

RODNEY DISTRICT COUNCIL

MINUTES: of a meeting of the Rodney District Council which commenced at 9.05 a.m. in the Council Chamber, Centreway Road, Orewa on Thursday, 24 September 2009.

PRESENT: Penny Webster - Mayor (Chairperson)
Crs Ross Craig
Pat Delich
Michael Goudie
John Kirikiri
Dave Parker QSM
Grahame Powell
Zane Taylor
June Turner
Grev Walker
Wayne Walker

IN ATTENDANCE: Chief Executive (Rodger Kerr-Newell)
Director: Customer Services (Lloyd Barton)
Director: Corporate Services (Kevin Ramsay)
Assistant Chief Executive (Warren Maclennan)
Acting Director: Infrastructure (Kim Gordon)
Executive Manager (Paul Garbett)
Democracy Services Manager (Ellen Barrett)

9.05 a.m. Manager: Finance (Morna Macfarlane), Manager: Community Development (Paul Green), Environmental Health Manager (Ian Farrell), Liquor Licensing Officer (Don Sara), and Communications Advisor (Mike Isle) in attendance.

599/09/09 APOLOGIES

AGENDA ITEM NO. 1

Powell/Kirikiri

That the apologies from Crs Harding and Weld (for absence) be received and sustained.

Carried

A discussion took place with regard to the possible acceptance of urgent items relating to property sales, during which it was agreed that these matters could be addressed during consideration of Item 15: Rodney Properties Ltd – Annual Report.

Turner/G Walker

That an urgent item relating to the Council-owned property purchased from Atlas Concrete take place at this meeting.

Lost

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600/09/09 CONFIRMATION OF MINUTES**AGENDA ITEM NO. 2****Craig/Goudie****(a) District Plan and Regulatory Committee – 5 August 2009**

That the minutes of a meeting of the District Plan and Regulatory Committee held on 5 August 2009, as circulated, be received and adopted.

019506-019515
(White)

(b) Strategy and Community Committee - 6 August 2009

That the minutes of a meeting of the Strategy and Community Committee held on 6 August 2009, as circulated, be received and adopted.

019516-019518
(Buff)

(c) Resource Consents Hearings Panel - 5, 8 & 29 June 2009

That the minutes of a meeting of the Resource Consents Hearings Panel held on 5, 8 & 29 June 2009, as circulated, be received and adopted.

019519-019599
(White)

(d) Resource Consents Hearings Panel – 15 and 16 June 2009

That the minutes of a meeting of the Resource Consents Hearings Panel held on 15 and 16 June 2009, as circulated, be received and adopted.

019600-019662
(White)

(e) Resource Consents Hearings Panel – 24 July 2009

That the minutes of a meeting of the Resource Consents Hearings Panel held on 24 July 2009, as circulated, be received and adopted.

019663-019679
(White)

(f) District Plan and Regulatory Committee – 12 August 2009

That the minutes of a meeting of the District Plan and Regulatory Committee held on 12 August 2009, as circulated, be received and adopted.

019680-019687
(White)

(g) Resource Consents Hearings Panel - 27 July 2009

- (i) That it be noted that the date shown in the header for these minutes should read *27 July 2009*.
- (ii) That, with the amendment above noted, the minutes of a meeting of the Resource Consents Hearings Panel held on 27 July 2009, as circulated, be received and adopted.

019688-019705
(White)

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- (h) **Council – 13 August 2009**
- That the minutes of a meeting of the Council held on 13 August 2009, as circulated, be received and confirmed. 019706-019760
(Blue)
- (i) **Audit Committee – 19 August 2009**
- That the minutes of a meeting of the Audit Committee held on 19 August 2009, as circulated, be received and adopted. 019761-019765
(Green)
- (j) **Resource Consents Hearings Panel – 11 August 2009**
- That the minutes of a meeting of the Resource Consents Hearings Panel held on 11 August 2009, as circulated, be received and adopted. 019766-019772
(White)
- (k) **District Plan and Regulatory Committee – 12 August 2009**
- (i) That it be noted that the Ward relevant to the decision noted in 550/08/09 should read *Central Ward*. 019773-019784
(White)
- (ii) That, with the amendment above noted, the minutes of a meeting of the District Plan and Regulatory Committee held on 12 August 2009, as circulated, be received and adopted.
- (l) **Infrastructure and Environment Committee – 27 August 2009**
- That the minutes of a meeting of the Infrastructure and Environment Committee held on 27 August 2009, as circulated, be received and adopted. 019785-019790
(Pink)
- (m) **District Plan and Regulatory Committee – 7 September 2009**
- That the minutes of a meeting of the Independent Commissioners (District Plan and Regulatory Committee) held on 7 September 2009, as circulated, be received and adopted. 019791-019793
(White)
- (n) **Strategy and Community Committee – 10 September 2009**
- That the minutes of a meeting of the Strategy and Community Committee held on 10 September 2009, as circulated, be received and adopted. 019794-019799
(Buff)
- (o) **District Plan and Regulatory Committee – 9 September 2009**
- That the minutes of a meeting of the District Plan and Regulatory Committee held on 9 September 2009, as circulated, be received and adopted. 019800-019814
(White)

Carried

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**601/09/09 SIGNIFICANT CONTRACTS LET OVER PERIOD 24 JULY 2009 –
4 SEPTEMBER 2009****FILE REF CE/1/1****AGENDA ITEM NO. 3****Webster/Powell****That the information be received.****Carried****602/09/09 CARRY FORWARD OF BUDGETED EXPENDITURE FROM THE
2008-2009 FINANCIAL YEAR****FILE REF AB/1/1****AGENDA ITEM NO. 4**

Officers responded to queries from councillors in relation to carry forwards proposed for:

- Estuary Arts Centre community education;
- Penlink tendering, marketing and research;
- replacement of the Glorit floodgate;
- Taupaki Stream improvements;
- Correy Farm development;
- Warkworth Cement Works; and
- Matakana Village upgrade.

Kirikiri/Parker**That the carry forwards of \$15.2 million of projects as per the schedule attached as
Appendix 1 to the agenda report be approved.****Carried**

9.20 a.m. Manager: Finance (Morna Macfarlane) retired from the meeting.

**603/09/09 FINANCIAL DELEGATIONS – COMMUNITY DEVELOPMENT,
CUSTOMER SERVICE DIRECTORATE****FILE REF CG/7/1****AGENDA ITEM NO. 5****Delich/G Walker****That, pursuant to the provisions of the Public Bodies Contract Act 1959, the Local
Government Act 2002, all other relevant powers and such additional conditions and
restrictions as the Chief Executive Officer shall see fit to impose, the financial
delegations for the Customer Service directorate be updated as follows:****NEW DELEGATION****That the Environmental Education Officer be empowered to enter into contracts in
relation to the duties of the position, up to a limit of \$1,000 for any one contract.**

REVISED DELEGATION

That the Team Leader: Emergency Services be empowered to enter into contracts in relation to the duties of the position, up to a limit of \$5,000 for any one contract.

Carried

9.32 a.m. Group Manager: Regulatory (Chris Boggs) in attendance.

604/09/09 YOUTH SERVICE GRANT 2009 – ALLOCATION OF FUNDING

FILE REF DG/13/1

AGENDA ITEM NO. 6

The Manager: Community Development (Paul Green) advised that there had been a recent change to the governance of the Hibiscus Coast Youth Council and he therefore proposed an amendment to the recommendation made in the agenda report that would reflect further consultation taking place with the newly elected Board members.

Kirikiri/Goudie

- (a) That the report be received.
- (b) That, subject to the terms and conditions of the Youth Service Grant, including accountability reporting in May 2010, funding for the Youth Service Grant 2009 be allocated as follows:
 - (i) Springboard – to be granted \$24,000.00
 - (ii) Te Awaroa Youth Club– to be granted \$20,500.00
 - (iii) Coast Youth Community Trust– to be granted \$17,000.00
- (c) That, pending further consultation with the new governance board, funding of \$13,500 from the Youth Service Grant 2009 be allocated to the Hibiscus Coast Youth Centre, subject to the terms and conditions of the grant, including accountability reporting in May 2010.

Carried

The Manager: Community Development (Paul Green) and his team were complimented on the allocations made which, it was agreed, reflected a fair and equitable distribution of the funds, lent certainty to non-profit community organisations and solidified the process.

605/09/09 APPOINTMENT OF CIVIL DEFENCE EMERGENCY MANAGEMENT RECOVERY MANAGER AND 1ST ALTERNATE RECOVERY MANAGER

FILE REF CC/1/1

AGENDA ITEM NO. 7

G Walker/Craig

- (a) That the Group Manager: Financial Services be appointed to the Civil Defence Emergency Management Recovery Manager role.
- (b) That the Director: Corporate Services be appointed as the 1st Alternate Recovery Manager.

Carried

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9.40 a.m. Manager: Community Development (Paul Green) retired from the meeting.
 Consultant (Geoff Ward) in attendance.

606/09/09 ANNUAL REPORT TO LIQUOR LICENSING AUTHORITY
FILE REF LI/1/4
AGENDA ITEM NO. 8

Turner/W Walker

- (a) **That the report on the activities of the Rodney District Licensing Agency and its Licensing Inspector for the 12 months ending 30 June 2009 be received.**
- (b) **That the summary of applications received and licences issued, together with information relating to the total number of licences as at 30 June 2009, be forwarded to the Liquor Licensing Authority in Wellington as part of the Rodney District Licensing Agency report.**

Carried

9.50 a.m. Environmental Health Manager (Ian Farrell) and Liquor Licensing Officer (Don Sara) retired from the meeting.

607/09/09 ADOPTION OF SHELTER DOGS
FILE REF DC/1/1
AGENDA ITEM NO. 9

Delich/Craig

- (a) **That all dogs adopted from the Northern Animal Shelter be desexed prior to being adopted.**
- (b) **That the fees charged for adoption of a dog from the Northern Animal Shelter be set at \$195 for an adult dog and \$250 for puppies.**

Carried

608/09/09 ANNUAL REPORT ON DOG POLICIES AND PRACTICES FROM 1 JULY 2008 UNTIL 30 JUNE 2009
FILE REF DC/1/1
AGENDA ITEM NO. 10

The discussion on this item focussed on:

- the number of prohibited breeds;
- disqualification of owners;
- fouling in public places;
- registration of dogs for the blind, hearing impaired people etc;
- prosecutions, appeals and classification of dogs as menacing or dangerous;
- the frequency of surveys carried out; and
- unregistered dogs.

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Craig/Kirikiri

- (a) That the Council's report on dog policy and practices for the period 1 July 2008 to 30 June 2009 be accepted.
- (b) That public notice of the report's availability be advertised in local newspapers.

Carried

609/09/09 ENFORCEMENT POLICY STANCE FOR ANIMAL CONTROL
FILE REF DC/1/1
AGENDA ITEM NO. 11

Delich/Powell**That the report be received.****Carried**

10.10 a.m. General Manager: Communications (David Anderson), Group Manager: Financial Services (Warren Stevens) and Group Manager: Property Services (Mark Johannsen) in attendance.

Group Manager: Regulatory (Chris Boggs) and Animal Control and Bylaws Manager (Wayne Knightbridge) retired from the meeting.

610/09/09 SUBMISSION ON NATIONAL INFRASTRUCTURE PLAN DISCUSSION DOCUMENT
FILE REF OC/36/1
AGENDA ITEM NO. 12

Parker/Delich

That the Mayor, Penny Webster, Deputy Mayor, Cr John Kirikiri, and Chairperson of the Infrastructure and Environment Committee, Cr Grahame Powell, be delegated the power to approve the final submission on the *Infrastructure: Facts and Issues* discussion document.

Carried

10.12 a.m. Manager: Transport Capital Works (Alan Roke) and Consultant (Noel Hawkins) in attendance.

611/09/09 **REVOCAION OF LOCAL PURPOSE ROAD RESERVES**
FILE REF PK/1/1; PK/10/1; PK/45/1
AGENDA ITEM NO. 13

Craig/Kirikiri

- (a) **That the Council delegate authority to the Group Manager: Property Services to commence the revocation of the Local Purpose (Road) Reserve status, pursuant to Section 24 of the Reserves Act 1977, for the following properties:**
- **37 Station Road, Wellsford (Road Reserve, Deposited Plan 23210)**
 - **Former depot, Albert Street, Leigh (Lots 18 & 29 DP 36465)**
 - **25 Albatross Road, Red Beach (Lot 49 DP 59043)**
 - **Rosario Crescent, Red Beach (Lot 159 DP57962).**
- (b) **That the Group Manager: Property Services report back to the Council following completion of the statutory consultation process and detail objections received (if any).**
- (c) **That Rodney Properties Ltd be kept advised on progress with this matter.**

Carried

Cr W Walker requested that his vote against the decision be recorded.

612/09/09 **WESTERN BUS SERVICES REVIEW BY ARTA**
FILE REF A/28/1
AGENDA ITEM NO. 14

A brief discussion took place with regard to the costs of providing bus services which were poorly patronised.

Kirikiri/Taylor

That the Director: Infrastructure be authorised to forward the submission attached as Appendix 1 to the agenda report to the Auckland Regional Transport Authority for consideration as part of its review of the Western Bus Services.

Carried

Crs Delich and Taylor requested that their votes against the decision be recorded.

10.25 a.m. Manager: Transport Capital Works (Alan Roke) and Consultant (Noel Hawkins) retired from the meeting.

613/09/09 **UPDATE ON RELOCATABLE BUILDINGS**
FILE REF PK/1/1
AGENDA ITEM NO. 16

During the discussion on this item, comments were made that several community groups had shown an interest in either leasing or buying one or both of the two modcom units currently stored in Huapai. Councillors were advised that all appropriate offers received in writing from such groups would be considered.

Turner/Craig

That the Group Manager: Property Services be authorised to sell the two remaining relocatable units at a minimum of \$30,000 plus GST each or lease the buildings for a minimum of \$190 per week per unit (plus GST if applicable).

Carried

614/09/09 ANNOUNCEMENT – DEATH OF SIR HOWARD MORRISON
FILE REF CF/1/1

The Mayor, Penny Webster, advised that Sir Howard Morrison, well known New Zealand entertainer, had passed away at his home in Rotorua early on the morning of the meeting.

10.38 a.m. - 10.57 a.m. Morning tea adjournment.

10.57 a.m. Group Manager: Policy and Planning (Laura White), Group Manager: Water Services (Jenny Warren), Manager: Property Capital Works and Special Projects (Paul White) in attendance.

615/09/09 RODNEY PROPERTIES LIMITED - ANNUAL REPORT
FILE REF PK1/1
AGENDA ITEM NO. 15

Note: Jenny Vickers and James Moulder, Directors of Rodney Properties Ltd (RPL), were in attendance for this item.

Group Manager: Financial Services (Warren Stevens) introduced Jenny Vickers and James Moulder before summarising the item and drawing the attention of councillors to amendments to the RPL Annual Report circulated earlier (copy on File PK/1/1). He advised that the Auditor's report, which had not been included in the Annual Report, had been delayed pending receipt of additional information from the Auckland Transition Agency, but that the Auditor had indicated he was satisfied that all other matters were in order.

Jenny Vickers, James Moulder and the Group Manager: Financial Services (Warren Stevens) answered queries from councillors relating to:

- the appointments of Executive Director and Strategic Advisor to RPL;
- information available to RPL which would support optimum sale prices being achieved;
- the directors' relationship with Council staff;
- the current directors' experience in property portfolios;
- involvement of the Auckland Transition Agency in RPL;
- Council-owned properties listed for sale and the effect of those sales on the Council's Long Term Council Community Plan;
- possible changes in the Council's position in relation to property sales since announcement of the district's amalgamation with the proposed Auckland Council.

- (a) That, subject to final audit of the Annual Report, the report on Rodney Properties Ltd – Annual Report be received.**
- (b) That the resolutions of the sole shareholder of the company in lieu of an annual meeting in accordance with clause 4.4 of the company's constitution and section 122(4) of the Companies Act 1993 be:**

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(i) Noted**REPORTING**

The Annual Report, consisting of the Chairman's Report, the Financial Statements of the Company, the Auditor's Report and other information as required by the Local Government Act 2002, the Companies Act 1993, the Company's Statement of Intent and its Constitution, for the period ended 30 June 2009 have been received by the sole Shareholder.

(ii) Resolved**AUDITORS**

That the Auditor General's appointment as auditor of the company, in accordance with the Local Government Act 2002, with effect from the date of this resolution until the conclusion of the next annual meeting, to audit the financial statements of the company for the accounting period next after the date of this resolution, be confirmed.

That, in accordance with section 197(a) of the Companies Act 1993, the fees and expenses of the auditor are to be determined by the Directors of the Company.

- (c) That the RPL Annual Report be made publicly available and posted on the Council's website following the receipt of the Auditor's report.**

Division**For the Motion**

Craig
Delich
Goudie
Kirikiri
Parker
Powell
Webster

Against the Motion

Taylor
Turner
G Walker
W Walker

Carried

11.25 a.m. Manager: Property Capital Works and Special Projects (Paul White) retired from the meeting.

616/09/09 HUAPAI, KUMEU AND RIVERHEAD PRIVATE PWC WASTEWATER SYSTEMS FUNDING ASSISTANCE PLAN

FILE REF RD/1/1; DD/1/1

AGENDA ITEM NO. 17

During the discussion on this item councillors were assured that, as per the previous decision made (refer Minute Number 1438/12/08), monies accrued on property titles through the Kumeu, Huapai and Riverhead Sewerage Rate would be discharged on those titles.

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Powell/Taylor

- (a) That The Huapai Kumeu Riverhead Development Contribution (Wastewater) for existing and growth connections be discounted by \$3887 to \$3375 (GST inclusive) for three years commencing 1 July 2010 to 30 June 2013.
- (b) That financial assistance for the provision and installation of the on-site capital cost of pressurised wastewater connections (PWC) systems for existing residents in the Huapai, Kumeu and Riverhead defined PWC areas on 1 September 2009, as set out in the agenda report, be made available for three years commencing 1 July 2010 to 30 June 2013.
- (c) That the Council advise all existing residents in the Huapai, Kumeu and Riverhead defined PWC areas who elect to connect and pay by targeted rate that further financial assistance may be available through Council's Rates Postponement Scheme.
- (d) That the Council consider applying the PWC private funding assistance approaches outlined in this agenda report to subsequent PWC schemes where the circumstances are similar.
- (e) That the part of Policy 2070, *Pressure Wastewater Policy and Implementation*, relating to the *Differential Rate* be amended to read (additions / amendments underlined):

In order to meet most of the maintenance and power costs incurred by individual properties connected to the public wastewater network via PWC pumps the Policy of the Council is the following:

- 1. *The rating units on which pressure wastewater collection (PWC) systems are installed within a PWC reticulation area and operating prior to the end of June each year will be assessed as a differential rate for the following year.*
- 2. *This differential rate will be set at 75% of appropriate targeted GRAVITY wastewater rates based on location:*
 - (i) *Targeted rate for gravity wastewater utility property charge - Army Bay Service Area;*
 - (ii) *Targeted rate for gravity wastewater utility property charge – other Rodney District Council wastewater systems.*
 - (iii) *Targeted rate for gravity wastewater utility volumetric charge - Army Bay Service Area;*
 - (iv) *Targeted rate for gravity wastewater volumetric charge - other Rodney District Council wastewater systems.*
- (f) That resolution 115/03/09 relating to *Financial Assistance for PWC Capital Costs* (as follows), made at the Infrastructure and Environment Committee meeting on 12 March 2009, be rescinded:
 - (a) *That owners of existing residential houses in the district who install PWC systems on their properties in order to connect to a public wastewater network be offered financial assistance on similar terms and conditions as offered to owners in the Point Wells area whose properties connected to the PWC reticulation.*

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- (b) *That the offer of assistance be for 12 months from the date of commissioning of the public wastewater network on a first come first served basis up to 20% of those wishing to connect.*
- (c) *That the conditions for the offer of financial assistance be as set out in section 2.1 of the agenda report. (Minute: 115/03/09)*
- (g) That this policy to assist with the individual capital costs for PWC connection be communicated to all residents and landowners in the Huapai Kumeu Riverhead PWC defined area.
- (h) That the Council's Water Services division investigate the provision of similar incentives for the provision of public water supply schemes in other parts of the district and report back to the Council.

Carried

11.44 a.m. Manager: District Planning (Peter Vari) in attendance.

Group Manager: Financial Services (Warren Stevens) and Group Manager: Water Services (Jenny Warren) retired from the meeting.

**617/09/09 MAKING ADDITIONAL CHAPTERS OF RODNEY DISTRICT PLAN
OPERATIVE**

FILE REF TP/14/12

AGENDA ITEM NO. 18

Powell/Craig

- (a) That in accordance with Clauses 16B and 17 of the First Schedule to the Resource Management Act 1991:
- (i) The Council approve the following parts of the Rodney District Plan 2000 – Operative in Part, being parts that have had all submissions and appeals relating to them disposed of:
- | | |
|------------|--|
| Chapter 6 | Highly Valued Natural Resources |
| Chapter 12 | Special Zones, with the exception of Special 8 (Weiti Forest Park) Zone (Rule 12.8.8), Special 15 (Kaipara Flats Airfield) Zone (Rule 12.8.15), Special 18 (Gulf Harbour) Zone (Rule 12.8.18) and the Special Zones proposed as part of the Private Plan Changes of the Te Arai Lands Trust and Genesis Energy Ltd that are specifically excluded from being approved through this resolution while the processes related to them are completed. |
- (ii) Approval of the parts of the Rodney District Plan 2000 – Operative in Part listed in (i) above be given effect to by affixing the seal of the Council to those parts pursuant to Clause 17(3) of the First Schedule to the Resource Management Act 1991
- (c) That those chapters listed in (a)(i) above become operative on 8 October 2009 in accordance with Clause 20 of the First Schedule to the Resource Management Act 1991 and that the required public notice be given accordingly.

Carried

**618/09/09 RODNEY DISTRICT GENERAL BYLAW 1998
REVIEW OF CHAPTER 14 – BROTHELS AND COMMERCIAL SEX
PREMISES**

FILE REF BC/1/4; TP/16/14

AGENDA ITEM NO. 19

Delich/Taylor

- (a) **That the Statement of Proposal with amendments to Chapter 14 – Brothels and Commercial Sex Premises of the Rodney District General Bylaw 1998 and the accompanying Summary of Information be adopted.**
- (b) **That the special consultative procedures set out in section 83 of the Local Government Act 2002, with the intention of confirming this resolution on 17 December 2009, be carried out.**

Carried

*Note: The Statement of Proposal and Summary of Information are attached to these minutes as **Appendices 1 and 2** respectively.*

11.46 a.m. Cr W Walker retired from the meeting.

**619/09/09 REPORTS FROM COUNCIL REPRESENTATIVES ON MEETINGS OF
REGIONAL COMMITTEES AND OTHER REGIONAL BODIES**

FILE REF CF/1/1; AI/1/1

AGENDA ITEM NO. 20

Cr Kirikiri circulated copies of reports of meetings relating to:

- Civil Defence Emergency Management;
- Auckland Museum Trust Board;
- Museum of Transport and Technology (Board retirement schedule);
- the Electoral College; and
- the Auckland Regional Amenities Funding Board.

Cr G Walker circulated a report from a meeting of the Auckland Regional Physical Activities and Sports Strategy Working Party (ARPASS).

Webster/Parker

That the reports from Council representatives provided at the meeting be received.

Carried

Note: Copies of reports circulated are on File: CF/1/1.

11.48 a.m. Cr G Walker retired from the meeting.

The meeting closed at 11.50 a.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 5TH DAY OF NOVEMBER 2009

MAYOR

* * * * *

APPENDIX 1

APPENDIX 1 - STATEMENT OF PROPOSAL PURSUANT TO SECTION 83 OF THE LOCAL GOVERNMENT ACT 2002 AND PROPOSED CHANGES TO CHAPTER 14 – BROTHELS AND COMMERCIAL SEX PREMISES OF THE RODNEY DISTRICT GENERAL BYLAW 1998.

STATEMENT OF PROPOSAL

The amendments to Chapter 14 – Brothels and Commercial Sex Premises of the Rodney District General Bylaw 1998 in this Statement of Proposal are made by the Rodney District Council pursuant to the powers contained in Sections 12, 13 and 14 of the Prostitution Reform Act 2003 (PRA) and Sections 145 and 146 of the Local Government Act 2002 (LGA) as well as the requirements to review bylaws pursuant to Section 158, 160 and 160A of the LGA.

Pursuant to Section 86(3) of the LGA, when making a bylaw, the Council is required to include in the statement of proposal:

- the reasons for the proposal;
- the Section 155 consideration as to whether the bylaw is the most appropriate means of addressing the perceived problem and if the proposed bylaw is the most appropriate form of bylaw. The Section 155 consideration is also to determine whether the bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

REASONS FOR PROPOSAL

The Council is required under Section 158 of the LGA to review any new bylaw made under this Act within five years of the date of making that bylaw, in this case by no later than 1 November 2009. If the review of Chapter 14 is not carried out by this time, Chapter 14 will be revoked.

The review of Chapter 14 includes a series of amendments intended to make the bylaw more robust and able to withstand legal challenge, clarify terms and definitions and ensure consistency with other plans and policies of the Council. In summary, the proposed amendments include:

- inclusion of a separate definition of “small brothel” (SOOB) in accordance with the definition in the PRA and changes to enable SOOBs to establish in identified residential areas within the District;
- inclusion of specific requirements in relation to SOOBs which were previously dealt with and restricted in a similar manner to all other brothels;
- amendments to the locational requirements for brothels (other than SOOBs) and commercial sex premises that will make Chapter 14 less open to successful legal challenge;
- clarification of the Council's position on street workers, who are already subject to controls under other chapters of the bylaw;
- removal of transitional provisions which were previously included to enable existing brothels to operate for a period of six months from the time Chapter 14 was first made operative and are no longer relevant;
- amendments to the licensing and inspection regime in Chapter 14 to link inspection to the granting and renewal of a licence, at which time the Council can ensure that venue itself, rather than processes and daily practices carried out within the venue, complies with hygiene and maintenance requirements, thus encouraging licensing and better enabling the Council to achieve the purposes of the PRA;
- various changes to refer correctly to the District Plan, other bylaw chapters and Acts and a general standardisation of the use of terms.

APPROPRIATENESS OF THE BYLAW

The Council has determined that the use of the Chapter 14 is an appropriate means of addressing the matter of prostitution in Rodney District and that this chapter, as amended, is the most appropriate form of bylaw.

Chapter 14 with the proposed amendments is not inconsistent with the New Zealand Bill of Rights Act 1990 and will only seek to impose justifiable and reasonable limitations on persons in the interests of protecting, promoting and maintaining public health and safety, and protecting the public from nuisance.

REPORT ON REVIEW OF BYLAW

Chapter 14 has been reviewed pursuant to Section 158 (requirement to review) of the LGA and in accordance with Section 159, (procedure for and nature of review) and has been subject to reconsideration under section 155 of the Act (appropriateness of bylaw).

Note: Alterations to the Chapter 14 are shown as underlining for additions and ~~striketrough~~ for deletions

RODNEY DISTRICT COUNCIL

RODNEY DISTRICT COUNCIL GENERAL BYLAW: 1998

CHAPTER 14

BROTHELS AND COMMERCIAL SEX PREMISES

1.0 PURPOSE

- 1.1 This chapter of the Bylaw is made pursuant to Sections 145 and 146 of the Local Government Act 2002 and Sections 12, 13 and 14 of the Prostitution Reform Act 2003.
- 1.2 This chapter Bylaw first came shall come into force on 1st November 2004 and has been reviewed as required by Section 158(1) of the Local Government Act 2002 (the Act). This chapter as reviewed, came into force on 1 November 2009.
- 1.3 This chapter ~~of the Bylaw~~ should be read in conjunction with the entire Rodney District Council General Bylaw 1998.
- 1.4 The purpose of this chapter ~~of the Bylaw~~ is to introduce control measures ~~that are designed~~ to manage the potential impact of brothels, small brothels and commercial sex premises on sensitive activities. It contains provisions that regulate the location of brothels, small brothels and commercial sex premises and signs that advertise the existence or location of these activities ~~brothels and commercial sex premises~~.
- ~~1.5 This chapter of the Bylaw provides a timeframe for lawful brothels that are in existence at the passing of this Bylaw to comply with the controls.~~

2.0 SCOPE OF THE BYLAW

- 2.1 Unless otherwise stated, ~~and subject to the Transitional Provisions,~~ this chapter ~~of the Bylaw~~ applies to all brothels and commercial sex premises in Rodney District.
- 2.2 For the avoidance of doubt, all other relevant chapters of the Bylaw apply to brothels and commercial sex premises as appropriate.
- 2.3 For the avoidance of any doubt, all brothels and commercial sex premises must also comply with the relevant statutes and regulations. Without limitation, this will include all requirements of the District Plan, and the Resource Management Act 1991. ~~The requirements of this bylaw are in addition to District Plan rules under the Resource Management Act 1991.~~ Obtaining resource consent does not avoid the need to comply with this chapter bylaw.

3.0 INTERPRETATION

3.1 The definitions of the terms denoted* are those in the Prostitution Reform Act 2003

BROTHEL*	Means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement made elsewhere. For the avoidance of any doubt, a small owner operated brothel as defined in section 2 of the Prostitution Reform Act 2003 is a brothel, and includes any private residence where any sex worker is working.
BUSINESS OF PROSTITUTION*	Means a business of providing, or arranging the provision of, commercial sex <u>ual</u> services.
COMMERCIAL SEX PREMISES	Means premises used as striptease clubs, rap parlours, massage parlours, adult sex shops or activities of a similar nature but does not include brothels.
COMMERCIAL SEX <u>UAL</u> SERVICES*	Means sexual services that: (a) Involve physical participation by a person in sexual acts with, and for the gratification of, another person; and (b) Are provided for payment or <u>other</u> reward (irrespective of whether the payment of reward is given to the person providing the services <u>or to</u> another person.
INDUSTRIAL ZONE	Means any land with an Industrial activity zoning in the District Plan.
PLACES OF	Means, for the purposes of this chapter of the bylaw only, any building

ASSEMBLY	or land used for public and/or private assembly or meeting of people <u>where activities are carried out that may be adversely affected by the provision of commercial sexual services nearby</u> and includes Marae, libraries, churches, halls, clubrooms, community centres, conference centres, chartered clubs and premises with a club licence and other similar establishments, including outdoor recreational facilities such as and children's playgrounds. but does not include motor sports facilities. Places of assembly shall also include recreational facilities such as badminton and squash courts but not amusement centres.
PLACE OF WORSHIP	Means land and buildings for public and/or private assembly (refer to the definition of places of assembly) of people primarily for the purposes of worship.
PRE-SCHOOL	Means any educational or childcare facility provided for children under the age of five years, and includes kindergartens as defined in the Education Act 1964.
<u>PRINCIPAL OCCUPIER</u>	<u>In the case of a small brothel means:</u> (a) <u>the owner of the premises where the owner is resident on the premises; or</u> (b) <u>the tenant named in the tenancy agreement where the premises are rented.</u>
PROSTITUTION*	Means the provision of commercial sexual <u>services</u> .
RESIDENTIAL ZONE	Means any land with a Residential activity zoning in the District Plan.
SCHOOL	Includes Primary Schools, Intermediate Schools, <u>Composite Schools</u> and Secondary Schools as defined in the Education Act 1964 <u>1989</u> . For the avoidance of doubt, this includes private schools but does not include businesses providing after hours tuition to students.
SEX WORKER*	Means a person who provides any commercial sexual services, as defined in the Prostitution Reform Act 2003.
SANDWICH BOARD ADVERTISING	Means any freestanding sign or structure with a notice affixed to it.
<u>SMALL OWNER – OPERATED BROTHEL*</u>	<u>Means a brothel –</u> (a) <u>at which no more than 4 sex workers work;</u> (b) <u>where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel; and</u> (c) <u>is not managed by an operator as set out in Section 5 of the Prostitution Reform Act 2003</u>
<u>STREET WORKER</u>	<u>Any person who offers commercial sexual services in a public place</u>
TRANSITIONAL PROVISIONS	Means the transitional provisions set out in Clause 7 of this chapter of the Bylaw.

Other terms used in this chapter are defined in ~~the Bylaw's~~ Chapter 1 – Bylaw Administration

4.0 LOCATION OF BROTHELS

4.1 No person may establish or operate a brothel other than a small brothel:

- (a) On sites other than those in an zoned industrial zone in the District Plan; and

- ~~(b)~~ ~~Within 200 metres of a residential zone in the District Plan; and~~
- ~~(c)-(b)~~ Within 75 metres of any existing brothel; and
- ~~(d)-(c)~~ Within 75 metres of any existing commercial sex premises; and
- ~~(e)-(d)~~ Within 200 metres of an existing pre-school or school; and
- ~~(f)~~ ~~(e)~~ Within 200 metres of a place of worship; and
- ~~(g)-(f)~~ Within 200 metres of a place of assembly; and
- ~~(h)-(g)~~ Where the brothel premises have ground-floor street front displays or shop frontages.

4.2 Any brothel that is in existence prior to a pre-school, school, place of worship, place of assembly, or other brothel or commercial sex premise ~~activity~~ being established within the prohibited distance specified in Clause 4.1 of this chapter ~~of the Bylaw~~ may continue to be carried on, provided that it was established under this ~~chapter bylaw~~.

4.3 No person may establish or operate a small brothel:

- ~~(a)~~ ~~Other than in a location that is within 200 metres of an industrial zone; and~~
- ~~(b)~~ ~~Within 75 metres of any existing brothel; and~~
- ~~(c)~~ ~~Within 75 metres of any existing commercial sex premises; and~~
- ~~(d)~~ ~~Within 200 metres of an existing pre-school or school; and~~
- ~~(e)~~ ~~Within 200 metres of a place of assembly or place of worship; and~~
- ~~(f)~~ ~~Where the brothel premises have ground-floor street front displays or shop frontages.~~

4.4 A small brothel must also comply with the home occupation requirements in Section 16.8 of the District Plan.

4.5 Any small brothel that is in existence prior to a pre-school, school, place of assembly, or other brothel or commercial sex premise being established within the prohibited distance specified in Clause 4.3 of this chapter may continue to be carried on, provided that it was established under this chapter.

4.6 As the activities of street workers are not confined to a specific venue or premises, they are not regulated by this chapter. Street workers offer services for sale in a public place without invitation and as such these activities are controlled separately by Chapter 5 - Trading in Public Places and Chapter 8 – Public Places.

5.0 LOCATION OF COMMERCIAL SEX PREMISES

5.1 The locational requirements in Clause 5.2 are made under Section 145(a) and (c) of the Local Government Act 2002, for the purpose of protecting the public from nuisance and minimising the potential for offensive behaviour in public places.

5.1 5.2 ~~Except as provided in Clause 4.1 above,~~ No person may establish or operate a commercial sex premise:.

- ~~(a)~~ ~~On sites other than those zoned industrial in the District Plan; and~~
- ~~(b)~~ ~~Within 200 metres of a residential zone in the District Plan; and~~
- ~~(c)-(a)~~ Within 75 metres of any existing brothel; and
- ~~(d)-(b)~~ Within 75 metres of any existing commercial sex premises; and
- ~~(e)~~ ~~Within 200 metres of an existing pre-school or school; and~~
- ~~(f)~~ ~~Within 200 metres of a place of worship; and~~
- ~~(g)~~ ~~Within 200 metres of a place of assembly; and~~
- ~~(h)-(c)~~ Where the ~~brothel~~ premises have ground-floor street front displays or shop frontages.

5.2 5.3 Any commercial sex premise that is in existence prior to ~~a pre-school, school, place of worship, place of assembly, or~~ another brothel or commercial sex premise ~~activity~~ being established within the prohibited distance specified in Clause 5.1 of this chapter ~~of the Bylaw~~, may continue to be carried on, provided that it was established under this ~~chapter bylaw~~.

6.0 SIGNS AND ADVERTISING TOUTING

6.1 No person may place on or in any building or structure or any other place, or allow to remain in place, a sign that advertises a brothel and/or commercial sex premise and/or the provision of commercial sexual services and which:

- (a) Displays any information other than the name of the person who conducts the business or the registered name of the business; or
- (b) Displays words or images or models (human or mannequin) which in the opinion of the Council, are sexually explicit, lewd or otherwise offensive; or
- (c) Is illuminated by flashing lights or contains neon lighting;
- (d) Is larger than 0.33m² in area.

6.2 This Clause does not absolve such .business from complying with ~~the~~ provisions in the District Plan or in Chapter 22 – Temporary Signs provisions relating to signage and Resource Management Act requirements.

6.3 The Council ~~retains a discretion to~~ can require the owner or premise operator of a brothel or commercial sex premises to adjust or remove any sign that Council believes does not comply with the requirements of this chapter, Chapter 22 – Temporary Signs bylaw or the District Plan.

6.4 All brothels and commercial sex premise signs must display a clearly visible street number.

6.5 No sandwich board advertisements for brothels and/or commercial sex premises and/or the provision of commercial sexual services are permitted.

6.6 No signs advertising brothels and/or commercial sex premises that are located on a moving or stationary vehicle or trailer that is visible from a public place are permitted.

~~6.7 No person may place, or allow to be placed, any sign that is visible from a public place, on or in any building or structure other than in an industrial zone and within the site at which a brothel or commercial sex premise is located.~~

~~6.8 No person may in any public place:~~

- ~~(a) Invite or request any person to enter a brothel or commercial sex premises; or~~
- ~~(b) Tout for business or otherwise verbally advertises the business of prostitution or commercial sex premises.~~

7.0 TRANSITIONAL PROVISIONS

~~7.1 Any brothel or commercial sex premise that was operating on the day this bylaw came into force and that:~~

- ~~(a) Holds any resource consent that may be required for the site on which the brothel is located and for the signage on the site under the District Plan; or~~
- ~~(b) Otherwise complies with the District Plan; or~~
- ~~(c) Has existing use rights under the Resource management Act 1991; Plan~~

~~is exempt from compliance with this chapter of the Bylaw until 6 months from the adoption of this chapter of the Bylaw.~~

~~8.7.0~~ LICENSING OF BROTHELS AND SMALL BROTHELS

~~7.1~~ The licensing requirements in Clauses 7.2. to 7.11 are made under Section 145(b) of the Local Government Act 2002, for the purpose of protecting, promoting and maintaining public health and safety.

~~8.47.2~~ No person shall operate, use or permit the use of premises as a brothel or small brothel, except pursuant to a licence issued by the Council.

- 8.27.3 Application for a licence shall be made by the owner or operator of the brothel or in the case of a small brothel, the principal occupier, on the form provided. The application shall be accompanied by an “operator of business of prostitution” certificate granted under section 35 of the Prostitution Reform Act 2003; or a statement that the brothel falls within the definition of a “small brothel” as defined in the Act.
- 8.37.4 Prior to a licence being issued or renewed or transferred, the premises shall be inspected by an authorised officer. No licence shall be issued or renewed or transferred unless the premises concerned comply with all the requirements of this chapter Bylaw and with all other statutory provisions governing its occupancy including the Resource Management Act 1991 and the District Plan.
- 8.47.5 Every licence shall be prominently displayed in a public part of the premises to which it relates at all times that the premises is being used for the business of prostitution.
- 8.57.6 Every application for a licence shall be made by the owner or operator manager of the premises or in the case of a small brothel, the principal occupier, and be accompanied by a fee NZ\$200.00 or such fee as may be set from time to time pursuant to Section 150(3)(b) of the Local Government Act 2002.
- 8.67.7 The Council may grant a licence for a brothel for a period set out in the licence. No licence shall be for a term of more than 12 months.
- 8.77.8 Every licence shall be personal to the licensee holder and the specified premise. If the licence holder or the premises to which a licence applies changes, the licence shall lapse.
- 8.87.9 Council can revoke any licence for any premise that fails to comply with a requisition notice issued under Clause 9.1 44 and within the period set within any such notice.
- 8.9 ~~For the avoidance of doubt, any sex worker providing commercial sexual services in their own home, and undertaking this practice as a home occupation is required to comply with sections 9 and 10 of this bylaw, as well as other provisions of this bylaw. (Moved to Clause 8.12)~~

98.0 HYGIENE AND MAINTENANCE REQUIREMENTS

- 8.1 The hygiene and maintenance requirements in Clauses 8.2. to 8.11 are made under Section 145(b) of the Local Government Act 2002, for the purpose of protecting, promoting and maintaining public health and safety. Before granting or renewing a licence under Clause 7.6, the Council shall ensure that Clauses 8.2. to 8.10 are complied with.
- 9.1-8.2 No person shall operate or allow any premises to be operated as a brothel (including a small brothel) except in accordance with all of the following provisions.
- 9.2-8.3 The premises shall be constructed in accordance with such of the provisions of the Bylaws ~~of the Council~~ and the provisions of the Building Act ~~1994~~2004 as are applicable in the circumstances.
- 9.3-8.4 Every floor, shower area and paved area within the premises shall be properly graded and drained, and together with every wall and ceiling of every room used for the business of prostitution, shall have smooth impervious and washable surfaces.
- 9.48.5 The premises shall be adequately ventilated to the satisfaction of an authorised officer.
- 9.58.6 Where subdued lighting is used in the premises, a fixed secondary system shall be incorporated to provide illumination of not less than 300 lux at a distance of 900mm above the floor for the purposes of cleaning and inspections.
- 9.6-8.7 One wash-hand basin supplied with constant hot and cold water and equipped with a plug, soap and adequate hand drying facilities shall be provided for every toilet compartment.

~~9.7.8.8~~ A separate room or separate facilities for the storage of clothing and personal effects shall be provided for use by the staff.

~~9.8.8.9~~ Adequate lockers or separate facilities shall be provided for the storage of clean and soiled laundry, cleaning equipment and massage products. Such lockers are to be separate from any area used for the manufacture, storage and preparation of food and drink.

~~9.9.8.10~~ A wash hand basin supplied and equipped in accordance with Clause 8.7 above shall be so located as to be readily accessible for use by staff members providing commercial sexual services and working in a cubicle or bedroom.

~~9.10~~
~~8.11~~ The premises shall be maintained in a state of good repair and in a clean and tidy condition.

~~9.11~~ ~~Every pillow and mattress shall have a removable cover, which shall be laundered after each use to maintain it in a clean and hygienic condition.~~

~~9.12~~ ~~Every towel shall be immediately placed in a receptacle, separate from any clean towels, and shall be laundered after use or handling by a customer.~~

~~9.13~~
~~8.11~~ ~~For the purposes of this clause the~~ In the course of the granting or renewing a licence, an authorised officer, may at all reasonable times, after first having given not less than 24 hours written notice to the premises licence holder, enter any brothel and inspect the premises to ensure compliance with this chapter bylaw.

~~8.12~~ For the avoidance of doubt, any sex worker providing commercial sexual services in their own home, and undertaking this practice as a home occupation is required to comply with the provisions of this chapter as if the home was a small brothel.

~~409.0~~ REQUISITIONS

~~409.1~~ Where a brothel does not meet the hygiene and maintenance requirements of this chapter ~~of the Bylaw~~, an application to grant or renew a licence may be declined or an authorised officer may serve notice on the licence holder to carry out, within the time stated in the notice, such remedial action as may be specified in the notice. Such notice may require the licence holder to cease operations until the remedial action is complete or for a period set out in the notice.

~~410.0~~ PENALTIES

~~410.1~~ Notwithstanding Section 10 of Chapter 1 – ~~Bylaw Administration of the Bylaw~~, every person who fails to comply with any requirement of this chapter ~~of the Bylaw~~ commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, or any infringement fees that may be payable.

APPENDIX 2

APPENDIX 2 - SUMMARY OF INFORMATION REQUIRED BY SECTION 83(1)(a)(ii) OF THE LOCAL GOVERNMENT ACT 2002 AND CHANGES TO CHAPTER 14 – BROTHELS AND COMMERCIAL SEX PREMISES OF THE RODNEY DISTRICT GENERAL BYLAW 1998

SUMMARY OF INFORMATION

1. Introduction

This is a Summary of Information as required by Section 83(1)(a)(ii) of the Local Government Act 2002, (LGA) accompanying the Council's Statement of Proposal to amend Chapter 14 – Brothels and Commercial Sex Premises of the Rodney District General Bylaw 1998.

This Summary of Information must comply with section 89 of the Act.

2. Representation of major matters in the Statement of Proposal

Chapter 14 – Brothels and Commercial Sex Premises of the Rodney District General Bylaw 1998 was a new bylaw made in 2004 and Section 158(3) of the LGA requires that it be reviewed within five years of being made or it will be revoked under Section 160A.

The Council acknowledges that the issues and complaints relating to prostitution in Rodney District are limited and the situation is generally positive. It considers that this is due in part to the fact that it has a bylaw. However the Council is also aware that Chapter 14 has been recognised by the Prostitution Law Reform Committee and the sex industry as one of the most restrictive bylaws in New Zealand.

The Council intends to retain the bylaw but is proposing to make amendments to it that would make it less open to legal challenge. The Council has carried out a detailed review of Chapter 14 and is proposing the following amendments:

- inclusion of a separate definition of "small brothel" (SOOB) in accordance with the definition in the PRA and changes to enable SOOBs to establish in identified residential areas within the District;
- inclusion of specific requirements in relation to SOOBs which were previously dealt with and restricted in a similar manner to all other brothels;
- amendments to the locational requirements for brothels (other than SOOBs) and commercial sex premises that will make Chapter 14 less open to successful legal challenge;
- clarification of the Council's position on street workers, who are already subject to controls under other chapters of the bylaw;
- removal of transitional provisions which were previously included to enable existing brothels to operate for a period of six months from the time Chapter 14 was first made operative and are no longer relevant;
- amendments to the licensing and inspection regime in Chapter 14 to link inspection to the granting and renewal of a licence, at which time the Council can ensure that venue itself, rather than processes and daily practices carried out within the venue, complies with hygiene and maintenance requirements, thus encouraging licensing and better enabling the Council to achieve the purposes of the PRA;
- various changes to refer correctly to the District Plan, other bylaw chapters and Acts and a general standardisation of the use of terms.

3. Place for inspection and obtaining copies

The Rodney District Council's Statement of Proposal to amend Chapter 14 – Brothels and Commercial Sex Premises of the Rodney District General Bylaw 1998, may be inspected at all Council offices and libraries during normal working hours and on the Council's website www.rodney.govt.nz

Copies of the documents may be obtained by contacting **Sue Healy on 09 427 3000**.

4. Period for submissions to be made

Submissions may be made on the Statement of Proposal and these should be received by the Council by no later than 4.00 p.m. on **Friday 30 October 2009**. Submission forms may be obtained from all Council offices and libraries and on the Council's website www.rodney.govt.nz and should be:

Posted to:

The Strategy and Policy Administration Officer
Rodney District Council
Private Bag 500
OREWA 0946; or

Delivered to:

Any Council office or library; or

Faxed to:

09 426 7280; or

E-mailed to:

info@rodney.govt.nz

5. Hearing of submissions

All submissions will be acknowledged. Persons making submissions who wish to be heard by the Council will have the opportunity to do so.

Submissions will be heard in the Council Chambers, 50 Centreway Road, Orewa during December 2009. Public notice will be given of the hearing date.