

## 5. MEDIATION OF ENVIRONMENT COURT APPEAL

<b>General Manager responsible:</b>	General Manager Regulation & Democracy Services
<b>Officer responsible:</b>	Environmental Services Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to seek the Subcommittee's approval for two officers to participate in the mediation of an appeal before the Environment Court.

### EXECUTIVE SUMMARY

2. On 1 July 2004 the Council resolved to publicly notify Variation 84 to the proposed City Plan. This Variation sought to add five properties owned or leased by Stonehurst Accommodation Limited to the list of scheduled metropolitan facilities in Living 4 zones included in Part 9 of Volume 3 of the plan.
3. Following a hearing, Commissioner Bob Batty recommended to the Council that the submissions opposing the variation be accepted and those supporting the variation be rejected. The Council adopted the Commissioner's recommendations as its decision on 3 February 2005. The effect of this decision was that the plan was unchanged. An appeal against the Council's decision was lodged by Stonehurst Accommodation Limited and the Environment Court has now referred this appeal to mediation on Tuesday 31 May 2005. Approval is sought for Barbara Read, Solicitor, Legal Services Unit and David Mountfort, Team Leader City Plan, to participate in this mediation.

### FINANCIAL AND LEGAL CONSIDERATIONS

4. The Council, as respondent in this matter, is obliged to be represented before the Court. It has delegated to the Subcommittee the specific power to authorise officers to take part in mediation. The delegation given on 9 December 2004 allows the subcommittee:

*“(a) to authorise any one or more officers to participate in a mediation of any proceeding before the Environment Court arising out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding, provided it does not require any Council expenditure not authorised by a Council delegation.*

*(b) Any authorisation given under this delegation shall be on such terms and conditions as the Subcommittee considers appropriate.*

*Authorised positions:  
Environmental Services Manager  
Team Leader, City Plan  
Solicitor, Legal Services Unit  
Team Leader, Area Planning and Development  
Senior Planner, Area Planning and Development”*

5. There are no apparent financial implications that arise from adopting the recommendation as:
  - a successful mediation would obviate the need for a potentially costly and drawn-out defended hearing; and
  - the delegation allows staff to commit to a binding agreement only where it does not require any expenditure not authorised by a Council delegation.

## **DISCUSSION**

6. The extent of the delegation requires a decision from the Subcommittee. The options are:
- (a) Delegation to settle the matter on any terms that the parties agree on the day. This could extend as far as reversing the decision of the Council. This would have an unfortunate look, but it should be remembered that the Council was originally prepared to proceed with the variation and it was only opposition from residents that convinced the Commissioner to recommend against it. Thus in the unlikely event the residents changed their minds and now agreed to the variation there would be little harm in the Council also agreeing to it.
  - (b) Delegation to settle the matter by allowing the properties to be scheduled for travellers' accommodation but subject to additional rules to limit the scale of activities and protect the amenities of the area.
  - (c) Delegation simply to attend and discuss the matter, but to bring any proposal to settle the matter back to the Subcommittee. This is bound to find disfavour with the Environment Court mediator. Usual practice is to finalise mediations on the day, as otherwise substantial delays can occur or matters grow very complex as there could be a number of reiterations, ie the Subcommittee might make a further suggestion which then has to be referred back to the parties, or parties may resile from what was previously agreed. However it is a valid option.

## **STAFF RECOMMENDATION**

It is recommended that the Subcommittee authorise Barbara Read, Solicitor, Legal Services Unit, and David Mountfort, Team Leader City Plan, to participate in a mediation of the appeal by Stonehurst Accommodation Limited and to commit the Council to a binding agreement to resolve the proceeding. The delegation to be limited to allowing the properties to be scheduled if additional means can be agreed upon to limit the scale of activities and protect the amenities of the area.