conservatory to form a two bedroom unit and bathroom for use by the defendants’ extended family. One bedroom has no natural light or ventilation.

The building works did not comply with the building code, and no building consent was lodged or granted for the work undertaken. Council has laid informations with the Court.

(Unchanged) HQH Limited and Others – 193 McLeod Road, Henderson (Riverglade Parkways) (March 2008)

Riverglade Parkways is a subdivision on McLeod Road, Henderson where Council discovered the construction of 14 concrete slabs, and 9 houses framed, all without building consent.

Informations have been laid against all of the parties involved. The matter has been adjourned to 15 July 2008 for lawyers to seek further instructions. One party has pleaded guilty to 11 charges. A sentencing date will be allocated once all pleas have been entered.

(Unchanged) AHC Reuben-Shepherd – 137 Simpson Road, Henderson Valley (January 2008)

This matter is in relation to an abatement notice issued under the RMA by Council in August 2007. The abatement notice required the defendants to remove significant numbers of disused vehicles, machinery, and miscellaneous metal and other objects from the property by the date specified in the abatement notice.

The use of the property by the defendants contravenes Council's district plan amenities rules. The defendant did not comply with the abatement notice, namely they did not remove any of the specified articles and vehicles from the property in accordance with the abatement notice.

The defendant has pleaded guilty. Sentencing has been set down for 16 June 2008.

(Unchanged) JS Choi – 163 Brighams Creek Road, Whenuapai (January 2008)

This matter relates to a breach of the district plan in that the defendant undertook earthworks on his property in excess of what is permitted under the General Natural Area Rules.

Retrospective resource consent has been lodged for the earthworks. The defendant has pleaded guilty and sentencing has been set down for 16 June 2008.

(Changed) RJ Dyas – 211 Laingholm Drive, Laingholm (January 2008)

This matter relates to charges laid for substantial unauthorised building works at the property. The works include internal structural works and significant structural changes to the basement area.

The building works were not in accordance with a building consent.

The defendant did not appear in Court at the last appearance. The defendant has pleaded guilty and sentencing has been set down for 15 July 2008.

(Unchanged) V Kumar and others – 9-11 Aetna Place, Henderson (January 2008)

This matter relates to the construction of a warehouse associated with the Mitre 10 Mega store and warehouse currently under construction at Henderson.

Council laid informations against all the parties for the unauthorised building works on 30 January 2008.

Further informations have been laid against the developer company and a director.

The matter has been adjourned to 15 July 2008 for pleas to be entered.

(Unchanged) GM Garland – 82 Woodlands Park, Titirangi (November 2007)

Council has laid informations in relation to unauthorised building works that include the development of the basement/garage of the dwelling into a habitable space. The works have not been carried in otherwise in accordance with a building consent.

The defendant has pleaded not-guilty to the charges. The matter has been set down for a status hearing for the Court to determine timetable orders on 10 June 2008.

(Unchanged) Metlifecare Pinesong – 48-72 Avonleigh Road, Green Bay

Charges have been laid under the Building Act for building work undertaken without consent. The building work relates to a partial re-cladding of 20 houses owned and operated by Metlifecare Pinesong Limited as retirement village where the occupants have a lifetime lease of the properties. The building work was undertaken by Apsec Construction. Both parties are being prosecuted. The matter was called on 28 April 2008. Both parties entered guilty pleas and the matter is set down for sentencing on 15 July 2008.

(Changed) Hong Chen – 15 Ayrton Street, Te Atatu South (August 2007)

This relates to unauthorised building works being undertaken at the property which included the construction of front and rear lean-to attached to the dwelling, unauthorised plumbing and drainage, the installation of windows and the construction of sub-floor framing and foundations. The building works required a building consent, and are not in compliance with the building code.

Charges were laid by Council under the Building Act in relation to the unauthorised works and in relation to Hong Chen's failure to comply with two separate Notices to Fix (NTF) issued by Council in March and May 2007.

Ms Chen entered a guilty plea in relation to the unauthorised building works, and not guilty pleas in relation to the NTF offences. Ms Chen subsequently changed her plea to guilty in relation to the two Section 168 NTF offences at the commencement of the defended hearing.

Sentencing was set down for 28 April 2008. The decision was reserved and delivered on 14 May 2008. The defendant was convicted and fined \$5,000.00 and Court costs of \$130.00 and Solicitors costs of \$226.00.

(Changed) G Yuan – 3 Dovey Place, Massey (August 2007)

The property is being used as a private rest home and is known as "Abbey Heights Rest Home". Ms Yuan built a conservatory on an existing deck, and installed a shower enclosure and vanity in the staff room without a building consent.

The deck area/conservatory is used as the rest home's dining room. Any building works undertaken on a building intended for public use requires a building consent, or the public should not have access to that area.

Council instructed the owners to cease using the conservatory area as a public area, and laid charges in relation to the unauthorised work, failure to comply with the NTF, and failure in permitting the use of the premises by the public where no building consent has been issued.

Ms Yuan sold the business in late August 2007. The new owners have been instructed to cease using the conservatory as a dining area and to close it to the use of residents. We understand the new owners have complied with Council's instructions. The Council has also referred the matter to the Ministry of Health.

The defendant has pleaded not guilty and Council has sought an adjournment as she has not raised a statutory defence under the Building Act. A defended hearing has been set down for 8 September 2008. Further informations will be laid against other parties found to be involved in the unauthorised building works.

(Unchanged) N and KG Bishop, AR Kiff and DR Jordan – 15 Williams Road, Hobsonville (August 2007)

This matter is in relation to the unauthorised re-cladding in a Monotec exterior cladding system, of a minor household unit on the property. Council has laid charges under the Building Act against the owners, the builder and the contract plasterer.

The unauthorised works consisted of the removal of exterior cladding, the removal and reinstatement of windows and joinery, and the installation of a Monotec exterior cladding system without building consent.

The owner pleaded guilty and appeared on 28 February 2008 for sentencing. The builder also pleaded guilty and appeared on the same date.

The matters were heard together, and the parties were convicted and sentenced as follows:

Mr Bishop – Fined \$3750.00 and costs which included \$226.00 solicitors costs and \$130.00 Court costs;

Mr Jordan – Fined \$4000.00 and costs as above; and

Mr Kiff has now pleaded guilty to the Section 40(1) offences. Sentencing has been set down for 1 August 2008.

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

Charges were laid under the RMA and the Building Act in respect of the use of numerous unauthorised minor household units on the site. The matter was called on 2 April 2007. Mr P Cottingham pleaded guilty to a charge of permitting building work without consent in respect of the conversion of 7 buildings on the property into sleep outs. The other charges of contraventions of the RMA and charges against Mrs J Cottingham were withdrawn by the leave of the Court and an out of court solution is being pursued in respect of issues under the RMA. The defendant applied for a determination from the Department of Building and Housing (DBH) in respect of the Council's decision to decline their application for a Certificate of Acceptance (COA) for the illegal conversion of 4 household units at the property. The DBH appointed an investigator to look into this matter. That report has now been received by the Council along with a draft determination. The draft determination accepts that there are 7 unauthorised sleep outs on the property. The matter has been set down for sentencing on 15 July 2008.

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

This matter relates to breaches of the RMA and the Building Act. Mr Gordon pleaded not guilty to both charges on 31 March 2006. The RMA matter was transferred to the Auckland District Court to be considered by an Environment Warranted Judge of the District Court.

The matter proceeded to a jury trial as the matter is indictable. The matter was scheduled to proceed on 15 June 2007, but as a judge was not available, it was unable to proceed and was set down for a jury trial on 18 February 2008.

The Building Act charges had been set down to be heard by a Judge alone in the week of 25 February 2008.

Mr Gordon was assigned someone to represent him as *amicus curiae* (an independent representative who is a friend of the Court to ensure the Court is supplied with the appropriate evidence). This was because Mr Gordon refused to obtain legal representation.

Mr Gordon has now pleaded guilty to 5 of the 6 counts in the indictment. Two of the charges were laid in the alternative. One has now dropped off because Mr Gordon pleaded guilty to the other.

Sentencing has been adjourned to 30 June 2008 to allow Mr Gordon to take steps to undertake works in accordance with Council's requirements.

The works will include:

- Removal of car wrecks from the property by 14 April 2008;
- Removal of house trucks and caravans by 30 June 2008;
- Provide a fire report by 10 March 2008;
- Cease all earthworks;
- Cease depositing organic and inorganic material on the property;
- Apply for all necessary consents by 14 April 2008;
- Permit reasonable access by Council employees.

The Building Act prosecution and application for costs will be adjourned to 30 June 2008.

In the event of non-compliance, the Crown will seek a custodial sentence.

The following update has been provided after an appearance before the Judge on 24 April 2008:

Sonja Bury of Council has undertaken an inspection of the property. As at 17 April 2008, 4 cars remain including 1 truck wreck. The Judge has instructed Mr Gordon to remove the remaining wrecks.

Mr Gordon was to obtain a fire report. This has not been provided and a memo was filed with the Court accordingly. Mr Gordon did advise that he would provide the report by 5.00 pm, Tuesday, 29 April 2008, however this was not done. Wednesday, 30 April 2008, the Court received a letter from Wormald, however this was inadequate as no assessment of the buildings' safety for ingress and egress had been done. Field Services are to follow up in relation to the dangerous building issues, and report back to the Crown.

An application for retrospective consent for earthworks has been lodged, and boundary adjustment application to address Council's concerns about the numbers of dwellings allowed on a lot. The boundary adjustment will address this, and looks likely to be granted.

Further reports are also required in relation to the contamination of the land.

Mr Gordon has also proposed an application for chalets to be built to house tenants on the property. The matter has a further Court date of 30 June 2008 for sentencing.

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

Charges have been laid under the RMA for a failure to comply with an abatement notice, doing earthworks of approximately 6,000m² (approximately 200m² were in an Ecological Linkage Area), and undertaking vegetation clearance in contravention of the General and Managed Natural Area rules of the District Plan without a resource consent. The matter was called on 3 September 2007 where the informations against D Gladwin were withdrawn and M Gladwin reserved the right not to enter a plea until 11 February 2008. The Court was informed that the Gladwin's intended to apply for retrospective resource consent to regularise the breach so as to mitigate the offending.

Mr Gladwin has pleaded not guilty and the matter has been set down for a hearing on 15 June 2008.

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

Charges have been laid under the Building Act for non-compliance with a NTF for work undertaken to re-clad the house. This matter was called on 23 July 2007. Although the defendant was served, he refused to appear. The matter was set down for 20 August 2007 for the defendant to plead. The defendant pleaded not-guilty.

The matter was set down for a one day hearing on 9 November 2007 with a potential of further 2 days being reserved if needed. Although the Council was ready to proceed on 9 November 2007, the Court had not allocated adequate time and considered that because Mr Brooky had not served summonses on his witnesses the Court ought to set the matter aside until 2008; particularly because Mr Brooky is a lay litigant. The Court has now set the matter down for hearing on 19 June 2008.

(Changed) S Hosaini - 71 Rosier Road, Glen Eden (May 2007)

Charges have been laid under the Building Act relating to doing building work without consent. The works involve the excavation of the basement to create a new area underneath the house to create four new rooms separated off by walls. The works include new concrete slab, new exterior cladding, construction of block retaining wall installation of waste water drainage system, creation of bathroom facilities as well as undertaking other significant alterations in the first storey (now second floor) of the house. This matter was called on 23 July 2007. The matter was adjourned without plea to 15 October 2007 for disclosure to be completed. Mr Hosaini entered a guilty plea on 15 October 2007 with facts in dispute set for resolution between the parties by 28 April 2008. The facts have now been resolved and Mr Hosaini is being sentenced on 15 July 2008.

Leaky Building Claims

(Changed) Claims statistics are as follows:

(a) Claims currently being handled are 32

- High Court: 4
- District Court: 3
- Weathertight Home Resolution Service (WHRS)/WHT 25

(b) Number of claims for Waitakere City as at 30 May 2008, which may include some building consents processed by building certifiers, was 338. This is the same as the number reported on 30 April 2008.

- (c) 281 (or over half of the WHRS claims) relate to 8 multi-unit developments.
- (d) One High Court claim relates to a property at 4 Keeling Road. This is a block of 22 units. The other defendants include James Hardies and the architect. The builder, and other contractors, has not been identified. The claim is presently for \$1.7M consisting of remedial work, plus \$220,000.00 general damages (\$10,000.00 per unit), loss of market value, fees, interest and costs.

Report prepared by: Mary Davenport, Contract Solicitor.



PART C - ENVIRONMENTAL MANAGEMENT

6 WAITAKERE CITY COUNCIL SUBMISSION ON THE PROPOSED NEW ZEALAND COASTAL POLICY STATEMENT 2008

GLOSSARY

Planning and Regulatory Committee	(the Committee)
New Zealand Coastal Policy Statement	(NZCPS)
Resource Management Act 1991	(RMA)
Department of Conservation	(DoC)
Waitakere Ranges Heritage Area Act 2008	(WRHAA)

EXECUTIVE SUMMARY

A4-A36

The purpose of this report is to inform the Planning and Regulatory Committee (the Committee) of the submission to the proposed New Zealand Coastal Policy Statement 2008 (NZCPS). A copy of the submission is attached at pages A4 to A36.

The NZCPS sets out policies relating to the coastal environment in order to achieve the purpose and principles of the Resource Management Act 1991 (RMA). The Minister of Conservation has prepared the document and appointed a Board of Inquiry to oversee and report on the NZCPS. The submission closed on 7 May 2008.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Waitakere City Council Submission on the Proposed New Zealand Coastal Policy Statement 2008 report.
2. **Approve** the Waitakere City Council submission to the Proposed New Zealand Coastal Policy Statement 2008.
3. **Agree** that a Councillor present the Waitakere City Council submission to the proposed New Zealand Coastal Policy Statement 2008 to the Board of Inquiry.

BACKGROUND

A37-A71

1. The NZCPS sets out policies to achieve the purpose of the RMA in relation to management of the coastal environment attached at pages A37 to A71.

2. The existing NZCPS was gazetted in 1994 and required an independent review of its effectiveness within 9 years. A review was undertaken by the Department of Conservation (DoC) in 2004 and contained recommendations for a formal review of the NZCPS which culminated in an 'Issues and Options' document in 2006. This proposed a revised NZCPS which was notified by the Minister of Conservation's appointed Board of Inquiry on 8 March 2008.
3. Under Section 55 of the RMA, councils are now required to "give effect to" the proposed NZCPS. This is a more robust obligation than was previously required under the RMA, which stated that council policies and plans not be 'inconsistent with' the NZCPS.
4. The Waitakere Ranges Heritage Area Act 2008 (WRHAA) also requires that "particular regard" be had to the NZCPS when considering resource consents (Section 13 of the RMA).
5. The Board of Inquiry process will oversee public submissions in accordance with Section 47-52 of the RMA and subsequently make recommendations to the Minister. Changes to the NZCPS may be made prior to gazetting the NZCPS.
6. There are a number of objectives and policies contained within the proposed NZCPS which may have implications for the council as outlined in the attached submission.

DECISION MAKING

7. Due to a combination of a short submission period, the timing of the Committee's meeting and agenda reporting requirements, this submission was unable to be approved by the Committee prior to lodgement and therefore seeks retrospective endorsement.
8. A copy of the final submission will be presented to the Committee meeting on 10 June 2008.
9. A copy of the submission is attached at pages A4 to A37.

A4-A37

STRATEGIC CONTEXT

10. The sustainable management of Waitakere as outlined in the operative District Plan, and the achievement of the four wellbeings in the manner outlined in the Long Term Council Community Plan 2006-2016 has the potential to be affected by the passing of the national regulations outlined above.
11. The proposed NZCPS will impact on all Community Outcomes. In particular there will be an impact on Green Network due to the need to consider impacts on the coastal environment and access to the coast. Further, the iwi outcomes (Waiora, Whaiora and Te Mahi Tahī) may also be affected. The proposed NZCPS will also impact the Sustainable Environment area due to consideration of natural hazards and coastal discharges. The Urban and Rural Villages outcome will be affected due to the subdivision and development provisions.

CONSULTATION

12. Consultation has been undertaken with the Strategy Unit, the Resource Management Section of Regulatory and Community Services Unit (who are responsible for implementing Council policy via the District Plan), the Resource Consents team of City Services Unit (who are responsible for implementing the District Plan) and EcoWater.

13. External consultation has been undertaken with iwi groups (a meeting held with Ngati Whatua o Orakei and a copy of the proposed submission has been forwarded to Te Kawerau a Maki).
14. A change to the operative District Plan is required to give effect to the NZCPS within five years of acceptance of the NZCPS. This timeframe will fall within the full review of the District Plan in 2013. Consultation will be undertaken in accordance with the provisions of the RMA at the time of the District Plan review.
15. Draft submissions to the NZCPS made by other authorities (including the Auckland Regional Council, Local Government New Zealand and several local authorities) have been reviewed and consulted as part of the council submission.

RESOURCES

16. At this time, no other resources are required other than staff time.

IMPLEMENTATION ISSUES

17. There are no implementation issues to be considered.

Report prepared by: Ruth Andrews, Policy Planner: Resource Management and Matt Heale, Team Leader: Sustainable Management.



7 PROPOSED PLAN CHANGE 27: RE-IDENTIFICATION OF THE HUMAN ENVIRONMENT OF EIGHT SITES

GLOSSARY

The Resource Management Act 1991 (the Act)
Planning and Regulatory Committee (the Committee)

EXECUTIVE SUMMARY

The purpose of this report is to present to the Planning and Regulatory Committee (the Committee) a Proposed Plan Change relating to the re-identification of eight sites as shown in the table below.

The sites require re-identification for various reasons, including land purchase, correcting an error on the District Plan maps, the swapping of privately owned land with land owned by the Council's Parks Assets section, and the conversion of formed and unformed roads to reserves.

The Proposed Plan Change is considered to be necessary to achieve the purpose of the Resource Management Act 1991 (the Act) and is the most appropriate course of action in terms of effectiveness and efficiency of the Council exercising its function. In addition, the Proposed Plan Change is consistent with the existing District Plan Policies and Objectives and it is considered that there will be no adverse environmental effects generated as a result of the Proposed Plan Change.

A72-A110

A copy of the 'Background Report and Section 32 Analysis' for the Proposed Plan Change, including changes to the Planning Maps, is attached at pages A72 to A110.

This report seeks approval from the Committee to enable the Proposed Plan Change to be publicly notified.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Proposed Plan Change 27: Re-Identification of the Human Environment of Eight Sites report.
2. **Agree** that pursuant to the First Schedule to the Resource Management Act 1991, the Proposed Plan Change 27: Re-Identification of the Human Environment of eight sites be publicly notified.

BACKGROUND

1. The Proposed Plan Change seeks to re-identify the Human Environment of eight sites. The current identifications for the sites are no longer appropriate due to land purchase, an error on the District Plan maps, the swapping of privately owned land with land owned by the Council's Parks Assets section, and the conversion of unformed roads to reserves.
2. The proposed Human Environment identifications for the sites will essentially correct current discrepancies in the District Plan due to land being purchased for another use, swapped with other land or converted to another use.

DECISION MAKING

Issues

3. The re-identification of the eight sites identified in the table above is required. The existing identification of these sites is no longer appropriate due to land purchase, the swapping of privately owned land with land owned by the Council's Parks Assets section, and the conversion of formed and unformed roads to reserves.
4. The existing Human Environment identifications for the eight sites are now at odds with the range of activities and effects that the community would expect of development associated with these areas of land. It is considered that the Proposed Plan Change is the most appropriate way to achieve the purpose of the Act. Re-identifying the eight sites will reflect the existing and future land use of each property.

Resource Management Act 1991

5. The Act provides for changes to the District Plan. The attached report, 'Background Report and Section 32 Analysis' for the Proposed Plan Change clearly identifies the relevant sections of the 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.

Auckland Regional Policy Statement

6. It is considered that the Proposed Plan Change is entirely consistent with the Objectives of the Auckland Regional Policy Statement.

The Proposed Plan Change

7. The Proposed Plan Change seeks to re-identify the Human Environment of eight sites as the current identifications for the sites are no longer appropriate.

A96-A103

8. The following table identifies the eight sites, the relevant District Plan map, and the existing and proposed Human Environment identification. A Proposed Plan Change map for each property is located within the Background Report and Section 32 Analysis at Appendix A1 attached at pages A96 to A103.

Site	District Plan Map	Reason for Re-identification	Existing Human Environment	Proposed Human Environment
14 Bordeaux Parade	E9	A residential development and subdivision on the site at 14 Bordeaux Parade (recently granted consent under LUC 2006 1300 and SUB 2006 1301) involves a land swap with 164 Te Atatu Road (Te Atatu South Park), which is owned by the Council's Parks Assets section.	Living Environment	Open Space Environment
164 Te Atatu Road (Te Atatu South Park)		To enable sustainable management of these sites, it is appropriate to re-identify areas of 14 Bordeaux Parade from Living Environment to Open Space Environment and areas of 164 Te Atatu Road from Open Space Environment to Living Environment.	Open Space Environment	Living Environment
578 Te Atatu Road	D9	The site at 578 Te Atatu Road contains a takeaway store and is part of an existing block of shops. The re-identification of this site from Open Space Environment to Community Environment will effectively correct an error on the District Plan maps.	Open Space Environment	Community Environment
40A Royal Road	C8	The site has been formed from the subdivision of two sites (40 Royal Road and Royal Reserve).	Open Space Environment	Living Environment

		The site at 40A Royal Road is predominantly identified as Open Space Environment, however, as the site is now privately owned it is appropriate to re-identify it as Living Environment to enable sustainable management of the site.		
Northern end of Riverlea Road	A8	This area is a road that has recently been converted to reserve under the Reserves Act 1977. Therefore, it is appropriate to re-identify the site from Transport Environment to Open Space Environment to enable sustainable management of the site.	Transport Environment	Open Space Environment
Eastern end of Scott Road	B10	This area is an unformed road that has recently been converted to reserve under the Reserves Act 1977. Therefore, it is appropriate to re-identify the site from Transport Environment to Open Space Environment to enable sustainable management of the site.	Transport Environment	Open Space Environment
7 Beauchamp Drive (Royal Reserve)	C8	This is a road (car parking area) that has recently been converted to reserve under the Reserves Act 1977. Therefore, it is appropriate to re-identify the site from Transport Environment to Open Space Environment to enable sustainable management of the site.	Transport Environment	Open Space Environment

Eastern end of Harbour View Road	D10	This area is a road that has recently been converted to reserve under the Reserves Act 1977. Therefore, it is appropriate to re-identify the site from Transport Environment to Open Space Environment to enable sustainable management of the site.	Transport Environment	Open Space Environment
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9. The Proposed Plan Change does not seek to amend any Objectives, Policies or Rules of the District Plan. However, re-identifying the sites will align the current land use in all cases with the District Plan's Objectives, Policies and Rules relating to Living, Open Space, Community and Transport Environments where relevant.

Section 32 of the Resource Management Act 1991

10. The Council's obligations under Section 32 of the Act 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.

A72-A110

11. An evaluation under each of the above subsections has been undertaken in the Background Report and Section 32 Analysis and is attached at pages A72 to A110. The evaluation fulfils the Council's requirements with regard to section 32 of the Act.
12. The Background Report and Section 32 Analysis identified that the Proposed Plan Change would enable the Council to manage its land resources efficiently whilst meeting the purpose of the Act by allowing sustainable management of natural and physical resources. It also concludes that re-identification of the eight sites would ensure that more appropriate rules would apply to the sites.
13. In summary, the re-identification of the sites would provide a clear direction to the community on the continued use of each of the sites. If the existing identification and rules relating to the Living Environment, Open Space Environment, Community Environment and Transport Environment were retained then the purpose of the Act would not be achieved and there may be a degree of uncertainty regarding the future use of the land. Further, it is intended that the Background Report and Section 32 Analysis 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 and Potential Adverse Effects on the Environment

14. Under section 31 of the Act, the Council's functions include "*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. Likewise, section 5(2)(c) provides for avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- A89-A90 15. A review of the effects of the Proposed Plan Change on the environment has been undertaken in the Background Report and Section 32 Analysis attached at pages A89 to A90.
16. In summary, it is considered that there will be no adverse environmental effects generated by the Proposed Plan Change. The Proposed Plan Change will enhance the framework that avoids, remedies or mitigates the adverse effects arising from development in the City as the re-identification of the sites will be consistent with each site's future use.

Consideration of Community Views

17. If the Proposed Plan Change is approved, it will be publicly notified, hence gaining community views via the submission and further submission process.

STRATEGIC CONTEXT

18. The working draft of the Waitakere Growth Management Strategy (August 2006) aims to ensure that the City remains a great place to work, live and play well into the future. The Waitakere Growth Management Strategy provides a blueprint for how the City might best accommodate growth pressures.
19. These issues are also documented and influenced by the Auckland Regional Policy Statement (updated 2005), the Auckland Regional Growth Strategy 1999, the Northern and Western Sectors Agreement 2001 and the Local Government Auckland Amendment Act 2004.
20. In addition, the Long Term Council Community Plan 2006-2016 has nine Strategic Platforms that set out the Council's vision for managing the social, economic and environmental wellbeing of the City. The Urban and Rural Villages Platform is about ensuring people have choices in housing, transport, employment and recreation in their neighbourhoods and town centres. The objective is to make the City a vibrant and enjoyable place to live, work and play by creating attractive urban places that encourage growth and economic development, with minimal environmental impacts.
21. All of these documents highlight the need to manage the growth of the Auckland Region in an integrated manner with the aim of consolidating development into a sustainable compact urban form, with well-integrated land uses and transport networks. With increased intensification of building development within the existing metropolitan urban limit there is a need to maintain adequate amenity in residential neighbourhoods.
22. As noted in the table above, the re-identification of the eight sites is required as the existing identification of the sites is no longer appropriate due to land purchase, the correction of an error on the District Plan maps, the swapping of privately owned land with land owned by the Council's Parks Assets section, and the conversion of formed and unformed roads to reserves. The existing Human Environment identifications for the eight sites are now at odds with the range of activities and effects that the community would expect of these areas of land.

23. The Objectives under the District Plan that are relevant to the Proposed Plan Change include Objectives 10 and 11. These seek to protect the quality and significance of the City's landscapes, and to maintain and enhance amenity values and neighbourhood character. The relevant Policies under each Objective outline in more detail what the Rules are seeking to achieve. The Proposed Plan Change improves the ability of Council to assess the effects of each activity.
24. Overall, the Proposed Plan Change would re-identify the eight sites to more appropriate identifications, and will enable them to be managed sustainably and consistently in relation to their existing and future land use.

CONSULTATION

25. Clause 3 to the First Schedule to the Act states that during the preparation of a Proposed Plan Change, a local authority shall consult with the Ministry for the Environment, other Ministers of the Crown deemed to be affected, other local authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a Plan Change.
26. Private landowners and residents of the sites at 14 Bordeaux Parade, 578 Te Atatu Road and 40A Royal Road have been contacted via letter of explanations dated 17 March 2008 and 8 May 2008. The letters informed the landowners and residents of the Council's intention to re-identify the sites and sought comments regarding the Proposed Plan Change.
- A104-A105 27. One written response was received in relation to Council's letter of 17 March 2008 from Tse (David Macpherson) on behalf of HY Developments Limited (attached at pages A104 to A105), who own the land at 14 Bordeaux Parade. This letter advises "...our client fully supports the Proposed Plan Change".
28. A phone call was also received from a representative of the owner of 578 Te Atatu Road on 12 May 2008. This call was to clarify what the Proposed Plan Change involves. It was explained that the Proposed Plan Change will effectively correct an error on the District Plan maps for this site (from Open Space Environment to Community Environment).
29. Further opportunities for residents and any other interested persons will be available to those persons through the public notification process of this Plan Change.

RESOURCES

30. No specialist reports are required for the Proposed Plan Change. Processing the Plan Change through the statutory process can be adequately resourced from existing budgets. No additional staff funding or resources are required.

IMPLEMENTATION ISSUES

31. There are no implementation issues associated with this report.

Report prepared by: Michelle Cooper, Senior Planner: Policy Implementation.



8 REVIEW OF BYLAW – CONTROL OF LIQUOR IN PUBLIC PLACES BYLAW 2003

GLOSSARY

Central Business District	(CBD)
Draft Control of Liquor in Public Places Bylaw 2008	(the draft bylaw)
Local Government Act 2002	(LGA)
New Zealand Bill of Rights Act 1990	(NZBORA)
Special Consultative Procedure	(SCP)
The Control of Liquor in Public Places Bylaw 2003	(the 2003 bylaw)
Planning and Regulatory Committee	(the Committee)

EXECUTIVE SUMMARY

The purpose of this report is to progress the review of the Control of Liquor in Public Places Bylaw 2003 (the 2003 bylaw), and to determine whether a bylaw is the most appropriate way of dealing with the perceived problem of alcohol related issues within the City, pursuant to Section 155 of the Local Government Act 2002 (LGA).

Feedback from the New Zealand Police, key stakeholders in the community, and the general public have been incorporated into this report, together with a range of bylaw and non-bylaw options for consideration by the Planning and Regulatory Committee (the Committee).

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Review of Bylaw – Control of Liquor in Public Places Bylaw 2003 report.
2. **Agree** to the following:
 - (a) That a bylaw is the most appropriate way of dealing with the perceived problem of alcohol related issues within the City;
 - (b) That the draft form of bylaw produced at this meeting and referred to as option 4, being the Draft Control of Liquor in Public Places Bylaw 2008 is the most appropriate form of bylaw to achieve the Council's objective;
 - (c) That the draft bylaw has no implications which are inconsistent with the New Zealand Bill of Rights Act 1990;
 - (d) That the statement of proposal and summary of information attached to this report are approved for use as part of the special consultative procedure required by section 83 of the Local Government Act 2002;
 - (e) That officers are authorised to implement the Special Consultative Procedure as set out on Section 83 of the Local Government Act 2002;
 - (f) That the Planning and Regulatory Committee accept to hear any submissions arising from the consultation;
 - (g) Direct Council officers to prepare an updated report to be presented to the Planning and Regulatory Committee for its consideration along with an updated version of the draft bylaw reflecting the changes suggested as a result of the Special Consultative Procedure.

BACKGROUND

- A111-A113
1. The 2003 bylaw is attached at pages A111 to A113. On 11 March 2008 the Committee considered a report which concluded that Council has specific legal power to make a bylaw for liquor control purposes pursuant to Section 147 of the Local Government Act 2002. It was resolved at the meeting of 11 March 2008:
 - “1. That the determination report – Review of the Control of Liquor in Public Places Bylaw 2003 report be received.
 2. That the problem to be addressed is to reduce the incidence of disorderly behaviour and criminal offending in the city linked to alcohol possession and consumption in public places.
 3. That the most appropriate way of addressing the perceived problem is to extend the Control of Liquor in Public Places Bylaw 2003 to cover those parts of the City identified by the Police as particularly affected by the problem.
 4. That Council officers in consultation with the Police prepare a draft bylaw, statement of proposal and summary of information for consideration and discussion at a future Planning and Regulatory Committee meeting.”

279/2008

DECISION MAKING

Issues

- A114-A146
2. Police report that offences in public places, particularly Central Business Districts (CBDs) within Waitakere have increased in recent times. The Police are of the opinion that a large proportion of these offences are alcohol related. The Police presented a report to the Committee on 11 March 2008. This report outlined the key areas in the City that were of concern to them. Police have now produced a supplementary report which identifies other areas of concern within the City where identified alcohol related offending occurs (attached at pages A114 to A146). The Police will present this report to the Committee and be available to answer any questions the Committee may have.
 3. The Police are of a view that an extended bylaw will lead to a substantial reduction in offensive behaviour in public places, if the consumption of liquor in public places was limited.
 4. Section 147 of the LGA gives local authorities specific powers to make a bylaw for the purpose of controlling liquor. In addition the general bylaw making powers contained within Section 145 of the LGA allow local authorities to make bylaws for one or more of the following purposes:
 - (a) protecting the public from nuisance;
 - (b) protecting, promoting and maintaining public health and safety;
 - (c) minimising the potential for offensive behaviour in public places.

5. Council officers undertook two public surveys in November 2007 and January 2008. (Copies of these reports will be made available for Councillors in the Councillors lounge).
6. The focus of the surveys was to:
 - determine the community's view on how best to deal with alcohol related offending in the community; and
 - to gauge public opinion on utilising liquor bylaws to assist in resolving alcohol related offending in public places.
7. As indicated to the Committee on the 11 March 2008, the survey results indicate very strong public support for an extension of liquor bylaws into identified problem areas within the City. The results of the survey have been referred to in the analysis of the options presented later in this report.

Problem Relocation

8. One of the issues identified with the implementation of liquor bans is that the consumption of liquor simply moves to another location, away from the prohibited area. This is confirmed through feedback received from other local authorities. However, we have been informed that this moving occurs in fewer numbers than is expected; in particular due to the evidence that where there are high pedestrian numbers, the offending is reduced. This is an issue that is likely to be better addressed by way of the Special Consultative Procedure (SCP).

Licensed Areas

9. Another common misconception associated with liquor bans, is that restaurant owners who have licensed outdoor dining rights would lose their privileges in serving alcohol to the outdoor patrons where the outdoor dining area is adjacent to a public place. Section 147(3) of the LGA and the Sale of Liquor Act 1989 protect the rights of the restaurateurs in their ability to permit liquor for consumption on the premises that adjoin the public place where the restaurateur has a right under the terms of their licence under the Sale of Liquor Act 1989 to sell liquor or permit liquor to be brought on site for consumption at the premises. The bylaw will not be impeding this right.

Form of Bylaw

10. On the basis that the Committee accept that there is a problem in public places relating to the consumption of alcohol, and that a bylaw is the best way of regulating this offensive behaviour, a range of draft bylaw options are presented here for consideration by the Committee. The locations in which the draft bylaw would operate are premised on the information obtained through the Council officer survey and the information contained in the attached Police reports. The Committee must now determine the most appropriate form of the draft bylaw, pursuant to Section 155 of the LGA, and the level of regulatory intervention it considers appropriate.

Options Identified

11. The recommended draft bylaw options are presented below ranging from the least intrusive to the most intrusive from a regulatory perspective.

12. Section 155(2) of the LGA requires that bylaws made by Local Authorities do not give rise to implications under the New Zealand Bill of Rights Act 1990 (NZBORA) in that bylaws do not unjustifiably interfere with the rights of the public to do what are otherwise legal activities. Therefore the areas identified for inclusion in the draft bylaw are those public places that have historically been known to cause people to gather and behave in an offensive manner causing a nuisance for general members of the public. Based on Police evidence and the Council officers' surveys, these areas have been identified as areas where alcohol consumption and thereby offensive behaviour is the highest.
13. The options presented below are for additional liquor bans only and the current provisions relating to Piha, are included as part of the attached draft bylaw.

A summary of the options are detailed below:

Option	Public Places for inclusion (in addition to Piha)	Hours / Days where liquor ban will be in place
1	(CBD's) Henderson, New Lynn, Glen Eden, Te Atatu Peninsula and Titirangi.	Thursday, Friday, Saturday from 6.00 pm to 6.00 am the following day,
2	(CBD's) Henderson, New Lynn, Glen Eden, Te Atatu Peninsula and Titirangi.	6.00 pm to 6.00 am, 7 days a week
3	(CBD's) Henderson, New Lynn, Glen Eden, Te Atatu Peninsula and Titirangi.	24 hours, 7 days a week
4	(CBD's) Henderson, New Lynn, Glen Eden, Westgate and Titirangi. Te Atatu Peninsula Parks and Reserves Central Park (Trusts stadium), Ranui Domain, Starling Park, Te Pai Park, Waikumete Cemetery, Ceramco Park, Kaurilands Domain, Parris Park, Harbourview Reserve, Taipari Strand, Chapman Strand, Paremuka Lake reserve, Gloria Park, Riverpark Reserve, Helena Park, Woodside Reserve, Archibald Park, Brains Park, Ken Maunder Park and Titirangi Beach.	24 hours, 7 days a week. 6.00 pm to 6.00 am 7 days per week 9.00 pm to 6.00 am the following day, Thursday, Friday, Saturday
5	(CBD's) Henderson, New Lynn, Glen Eden, Westgate and Titirangi. Te Atatu Peninsula Parks and Reserves Central Park (Trusts stadium), Ranui Domain, Starling Park, Te Pai Park, Waikumete Cemetery, Ceramco Park, Kaurilands Domain, Parris Park, Harbourview Reserve, Taipari Strand, Chapman Strand, Paremuka Lake reserve, Gloria Park, Riverpark Reserve, Helena Park, Woodside Reserve, Archibald Park, Brains Park, Ken Maunder Park and Titirangi Beach.	24 hours, 7 days a week. 24 hours, 7 days a week.
6	(CBD's) Henderson, New Lynn, Glen Eden, Westgate and Titirangi. Te Atatu Peninsula Parks and Reserves All Council owned parks and reserves	24 hours, 7 days a week. 9.00 pm to 6.00 am the following day, Thursday, Friday, Saturday.

Assessment of Options

Option 1

14. This is the least regulated option and Police have indicated that this option may have a potential impact by decreasing alcohol related offending by up to 50%. However, concerns have been raised by members of the Business Associations that the issue of drinking in public places affects them during the business hours of 9.00 am to 5.00 pm, and therefore this option would not serve a useful purpose for their needs. Public survey results indicate that over 75% of the public support bans during the day within the CBDs.

Option 2

15. Police have indicated that this option may have a potential impact by decreasing alcohol related offending by up to 66%. However, public survey results indicate that over 75% of the public support bans within the CBDs during the day. Further, the concerns from the Business Associations detailed above would not be addressed.

Option 3

16. This option contains the most regulated intervention for the CBD areas within the City. Police have indicated that this option may have a potential impact by decreasing alcohol related offending by up to 80%. The options that provide for a 24 hour and 7 days a week ban in the CBD are favoured by the Business Associations and based on the results of the recent telephone surveys, are supported by approximately 80% of the community. However, this option does not address other areas of the City that Police have identified as problem areas.

Option 4

17. This option takes into account both the CBDs and other key areas within the City that have been identified by Police as areas of concern. Police have highlighted a number of additional areas of concern within the City through their supplementary report. These areas have been included in the draft options for consideration by the Planning and Regulatory Committee. In these areas, Police have indicated that there is a higher level of alcohol related offensive behaviour in various parks and reserves in this City. The issues with such behaviour appears to arise mainly in the late evening and early morning hours on Thursday, Friday and Saturdays, particularly during public holidays. Implementing a liquor ban at these times within these areas, would have the least impact on members of the public who wish to utilise these spaces for activities, which may involve a small amount of alcohol consumption (e.g. family picnics), and permit the Police to exercise control in the remaining times.
18. This option also caters for the needs of the Business Associations in respect of ensuring that there are liquor bans during shop trading hours, and in the later hours of the evening. The Te Atatu Business Association has asked for a ban in their identified CBD area between the hours of 6.00 pm to 6.00 am the following day and this is supported by Police. This has been reflected in the draft bylaw option presented.
19. Furthermore, the public surveys conducted show that approximately 87% of the public support the introduction of liquor bans in parks and reserves within Waitakere City during the hours of 9.00 pm to 6.00 am everyday.

Option 5

20. This option imposes 24 hour per day, 7 days per week bans in all identified areas in the City. This option addresses the needs of the Business Associations in terms of activities within the CBDs. However, the problem with this option is that there is no evidence supporting the need for a liquor ban 24 hours a day. It is also considered that this option may in fact breach the NZBORA by imposing an unjust limitation on the public's rights to enjoy liquor in public areas, particularly when picnicking or when there are events for public entertainment.

Option 6

21. Options 1 to 5 only include areas where identified current or historical problems exist, however option 6 offers the Council the ability to impose bans in all Council owned parks and reserves from 9.00 pm to 6.00 am, Thursday, Friday and Saturdays, and all public holidays and the evening before the public holiday. This approach has been used by Council in other bylaws (such as the Dog Control Bylaw 2004). The restrictions highlighted in this option apply only to the hours of the day, and days of the week where alcohol consumption is highest, and therefore have a lesser impact on the general public.
22. This is the most regulated option and as indicated in option 5, this option may give rise to an unjustified limitation on the public's rights under the NZBORA. This may lead to a judicial review of the bylaw and be considered to be *ultra vires* (outside of the Council's legal powers) as there is no evidence that there is a problem with alcohol related offensive behaviour at all of the City's reserves and parks. However, this matter can be readily rectified, in that the review of the bylaw can include other areas where we see that there is a problem.

Preferred Option

23. Following an analysis of the information gathered to date, The Committee is invited to consider Option 4 as being the preferred option.

Option 4 will enable Council to amend its liquor control bylaw to:

1. Assist in reducing the incidence of alcohol related offending in identified problem areas within the City.
2. Place a 24 hour a day, 7 days a week ban in areas where the highest number of incidents occur (i.e. CBD's excluding Te Atatu Peninsula) as requested by the respective Business Associations.
3. Increase safety within the CBDs by enabling the Police to deal effectively with those members of the Public at all times of the day and night, who choose to drink in these areas.
4. Increase safety within identified parks and reserves in the City.
5. Increase perceptions of safety within the identified CBD, parks and reserve areas in the City.
6. Not restrict the sensible consumption of alcohol in parks and reserves during the day and early evening.

A147-A179

The recommended draft bylaw has been prepared and updates the 2003 bylaw in accordance with this option (attached at pages A147 to A179).

Consideration of Community Views

24. There are no special considerations for local Maori required in terms of Section 77(c) of the LGA. Local iwi will be included in the list of people that the bylaw will be sent to as part of the SCP.
25. As indicated, two public surveys have been conducted that show strong community support for reviewing the 2003 bylaw, and extending the bylaw to other parts of the City.
26. Since the meeting of the Committee held on 11 March 2008, specific feedback has been sought from the Business Associations of Te Atatu, New Lynn, Glen Eden and Henderson. Their feedback has been incorporated into the options presented above.
27. Should the Committee recommend to Council that the draft bylaw be adopted for consultation then the community will have a further opportunity to express their views as part of the SCP outlined in the LGA.

Implications under The New Zealand Bill of Rights Act 1990

28. The proposed bylaw must meet the legal standards of reasonableness and cannot be inconsistent with the freedoms protected and affirmed in the New NZBORA. It is not considered that the proposed bylaw impacts on any of the protected freedoms or unnecessarily interferes with the rights protected by NZBORA.

Special Consultative Procedure

29. The Committee determined on 11 March 2008, that a bylaw is the most appropriate way of addressing the perceived offensive and disorderly behaviour in the city linked to alcohol possession and consumption in public places. The Committee made this decision based on the information presented by the Police and the Council officer surveys.
30. It is for the Committee to now decide whether the draft bylaw attached to this report is the most appropriate form of bylaw. If the Committee is comfortable that there will be no infringements of the NZBORA in the recommended option contained as the draft bylaw, then the next step is to permit Council officers to advertise the bylaw for public consultation in accordance with the SCP as defined in the LGA.

A180-A192

31. To do that the Committee is required to adopt a Statement of Proposal (attached at page A180) and Summary of Information (attached at pages A181 to A187). This will assist the public to understand the key issues and respond to frequently asked questions. An information pack has been developed (attached at pages A188 to A192) to assist the public in this respect. Submissions received as a result of the consultation process will be heard by the Committee on dates to be arranged. Council officers will then prepare a final report (with amendments as appropriate arising from the consultation process) for the Committees' consideration prior to the final bylaw being taken to the full Council for adoption.

Special event liquor bans

32. The provisions relating to special event liquor bans are contained in the 2003 bylaw. The same provisions have been included in the draft bylaw option presented for consideration by the committee.

STRATEGIC CONTEXT

33. This initiative is directly aligned with Council's strategic priorities of Safe City and First Call for Children, and Council's strategic platform of Strong Communities supporting the health and wellbeing of the City's residents, building community pride and local identity. It also aligns with the Citywide Alcohol Strategy, adopted by Council in July 2005.
34. The initiative has been strongly supported by Police, the City's Business Associations and the public at large. It will provide the Police with the ability to adopt a preventative approach in dealing with alcohol related behaviour that is offensive and which causes a nuisance to members of the public in and around public places.

CONSULTATION

35. As previously reported feedback has been sought from key stakeholders including:
- Community Boards
 - Te Taumata Runanga
 - Waitakere Pacific Board
 - Waitakere Ethnic Board
 - Business Associations of New Lynn, Henderson, Te Atatu and Glen Eden
 - The Portage and Waitakere Licensing Trusts
 - New Zealand Police
 - General Public
36. Should the Committee recommend the adoption of the draft bylaw, there will be an opportunity for the wider members of the public to make formal submissions on the draft bylaw, through the SCP.

RESOURCES

37. As previously reported on 11 March 2008, the cost associated with the implementation extends to promulgating the bylaw, including the SCP, public notification and signage costs.
38. The actual costs associated with the implementation will depend on which option is preferred by Council. A provisional amount of \$15,000 has been budgeted for however a more accurate assessment will be made once a preferred option is known following the SCP. A further report will be made to the Committee in August 2008; this will include budgetary estimates as outlined in paragraph 42.

Replacement of signs

39. It is inevitable that some signs will be damaged or stolen and therefore there will be costs associated with replacement. Other local authorities indicate that approximately 5% of signs are damaged or stolen each year. Based on the estimated number of signs as detailed above, a further \$1,000 per annum will be required to replace damaged and stolen signs.
40. There are no additional resource implications from an enforcement point of view for Council as the Police would enforce the bylaw.

IMPLEMENTATION ISSUES

41. If the Council decide to adopt the draft bylaw, Council officers will commence the process of organising signs for placement in the identified areas, and instigating a public education campaign. It is anticipated that there will be a one month delay from when the full Council adopt the bylaw.
42. As detailed in paragraph 38, a further report will be made to the Committee in August 2008. This report will contain the results of the SCP together with the costs associated with implementation.

Report prepared by: Roy Hunt, Alcohol Project Leader: Safe Waitakere and Setareh Masoud-Ansari, Team Leader: Legal services



9 ISSUES SURROUNDING AN EDUCATION SPECIAL AREA WITHIN WAITAKERE

GLOSSARY

The Resource Management Act 1991	(the Act)
Planning and Regulatory Committee	(the Committee)
Outline Plan of Works	(OPW)
Ministry of Education	(the Ministry)
Resource Management Act 1991	(the RMA)

EXECUTIVE SUMMARY

This report is prepared to inform the Planning and Regulatory Committee (the Committee) about a draft Plan Change that seeks to create an Education Special Area within the District Plan.

Waitakere currently contains 71 schools, which include state schools, state integrated schools and private schools. State schools are owned and administered by the Ministry of Education (the Ministry) and the majority of these schools are designated. State integrated schools are subject to regulations of state schools and are fully funded, however, they must pay for capital costs. Private schools are privately owned.

The Education Special Area would result in state integrated and private schools being on an equal footing with state schools in respect of District Plan provisions.

The Education Special Area would also provide new rules for community use of schools. Currently, resource consent is required to use designated schools for community use as the designations do not allow for this type of activity and the activity is not permitted in the underlying residential zones. Resource consent is also required for state integrated and private schools to allow community use of the school as this type of use is not permitted in the residential zones.

The Education Special Area is considered to be necessary to achieve the purpose of the Resource Management Act 1991 (the Act) and is the most appropriate course of action in terms of effectiveness and efficiency of the Council exercising its function.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Issues Surrounding an Education Special Area Within Waitakere report.
2. **Agree** that further investigation is undertaken in relation to the Education Special Area within the District Plan.
3. **Agree** that a Proposed Plan Change in regard to the Education Special Area be brought back to the Planning and Regulatory Committee for consideration.

BACKGROUND

1. The Proposed Plan Change seeks to create an Education Special Area within the District Plan. Waitakere contains a total of 71 schools, which include state schools (62), state integrated schools (5) and private schools (4). State schools are owned and administered by the Ministry and the majority of these schools (59 out of 62) are designated. State integrated schools are subject to regulations of state schools and are fully funded, however, they must pay for capital costs. These schools are not designated nor are they owned by the Ministry. Private schools are privately owned, therefore, they are also not designated.
2. The existing Human Environment identifications of the 71 schools within Waitakere includes: Living (1, 2 and 3); Special Area (Birdwood); Foothills; Countryside Living; Waitakere Ranges; and Bush Living. Therefore, currently there are no consistent rules for schools within the District Plan.
3. The majority of state schools within Waitakere are designated, which overrides the underlying zone. An Outline Plan of Works (OPW) can be submitted for development (i.e. classrooms, gymnasiums and car parking areas) on a school site, and if the development is within the parameters of the designation then resource consent is not required. OPW's are non-notified, therefore, there is no opportunity for the public to make submissions.
4. State integrated and private schools are not designated, therefore, development requires resource consent for a non-residential activity as the site is generally located on residential land. These consents are often discretionary or non-complying.
5. The Education Special Area will result in state integrated and private schools being on an equal footing with state (designated) schools, thereby making most activities that presently require them to obtain resource consent, permitted activities. The Education Special Area will also further reduce the obstacles for development of designated schools by creating a class of activities that overrides and is less stringent than OPW requirements.
6. The Education Special Area will also provide new rules for community use of schools. Currently, resource consent is required to use state (designated) schools for community use as the designations do not allow for this type of activity and the activity is not permitted in the underlying residential zones. Resource consent is also required for state integrated and private schools to allow community use of the school as this type of use is not permitted in the residential zones.

DECISION MAKING

Issues

7. There are approximately 6 different underlying residential zones for existing schools in the District Plan. Hence, there are no consistent rules for schools within the District Plan. This results in resource consent being required for non-residential development on sites, or for developments that are outside the designation for a state school.
8. The costs of obtaining resource consent can be significant, in particular if the application is notified. Designated schools are required to apply for OPW's, which range in cost depending on the complexity of application.
9. OPW's provide certainty that consent for development will be obtained. The Council can only make recommendations on the OPW, however, the decision of the Ministry of Education can be appealed to the Environment Court. In contrast to this, the resource consent process does not provide certainty as neighbours consent may be required, the application may be notified and could be refused. The resource consent process is also a relatively costly process.
10. Designated schools do not provide for community use of schools. Currently, resource consent is required to use designated schools for community use. In regard to schools that are not designated, community use of these schools also requires resource consent for a non-residential activity.

Current District Plan Provisions

11. As noted above, the existing schools in Waitakere are located within approximately 6 different residential zones. This means that there are no consistent rules applying to schools in the District Plan.
12. Overall, the Education Special Area will create a special zone for schools and will therefore enable them to be managed sustainably and consistently in relation to their existing or future land use.

Section 32 of the Resource Management Act 1991 (the RMA)

13. The Council's obligations under Section 32 of the RMA are divided into 5 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.

14. These points will be considered in more detail during the investigation, however, the main points are summarised below:
15. The Education Special Area will have benefits in terms of providing a consistent rule framework for schools in Waitakere, thereby, reducing adverse effects on the environment. These benefits are not readily quantifiable in financial terms, but are nevertheless significant.
16. The Education Special Area would enable the Council to manage its land resources efficiently whilst meeting the purpose of the Act by allowing sustainable management of natural and physical resources. The Education Special Area would also ensure that more appropriate rules apply to the sites.
17. The Education Special Area will provide for community use of schools. Schools are often the most significant public building within a neighbourhood and the majority are under-utilised outside school hours. This represents another benefit that is not quantifiable in dollar values.
18. One benefit that is quantifiable is the money that will be saved by the Ministry of Education's designated schools and by other schools not owned by the Ministry.
19. The Education Special Area would provide a clear direction to the community on the continued use of each of the school sites. It is likely that there would be greater certainty about future development for schools, particularly where such development would occur in close proximity to residential boundaries.
20. Resource consent processing incurs a transaction cost comprised of the application preparation cost and the processing and monitoring costs. These costs can be significant, in particular if the application is notified. OPW's also incur costs in terms of their preparation and processing.

Potential Plan Change

21. The Plan Change would effectively create an Education Special Area, which would cover schools within Waitakere. Essentially the issues revolve around the practicality and effectiveness of the existing rules in achieving the desired environmental results. While the strategic direction of the District Plan will not be altered, the matter is important in terms of maintaining public confidence in the effective administration of the Council's functions.

Approaches Taken by Other Local Authorities to the Issue

22. A review of how other Local Authorities administer schools within their District Plans has been undertaken. The findings of this review indicate that the majority of Local Authorities do not have a special 'education zone'. Also, the activity status of schools varies in different zones in the District Plans from permitted or discretionary, to non-complying.
23. Auckland City Council District Plan (Isthmus Section) contains a 'Special Purpose 2 Zone', which includes both public and private schools at primary, intermediate, secondary and tertiary level, as well as specialised research facilities. Also, Dunedin City Council schedules school sites within its District Plan (see Case Law section below).

Case Law

24. The following Case Law is relevant:

Otago Presbyterian Girls College Board of Governors Incorporated (Columba College) v Dunedin City Council (Decision no. C128/2001)

25. The hearing for this case took place on 23 and 24 April 2001 and involved a state integrated school (Columba College) and Dunedin City Council. In essence, Columba College sought to operate a primary and secondary school integrated with the state system as a permitted activity in the Residential 1 zone. The land was not owned by the Ministry of Education.
26. At the time of the hearing, schools were classified as discretionary activities in the Residential 1 zone. All schools owned by the Ministry within the District Plan area were designated, therefore, they were not subject to notification requirements for any development.
27. The position of Columba College was that their school should be on the same footing as the Ministry's schools as the only distinction between the two is the ownership of land. As such, Columba College sought equivalent treatment by making their activity a permitted or scheduled activity in the Residential 1 zone.
28. The Environment Court found that it was appropriate to schedule the site and included appropriate scheduling conditions. Following this decision, Dunedin City Council scheduled other schools within its District Plan.

STRATEGIC CONTEXT

RMA

29. The purpose of the RMA as outlined in Part II, is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which the Council must have regard to and provide for in achieving that purpose. The purpose of a District Plan as outlined in Section 72 of the RMA is to assist the Council to carry out its functions.
30. The Council's functions are outlined in Section 31 of the RMA as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the RMA. The Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities. Section 35 of the RMA requires the Council to monitor the efficiency and effectiveness of policies, rules, or other methods in its plan. Other sections of the RMA are also relevant in terms of the Education Special Area.
31. Firstly, there is the purpose of the RMA, which is found in Section 5, Part II, where the RMA promotes the sustainable management of natural and physical resources.
32. Secondly, Section 6 of the RMA, which talks about matters of national importance.
33. Thirdly, Section 7 includes 'other matters' that need to be considered in terms of achieving the purpose of the RMA.

Auckland Regional Policy Statement

34. The Education Special Area would help achieve the objectives of the Auckland Regional Policy Statement, including managing the use, development and protection of the natural and physical resources of the region.

Long Term Council Community Plan

35. The Long Term Council Community Plan has nine Strategic Platforms that set out the Council's vision for managing the social, economic and environmental wellbeing of Waitakere. The Urban and Rural Villages Platform is about ensuring people have choices in housing, transport, employment and recreation in their neighbourhoods and town centres. The objective is to make Waitakere a vibrant and enjoyable place to live, work and play by creating attractive urban places that encourage growth and economic development, with minimal environmental impacts.

Summary

36. All of these documents highlight the need to manage the growth of the Auckland Region in an integrated manner with the aim of consolidating development into a sustainable compact urban form, with well-integrated land uses and transport networks. With increased intensification of building development within the existing metropolitan urban limit there is a need to maintain adequate amenity in residential neighbourhoods.
37. The Education Special Area will create a consistent rule framework for schools within Waitakere that will help to achieve well integrated land uses. It will also help to maintain the amenity of residential areas.

CONSULTATION

38. Clause 3 to the First Schedule to the RMA states that during the preparation of a Proposed Plan Change, a local authority shall consult with the Ministry for the Environment, other Ministers of the Crown deemed to be affected, other local authorities deemed to be affected and the tangata whenua of the area. Clause 3 also states that a local authority may consult anyone else during the preparation of a Proposed Plan Change.
39. Prior to the Proposed Plan Change being notified, consultation will be undertaken with the Ministry of Education as well as the Waitakere Area Principals Association (for state integrated schools) and the Principals of private schools in Waitakere. This will be achieved by writing a letter to the Principals requesting comments/ identification of issues in regard to the Proposed Plan Change. If necessary, a meeting will be held with the Principals. Following the notification of the Proposed Plan Change, consultation will be undertaken with other Ministers as appropriate as well as local iwi.
40. Opportunities for residents and any other interested party to comment will be available to those persons through the public notification process of this Proposed Plan Change.

RESOURCES

41. The Education Special Area has been identified as a medium priority potential plan change. Sufficient staff resources are available to undertake a review of the proposed Education Special Area. No significant costs other than staff time are anticipated.

IMPLEMENTATION ISSUES

42. Once the Proposed Plan Change has been approved, an Education Special Area zoning will apply to all schools within Waitakere. This will ensure a consistent rule and policy framework for the schools.
43. If a new school is proposed on a site following the rezoning of all school sites to Education Special Area then a further Plan Change will be required to rezone the site from its existing zoning to Education Special Area. This may be done at the same time as the notification of the Notice of Requirement or any resource consent application for a new school.

Report prepared by: Michelle Cooper, Senior Planner: Policy Implementation.



10 PROPOSED PLAN CHANGE 22: WHENUAPAI AIRPORT SPECIAL AREA UPDATE

EXECUTIVE SUMMARY

The purpose of this report is to provide an update to the Planning and Regulatory Committee on the progress of Proposed Plan Change 22. The Proposed Plan Change seeks to establish a Policy and Special Area Rule framework for Whenuapai Airport in the Waitakere District Plan.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Proposed Plan Change 22: Whenuapai Airport Special Area Update report.
2. **Agree** that Independent Commissioners will be appointed to comprise a majority of the hearing panel. This ensures that independent persons are sitting on the panel as well as representatives of the Council, thereby eliminating perceptions of bias in the decision making process.
3. **Agree** that the Commissioner Appointment Panel will decide the composition and membership of the hearing panel. This is because it is standard Council practice for the Commissioner Appointment Panel to determine the composition and membership of hearing panels.

BACKGROUND

1. At its meeting on 29 November 2006, the Council resolved:

- “1. That the Proposed District Plan Change 22: Whenuapai Airport Special Area report be received.
2. That pursuant to the First Schedule to the Resource Management Act 1991, the Council resolve to publicly notify proposed Plan Change 22 relating to the Whenuapai Airport Special Area as set out in pages A35 to A53 to the Agenda.
3. That the statutory period for public submissions for proposed Plan Change 22, Whenuapai Airport Special Area, be 40 working days from the date it is notified, being double the statutory minimum period.”

2. Subsequently the Proposed Plan Change was publicly notified on 20 December 2006, with the closing date for submissions being 7 March 2007.
3. Following this, at its meeting on 8 May 2007, the Council resolved:

- “1. That the Proposed District Plan Change 22: Whenuapai Airport Special Area report be received.
2. That the Planning and Regulatory Committee approves the Council’s submission on Plan Change 22: Whenuapai Airport Special Area, lodged by the Chief Executive Officer under his delegated authority and within the statutory time frame”.

849/2007

4. The Council received 2,651 submissions and 135 further submissions on Proposed Plan Change 22. The large number of submissions raised a significant range of issues, some of which required further technical work. To address these issues, the technical work has been undertaken over the last six months, and has recently been completed. The Council is now in a position to decide when a hearing can be held and it is anticipated that this will take place in September 2008.

DECISION MAKING

Issues

5. As stated above, it is anticipated that a hearing will be scheduled for September 2008. No decision has been made as yet in regard to the Commissioners and Committee members that would hear the Proposed Plan Change, nor has any decision been made as to the composition of the hearing panel.
6. The following paragraphs detail letters received from North Shore City Council and outline the options for the hearing panel.

North Shore City Council’s Submission in Support of Proposed Plan Change 22

- A193
7. The Council received a letter dated 15 January 2008 from North Shore City Council advising that the Council wishes to withdraw its support in their submission for any commercial activities, including commercial flights, at Whenuapai Airbase. A copy of this letter is attached at page A193.

Use of Independent Commissioners

8. A number of submissions seek that an Independent Commissioner be appointed to hear the Proposed Plan Change. Submitters have raised concerns over a potential conflict of interest given Council’s Joint Venture Agreement with Infratil to establish a commercial airport at Whenuapai.
 9. In addition, a letter has recently been received from North Shore City Council (dated 29 April 2008), which requests that Independent Commissioners be appointed to hear Proposed Plan Change 22. This letter is attached at page A194.
- A194

10. The following options for the composition of the hearing panel have been considered:

Option 1 – Planning and Regulatory Committee

A194

This option involves the Planning and Regulatory Committee sitting on the hearing panel for the Proposed Plan Change. There would be no Independent Commissioner on the hearing panel. It is considered that this option is the least desirable as the Council may be perceived as being biased due to its involvement with Infratil. This is an issue that a number of submitters have raised as well as North Shore City Council (see Appendix at page A194).

Option 2 – Panel of Independent Commissioners

Option 2 involves the hearing panel only comprising Independent Commissioners. This means that there would be no Council representatives on the hearing panel.

It is considered that Council representatives are required on the panel because the Proposed Plan Change seeks to establish District Plan policy in the context of the Council's wider strategic objectives.

Option 3 – Majority of Independent Commissioners

This option is the desired option as the hearing panel would consist of both members of the Planning and Regulatory Committee and Independent Commissioners, with the majority of the panel being Independent Commissioners. For example, the hearing panel could comprise two members of the Planning and Regulatory Committee and three Independent Commissioners. This option ensures that independent persons are sitting on the panel as well as representatives of the Council, thereby eliminating perceptions of bias in the decision making process.

11. The options for making a decision in regard to determining the actual composition and membership of the hearing panel and appointing Independent Commissioners are set out below:
- **Option 1** – This option involves the Chairperson of the Planning and Regulatory Committee making a decision as to the ratio of Planning and Regulatory Committee members to Independent Commissioners. The Chairperson would also appoint Independent Commissioners.
 - **Option 2** – This option involves Council Officers making the decision.
 - **Option 3** – This option involves the Commissioner Appointment Panel making the decision.
12. The preferred option is Option 3. It is standard Council practice for the Commissioner Appointment Panel to determine the composition and membership of hearing panels.

STRATEGIC CONTEXT

13. A leading strategic priority for Waitakere is the creation of a strong local economy, retain current local jobs and provide more local jobs. The future development of the Whenuapai area is a key project for Waitakere in relation to this objective.
14. The Whenuapai Airbase represents a substantial physical resource in a strategic location. Because of the combination of its existing and historical use and the current infrastructure, it would be difficult, if not impossible to replicate this resource elsewhere in the Auckland region. The Proposed Plan Change sets the framework to protect this important resource and its future potential.

15. Waitakere has a clear policy position on Whenuapai which it has been pursuing for a number of years. While Waitakere has no control over any decision by the Crown to pursue joint use of the Airbase, or how it decides to dispose of the land under the options available to it (i.e. Airport Authorities Act or Public Works Act) the Council is responsible for the management of the natural and physical resources within its boundaries. The Proposed Plan Change has been prepared as part of an on-going process to secure the future use of the Airbase for commercial airport activities.

CONSULTATION

16. Consultation has been undertaken with the Manager: Strategic Projects, who has agreed with the proposed course of action outlined in this report.

RESOURCES

17. No additional staff funding or resources are required in order to continue processing Proposed Plan Change 22.

IMPLEMENTATION ISSUES

18. There are no implementation issues associated with this report.

Report prepared by: Michelle Cooper, Senior Planner: Policy Implementation.



11 GAMBLING VENUE POLICY

GLOSSARY

Gambling Venue Policy	(the policy)
Draft Gambling Venue Policy	(the draft policy)
Planning and Regulatory Committee	(the Committee)

EXECUTIVE SUMMARY

The purpose of this report is to present the different options available to the Council to manage the number of gambling venues and machines in the City through a revised Gambling Venue Policy (the policy).

It is requested that the Planning and Regulatory Committee (the Committee) decide on the option it would like to see included in a draft policy which will be put out for public consultation. The next step will be to prepare the Draft Gambling Venue Policy (the draft policy) and the Committee will then be given the opportunity to endorse the draft policy prior to public consultation.

The option chosen at this time will not necessarily be included in the final gambling venue policy, as a different option could be recommended as a result of the public consultation. If the Committee agrees with this, the final policy will be revised to reflect the change. The only requirement is that any change in the preferred option is covered by the material used in the special consultative procedure.

If the Council intends to change its gambling venue policy, it is a requirement of the Gaming Act that the special consultative procedure as set out in the Local Government Act is applied.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Gambling Venue Policy report.
2. **Agree** on one of the following options for controlling the number of Class 4 gambling venues and machines in the City to be included in the draft Gambling Venue Policy:
 - (a) Maintain the status quo of the current cap on venue and machine numbers as stated in the existing policy, or
 - (b) Support a sinking lid policy, where the cap on venue and machine numbers will reduce each time a venue closes.
3. **Note** that any preferred option in the draft Gambling Venue Policy can be changed, if appropriate, following public consultation and public hearings.

BACKGROUND

1. Waitakere City Council's policy is currently under review. This policy needs to be reviewed every three years.
2. This policy is in accordance with Section 101 of the Gambling Act 2003, which requires each territorial local authority to have one in place for its district or city.
3. Class 4 Licensed Gambling, is any activity that involves the use of a gaming machine outside a casino, and may be conducted only by a corporate society and only to raise money for authorised (community and non commercial) purposes. The policy will cover the following types of societies:
 - Clubs (RSA's, sport clubs, chartered clubs and other clubs)
 - Trusts
 - The New Zealand Racing Board and Societies including Totaliser Agency Boards that are considered as racing clubs under the Racing Act 2003.
4. The purpose of the policy is to control the number of Class 4 gambling venues and Class 4 gambling machines in Waitakere. It guides Council decisions on the issuing of Class 4 gambling venue licences including all new Class 4 gambling venues in the City, and the number of Class 4 gambling venue machines permitted at each venue. Currently, there is a limit of 38 venues and 501 gambling venue machines. One new venue opened in late 2007 in Henderson, with nine machines (licensed by the Perry Foundation).
5. No more venues or machines can be established under the existing policy if the three applications recently received are approved. This is because the caps on the number of gambling venues and machines will have been reached.
6. This increase in venue numbers reverses the trend where the number of venues and machines in Waitakere reduced between 2004 and 2007.
7. There were 35 gambling venues and 477 gambling machines in Waitakere as at 31 March 2008 (see table below). Just under half of these venues (17) are licensed by Trusts, the main one being The Trusts Charitable Foundation with 15 venues.

8. **Venue Numbers as at 31 March 2008**

Venue Name	Society	Number of machines
The Korner Bar	The Trusts Charitable Foundation Incorporated	18
The Marina Restaurant and Bar	The Trusts Charitable Foundation Incorporated	9
Thirsty Rooster	The Trusts Charitable Foundation Incorporated	18
Western Lights Inn	The Trusts Charitable Foundation Incorporated	18
Bricklane Restaurant & Bar	The Trusts Charitable Foundation Incorporated	9
Cue Club	The Trusts Charitable Foundation Incorporated	18
Legends	The Trusts Charitable Foundation Incorporated	18
Lincoln Green Motor Hotel	The Trusts Charitable Foundation Incorporated	18
Miss Q's Westgate	The Trusts Charitable Foundation Incorporated	18
Origins Bar	The Trusts Charitable Foundation Incorporated	18
Players Bar	The Trusts Charitable Foundation Incorporated	18
Players Bar & Bistro New Lynn	The Trusts Charitable Foundation Incorporated	18
Players Bar & Bistro	The Trusts Charitable Foundation Incorporated	18
Te Atatu Tavern	The Trusts Charitable Foundation Incorporated	18
New Hong Kong Restaurant	The Trusts Charitable Foundation Incorporated	18
Monty's Licensed Restaurant	Perry Foundation	18
TAB Henderson	Perry Foundation	9
Lucky Break Snooker Lounge	Youthtown Incorporated	9
Tenpin Waitakere	Scottwood Trust	18
Te Atatu Memorial RSA Inc	Te Atatu Memorial RSA Incorporated	14
Titirangi Golf Club Inc	Titirangi Golf Club Incorporated	5
Titirangi RSA	Titirangi RSA	10
Waitakere RSA	Waitakere RSA	6
New Lynn Memorial RSA Inc	New Lynn Memorial RSA Inc	18
Westgate Ten Pin	The Lion Foundation	18
Glen Eden RSA	Glen Eden RSA	12
Henderson RSA	Henderson RSA	18
Hobsonville RSA	Hobsonville RSA	7
Swanson Memorial RSA Inc	Swanson Memorial RSA Inc	18
Whenuapai, Building	W O & SNCO's (senior non-commissioned officer) Mess, RNZA Base, Auckland	5
New Lynn Bowling Club Inc	New Lynn Bowling Club Inc	16
Glen Eden Bowling Club	Glen Eden Bowling Club	9
Redwood Park Golf Club Inc	Redwood Park Golf Club Inc	4
Shooters	The Southern Trust	18
Te Atatu Boating Club Inc	Te Atatu Boating Club Inc	3

DECISION MAKING

Issues

Timetable for policy development

9. The timetable for the development of the policy is stated below. This has been updated due to a postponement of the development of the policy in late 2007 during the local body elections. Availability of key staff to carry out the work has also been a delaying factor.

Task	Timeline (2008)
Present key policy issues for consideration to Planning & Regulatory Committee	June
Present draft policy to Planning and Regulatory Committee Approval needs to be given by the Committee before the draft policy can be put out to public consultation	July/August
Prepare for Consultation	July/August
Advertise Consultation	August
Consultation A formal type of consultation, called special consultative procedure is required by the Gambling Act 2003 when there is intention to amend or replace existing policy. This means there is a need to ensure key stakeholders and the community are aware of the policy and have the opportunity to have a say.	August/ September

Task	Timeline (2008)
Public Hearings The public can make oral submissions to a panel of Councillors in support of their written submissions.	October
Present final Policy to Planning and Regulatory Committee Policy may be changed as a result of the consultation.	November
Present final Policy to Council for adoption For a policy to be adopted it generally requires the approval of full Council. The policy can be implemented shortly afterwards.	December
Implementation of policy	December

Control of the number of venues and machines in the City

10. Before a draft policy can be written and made available for public consultation, a decision needs to be made on how the Council proposes to control the number of gambling venues and machines in the City. There are four options available, which are noted below. It is requested that the Committee give direction as to which of the options it would prefer to be included in the draft policy that will be publicly consulted on. The reason why these options are presented is due to their differing impacts on the local gambling environment.

Options Identified

11. Four options have been identified to manage the number of venues and machines, which are:
- **Option 1** – status quo (keep the same machine and venue cap)
 - **Option 2** – reduce the size the industry can grow (reduce machine & venue caps)
 - **Option 3** – allow the gambling industry to grow with not having limits on venue and machine numbers (no cap)
 - **Option 4** – limit the size of the industry over time (sinking lid on machine & venue caps).

Option	Option Analysis
<p>Option 1 – Status Quo, keep the same cap</p> <p>The current policy places a cap of 38 venues and 501 machines in the City.</p> <p>A maximum of 9 machines can exist in each venue.</p>	<p>Effective way to manage growth An effective way of managing the growth of the gambling industry. Unlikely to be a sudden rise in number of venues. The current caps have not been reached.</p> <p>Limited impact on industry Unlikely to be damaging to the local gambling industry, given national & local trends. Caps have not been reached since the last policy was introduced.</p> <p>Will help to prevent and minimise the harmful effects of gambling over time.</p> <p>Slow impact on changing size of gambling industry Will reduce the size of the gambling industry, but slowly over time. Population keeps growing but the cap stays the same.</p>

<p>Option 2 - Lower existing cap on number of venues and machines</p> <p>Reduce the number of venues and number of machines to what is in existence at the time the policy is introduced.</p>	<p>Option may not be available</p> <p>This option is only available if the caps on the number of venues and machines have not been reached. If the limits have been reached, the cap cannot be lowered.</p> <p>Will result in a reduction in venue and machine numbers</p> <p>As the population increases, the number of venue numbers and machines will decrease 'per head of population'. This results in a 'passive' reduction.</p> <p>Will not have an immediate impact on the industry</p> <p>The demand for venues has not exceeded the current cap for over 4 years. The industry has not used the opportunity to establish more venues and machines in the City. Two more venues could be established before the cap is reached.</p>
<p>Option 3 - No caps</p> <p>No limit on the number of Class 4 gambling venues in Waitakere.</p> <p>The number of venues will be determined by the gambling industry and customer demand.</p>	<p>Contrary to the intent of the Gambling Act 2003</p> <p>Would not be in keeping with the intent of the Gambling Act, which wants to encourage responsible gambling.</p> <p>Experience of other Councils</p> <p>Christchurch City Council chose to back off from an initial proposal not to have caps due to community outrage and a large amount of opposition.</p> <p>Economic impact</p> <p>Market forces (demand & supply) will be left to determine how many are in existence if there are not any limits on the number of venues and machines.</p> <p>Social impact</p> <p>The number of venues could significantly increase without any form of control to manage this. It is likely this could have a negative community impact.</p> <p>It could be damaging to the City if many venues suddenly appeared across the different suburbs as a result of there being no limit on venue numbers. At the same time, there are only so many venues that the industry could economically sustain as there are a limited number of gamblers.</p> <p>May have a detrimental impact on communities if there were a 'clustering' of gambling venues in particular areas. Often gambling venues are located in town centres and a high number of venues in these areas could be detrimental to the overall 'amenity', character and vibe.</p> <p>Perceptions of the city could change; probably for the worse, as it would probably be seen as a 'gamblers paradise'.</p>

<p>Option 4 - Sinking lid The number of venues and machines would fall over time.</p> <p>Each time a licensed venue closed down, the cap would reduce to reflect the number of venues and machines still in existence.</p> <p>No new venue would be established. The speed at which the cap reduces is determined by the rate of closure of gambling venues in the City.</p> <p>Venues can close in 3 main ways: (Operator wants to stop having gambling machines; closure of principal business in which gambling venue operates; DIA closes the gambling venue).</p>	<p>Limit size of gambling industry Would limit the size of the gambling industry in the City. A likely reduction in the number of Class 4 gambling venues in the City over time.</p> <p>Lack of control over reduction of industry The Council would not have control over the speed at which the Class 4 gambling venue industry would reduce.</p> <p>Consistency in strategic approaches There needs to be consideration of the merits of taking a consistent approach towards policies that control the social behaviour of people and how policy in relation to gambling venues, aligns with the approach taken with other social impact type policies that the Council has in place.</p> <p>The citywide alcohol policy advocates responsible drinking by focusing on the way in which alcohol is consumed, as opposed to limiting the number of outlets where liquor is sold. The commercial sex policy is aimed at the effective, reasonable and appropriate management of the location of brothels within the context of a legitimate sex industry.</p> <p>Economic impact. Businesses may not remain commercially viable if there is a loss of gambling revenue. Businesses will lose their resale value if there is not the option to offer gambling machines. This situation may deter potential business investors. It would exclude new operators from entering the industry.</p> <p>Overall Overall, this option would be more beneficial to the social wellbeing of the city due to a likely decline in venues for problem gamblers to use.</p>
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Preferred Option

12. The preferred option will be largely a question of how to achieve the right balance between minimising the harms that can be caused by gambling and regulating the activities of what is essentially a legitimate industry.
13. It is recommended that the Committee give consideration to two of the options which are likely to have the most favourable outcomes and decide on one of them to be included in the draft policy. The two options are:

Option 1

14. Maintain the status quo in terms of the caps on the number of venues (38) and machines (501) in the City. Over time, this option will reduce the scale of the gambling industry, as the number of machines stay static or decline whilst the population grows **OR**

Option 4

15. A sinking lid policy would reduce the number of venues and machines over time. Under this approach, when a gambling venue closes down no new replacement venue would be allowed (as the permitted cap would fall).
16. The remaining two options have not been chosen because option 2 is not possible as the current caps have been met and option 3 is not consistent with encouraging responsible gambling.

STRATEGIC CONTEXT

17. Policy decisions regarding the regulation of gambling venues must have regard to all effects that gambling can have on the community, whether these are 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.
18. 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 the health and wellbeing of individuals and 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.

CONSULTATION

19. Within the Council, there has been input from Legal Services, the Compliance and Inspections Team and Public Affairs.
20. Key stakeholders will be consulted on the draft policy as part of the special consultative process. Under the Gaming Act, it is requirement that Councils use the special consultative procedure when reviewing their gambling venue policies.
21. A communications plan for the development of the policy sets out the main stakeholders. These include key groups in the gambling industry such as venue operators, societies, trusts, gamblers and key interest groups. Other groups to be consulted include the Community Boards, Te Taumata Runanga, and Iwi.

RESOURCES

22. The resources required for the development of this policy are included in the Annual Plan 2007/2008 and staff time has been provided for.

IMPLEMENTATION ISSUES

There are no implementation issues arising out of this report. Once a preferred option has been chosen for the draft gambling policy, the policy will be prepared in full in preparation for public consultation. A social impact assessment will also be prepared for this consultation. The Committee will be presented with the draft policy before it is put out for consultation.

Report prepared by: Zoe Cuming, Senior Analyst: Social Policy.

