

EXTRAORDINARY COUNCIL MEETING

SUPPLEMENTARY AGENDA

11 June 2009

ITEM NO: 3

SUBJECT PUBLIC EXCLUDED

Recommendation:

That the public be excluded from the following parts of the proceedings of this meeting, namely:

Agenda Item No(s) 4

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under section 48(1) for the passing of this resolution
Possible Appeal – Grand Drive Heavy Vehicle Restrictions – Commissioners' decision	The disclosure of information would not be in the public interest because of the greater need to maintain legal professional privilege (section 7(2)(g) Local Government Official Information and Meetings Act 1987).	That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist, under section 6 or section 7 (except section 7(2)(f)(i) of the Act). (section 48(1)(a) Local Government Official Information and Meetings Act 1987.)

CONFIDENTIAL

ITEM NO: 4

REPORT



TO Extraordinary Council Meeting
ON 11 June 2009
FROM Ray Ginnever – Penlink Project Officer
APPROVED BY Murray Noone – Director Infrastructure
SIGNATURE

A handwritten signature in black ink, appearing to be "Murray Noone", written over a horizontal line.

SUBJECT GRAND DRIVE HEAVY VEHICLE RESTRICTIONS – REVIEW OF COMMISSIONERS' DECISION AND RECOMMENDATION
FILE REF RF/230/4

Request for Consideration of Urgent Item

RECOMMENDED:

That this item be considered as an urgent item as a decision on whether to appeal the decision has to be made in a short timeframe.

PURPOSE OF REPORT:

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? Rodney Transport Strategy, Orewa West Structure Plan, District Plan Variation 52.
(v)	Is a budget amendment required? No

(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required?
	Yes. No further consultation required.

FINANCIAL IMPLICATIONS:

Capital cost implications	None
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Within standard operating budgets
Is it currently budgeted for?	Yes
Funding & rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

The Council notified a proposed amendment to the Grand Drive designation and the related Council Bylaw restricting heavy vehicle access to Grand Drive. Consultation has been undertaken, hearings held, and a decision reached by independent commissioners. There are issues to resolve regarding the decision and the question of any appeal.

RECOMMENDATION:

- (a) **That the report be received.**
- (b) **That Council appeal the Commissioners' decision.**
- (c) **That Council defer the amendment of the current Bylaw restricting heavy vehicle movements on Grand Drive pending the hearing of the appeal.**
- (d) **That the Council decision to appeal the Commissioners' decision on the amendment to the designation and the decision to defer any amendment to the current Bylaw be restated in open meeting.**

1.0 Background

The Council notified a proposed amendment to the Grand Drive designation and the related Council Bylaw restricting heavy vehicle access to Grand Drive in December 2008. Consultation has been undertaken, hearings held, and a decision and recommendation reached by independent commissioners.

Commissioners were retained to hear the items because Council was both the applicant and the regulatory decision maker with respect to the application.

Any appeal to the decision must be filed by June 19, 2009.

2.0 Issues

The Hearing dealt with the two matters relating to heavy vehicles on Grand Drive, namely an amendment to the designation for the road itself, a matter under the Resource Management Act (RMA), and the actual Bylaw restricting heavy vehicles on Grand Drive, a matter under the Local Government Act (LGA). As the issues were substantively the same for both matters, they were heard together.

Approximately one hundred and fifty submissions were received during consultation, with a majority opposed to the change, but with a significant minority supporting the proposal. Over forty submitters indicated an intention to speak to their submission at the Hearings, but only fourteen appeared.

The New Zealand Transport Agency submitted in support of the proposed change. They had removed the heavy vehicle restriction on their section of Grand Drive from the Orewa Interchange on the Motorway to the Maire Road intersection with Grand Drive on January 25, 2009. They intend to revoke the designation of that section of Grand Drive as State Highway in the near future, which would leave Council as the road controlling authority for the whole of Grand Drive. The decision of the Commissioners was to partly amend the designation, such that heavy vehicle access will now only be permitted to access Grand Drive between 7am and 7pm daily. Council is required to amend its Bylaw to reflect the new designation condition unless the Commissioners' decision is appealed. Heavy vehicles which have business in Orewa requiring direct access from Grand Drive are already permitted to do so without restriction.

Council's legal advisors, Simpson Grierson, are of the view that the Commissioners "overemphasised and overstated the amenity of the adjacent residential environment", and that there are substantive grounds for appeal. These grounds include:

- "the decision does not appear to consider expert evidence"
- "the noise evidence was not challenged by any expert witnesses"
- A reliance on perceived amenity and community expectations, which are not grounds for supporting a condition or position under the RMA
- "the Commissioners appear to place little or no weight....on the District Plan provisions which require the houses to be built to a particular acoustic standard"
- the status of Grand Drive as a regional arterial in the District Plan, providing an essential link to the Motorway and State Highway network, and also to Silverdale North.

"Accordingly, there is a reasonable basis to lodge an appeal".

Council's advising planner, Terra Nova Planning, is of the view that the Commissioners ignored the overall effects of the change in status of Grand Drive once ALPURT B2 opened, as well as other matters covered in the Simpson Grierson letter.

The decision has also been reviewed with Janet Hope, Area Commander for New Zealand Police in Orewa, as well as with John Kelly, Officer in Charge for Highway Safety and Enforcement for State Highways and the local road network north of the Harbour Bridge, as well as for Waitakere City. They have indicated that enforcement of the arrangements proposed will not be a priority for the Police, and that they see substantial difficulty and resource issues in enforcing the proposed Bylaw conditions. In addition, they foresee further issues around their ability to successfully prosecute alleged offenders. These concerns beg the question of whether the conditions of the Commissioners' decision meet the standard legal tests for imposing a condition under the RMA. These conditions include both reasonableness and enforceability.

Council legal staff have reviewed the matter and are of the view that Council can lawfully appeal the decision. They have considered the matter that Council is both the applicant and the regulatory authority in this matter. Because the decision to amend the designation, and the accompanying recommendation to amend the Bylaw, were both made by independent Commissioners, the matter of an appeal is less of a conflict than if the decision had been made directly by the Council. The confirming view of the Police that the changed Bylaw is both unreasonable and unenforceable further supports the viability of an appeal, even though technically Council is filing an appeal against itself. Under the provisions of the Resource Management Act and the Local Government Act, this is sometimes the case, and there is ample legal precedent to support this position. Communications staff have been briefed on the matter and will develop a communications strategy to deal with this issue.

3.0 Options

- a) Let the decision stand and impose the Bylaw restrictions from 7.00 p.m. to 7.00 a.m.
- b) Appeal the decision and argue for a more sustainable and enforceable provision, consistent with standards for regional arterials accessing Motorways in New Zealand.

4.0 Conclusion

Given the apparent errors in the Commissioners' decision, and the unwillingness and inability of the Police to enforce the Bylaw provision, it is recommended that Council appeal the Commissioners' decision to amend the designation to restrict heavy vehicle access to Grand Drive between 7pm and 7 am. The Council decision to accept the Commissioners' recommendation to amend the Council Bylaw to agree to the amended condition in the current Council Bylaw should be deferred pending the outcome of the appeal.

Attachments:

Copy of Commissioners' Decision – May 2009 (Confidential Appendix 1)

Simpson Grierson Review of Decision – June 2009 (Confidential Appendix 2)