

4. PROPOSED CHRISTCHURCH CITY COUNCIL COMMERCIAL SEXUAL SERVICES SIGNAGE BYLAW 2009

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
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PURPOSE OF REPORT

1. To consider a proposed Christchurch City Council Commercial Sexual Services Signage Bylaw 2009 to prohibit the advertising of the availability of commercial sexual services in, or visible from, any public place, and undertake the required special consultative procedure under the Local Government Act 2002 (LGA02). To revoke the Christchurch City Brothels (Location and Signage) Bylaw 2004.
2. Attached to this report are draft versions of:
 - The Summary of Information of Proposal Regarding the Christchurch City Council's Commercial Sexual Services Signage Bylaw 2009 and Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004 (**Attachment 1**), and
 - The Statement of Proposal Regarding the Introduction of the Christchurch City Council's Commercial Sexual Services Signage Bylaw 2009 and Revocation of the Christchurch City Council Brothels (Location and Signage) Bylaw 2004 (**Attachment 2**).

EXECUTIVE SUMMARY

3. The Prostitution Reform Act 2003 (the Act) provides for territorial authorities to make bylaws prohibiting or regulating signage in, or visible from, a public place that advertises commercial sexual services. Section 12 of the Act states:
 - (1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
 - (2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that:
 - a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
 - b) is incompatible with the existing character or use of that area.
 - (3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.
4. The current Brothels (Location and Signage) Bylaw 2004 prohibits signage associated with brothels over the majority of areas of the previous Christchurch City Council area (that is the area prior to the amalgamation with Banks Peninsula District) and only provides controls over signage in a limited area of the central city. In the latter area there has not been any signage erected or displayed under such controls and in any case the limits specified may not be more than allowing for business identification which is possibly not covered by advertising commercial sexual services.
5. The Council, at its meeting on the 27 November 2008, considered a report on the review of the Brothels (Location and Signage) Bylaw 2004 (the current bylaw) and it was resolved that the Council:
 - (a) Determines that under the section 155(1) analysis, there is not sufficient evidence of a problem in regards the location of brothels that needs to be addressed by way of a bylaw.

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- (b) Determines that under the section 155(1) analysis, there is sufficient evidence of a problem in regards signage advertising of commercial sexual services that needs to be addressed by way of a bylaw.
- (c) Consider a new bylaw controlling signage advertising commercial sexual services, in conjunction with the Brothels Location and Signage Subcommittee, for adoption under the provisions of the Prostitution Reform Act 2003, and that once any new bylaw is introduced the current Brothels (Location and Signage) Bylaw 2004 be revoked.

(This report addresses resolutions (b) and (c) of the above decision.)

- 6. Legal advice has been provided regarding the matters the Council may control in regard to signage under the Act and some clarity of the definition of "commercial sexual services". Section 4 of the Act defines "commercial sexual services" as meaning sexual services that:
 - (a) involve physical participation in sexual acts with, and for the gratification of, another person; and
 - (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

These are closely related issues as the Act permits bylaw control relating explicitly to the latter. The legal advice is that commercial sexual services requires the element of physical participation in sexual acts for reward and in addition to sexual intercourse, masturbation procedures and oral sex, the legal advice is that such could also include activities such as lap dancing and nude massage. Signage advertising commercial sexual services is signage that draws attention to or promotes such services.

- 7. The legal advice is that any signage merely advertising a business of prostitution or brothel per se by providing the name of the business, address and instructions on how to enter the premises, would not be a sign advertising commercial sexual services. It would, however, depend on the name of the business used, for example the name "XYZ Brothel" could be considered advertising commercial sexual services while XYZ Lounge would not. The latter could be considered "building identification outdoor advertisements" under the City Plan if attached to the building in which the services are provided.
- 8. The tests for introducing a bylaw include that the signage is likely to cause "serious offence to ordinary members of the public using the area".¹ The legal advice states that "for a Council to be satisfied that a bylaw is necessary on the basis of serious offence to members of the public, the signs it was attempting to control would need to be ones that aroused feelings of anger, resentment, outrage and disgust, not just feelings that the signs are tactless, inappropriate and in bad taste".² It is not clear as to whether **ordinary members of the public** would consider signage specifying that services such as intercourse or oral sex or other matters included in the term commercial sexual services were available, were offensive per se or could cause serious offence or whether they were just tactless and in bad taste. Until this matter is tested it could be assumed that a reasonable person may find such public signage offensive in general terms.
- 9. The Council may, if satisfied that signage advertising commercial sexual services could cause serious offence to ordinary members of the public, prohibit any such signage in or in view of a public place by way of bylaw. Such a bylaw would cover all signage in, or visible from a public place, whether on buildings, free standing signs on public or private property, or bill boards. It may be argued that such a bylaw would meet the reasonableness test required to introduce such a bylaw, as the power exists to prohibit under the Act, it does not have to comply with the New Zealand Bill of Rights 1990 requirements. It would not restrict the right to advertise the business location and other non sexual services provided there, and other opportunities exist to advertise commercial sexual services.

¹ Section 12(2)(a) Prostitution Reform Act 2003

² Judith Cheyne, Solicitor, *Brothels Bylaw – Clarification of legal issues*, 16 January 2009

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10. The Brothels Location and Signage Subcommittee has taken the view that offensiveness should be the rationale for the proposed bylaw, and the bylaw has been drafted accordingly. The recommendation to the Council is that it accept such an approach that signage advertising commercial sexual services causes offence to ordinary members of the public and to test this via the bylaw.
11. Other alleged "offensive" or "sexually explicit" signage was seen to exist in the city, but the signs were not associated with advertising "commercial sexual services" per se and cannot be controlled by a bylaw under the Act. It should be noted that "striptease" and "massage" are not considered to fall within the definition of commercial sexual services. The display of outdoor advertisements are controlled under the provisions of the City Plan in regard to area, height, illumination, relationship to the site, and compliance with the Advertising Standards Authority Code of Practice relating to criteria for offensiveness and decency of advertising.³ Such rules would apply appropriately to any other legitimate businesses. The Banks Peninsula District Plan also contains controls over signs but there is no evidence that any businesses of prostitution exist in that area, or if they did they were not considered an issue.

FINANCIAL IMPLICATIONS

12. This report recommends the introduction of a bylaw prohibiting signage advertising commercial sexual services, and the revocation of the current bylaw, which must be done by way of a special consultative procedure so the costs associated with special consultative procedures apply. Costs to carry out the special consultative procedure are budgeted in the Community and City Planning Activity in the LTCCP.
13. With the introduction of the proposed bylaw and revocation of the current bylaw, the expectation is that inspection and enforcement action of location issues, if any, would be undertaken through the provisions of the City or District Plan, rather than the bylaw. Compliance monitoring and enforcement in relation to signage should not be significantly more than is caused by ensuring compliance with provisions of other bylaws relating to other business activities.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

14. Funding exists in the LTCCP for the Special Consultative Procedure.

LEGAL CONSIDERATIONS

15. The Act contains bylaw-making powers for Councils. Section 12 provides that a Council can make bylaws prohibiting or regulating signage advertising commercial sexual services that is in or visible from a public place (and the procedure for making such bylaws is the same as for a bylaw made under the LGA02). However, such bylaws can only be made if the Council is satisfied that the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or that the signs are incompatible with the existing character or use of an area (section 12(2)).
16. The Council must also review any bylaws made under section 12⁴ or 14⁵ of the Act within the timeframes provided in section 158⁶ of the LGA02. The bylaw must be reviewed no later than five years after the date on which the bylaw was made if made under the LGA02. Section 160⁷ of the LGA02 provides that a bylaw review is completed by making the determinations required by section 155.⁸ If, following the review, the Council determines that the bylaw should be amended, revoked, or revoked and replaced; it must act under section 156, and use the special consultative procedure to make, amend or revoke a bylaw.

³ Christchurch City Plan, Volume 3, Chapter 10

⁴ Relating to regulating or prohibiting signage advertising commercial sexual services.

⁵ Relating to regulating the location of brothels.

⁶ Section 158 of the LGA02 requires bylaws made under the Act not later than 5 years after the bylaw was made if the bylaw was made after 1 July 2003. This applies to the Brothels (Location and Signage) Bylaw 2004.

⁷ Section 160 of the LGA02 requires the review under section 158 to be undertaken in accordance with section 155 including identifying the perceived problem to be addressed and whether a bylaw is the appropriate way of addressing the problem.

⁸ Note that "a bylaw may be made under section 12 even if, contrary to section 155 (3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990." (section 13 (2) of the Act).

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17. The legal considerations in relation to the review of existing bylaws and adoption of a new bylaw largely arise from section 155 of the LGA02. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
- (1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
 - (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw:
 - a) is the most appropriate form of bylaw; and
 - b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.
 - (3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.
18. In order to comply with section 155 of the LGA02, the Council needs to identify the perceived problem and determine formally that a bylaw is the most appropriate way to deal with the perceived problem, and if so, that the proposed form of bylaw is in the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. If the Council does not satisfy the requirements of section 155 appropriately, then it is at risk of a challenge to its decision by way of a judicial review application. For example, if it did not have sufficient evidence of a problem, or there was a problem but there were other more appropriate ways to deal with it than a bylaw, then the bylaw might be open to challenge. Conversely, if there was evidence of a problem and that a bylaw was the most appropriate way to deal with that problem, but the Council did not make a bylaw, then that decision might also be successfully challenged.
19. The display of outdoor advertisements, such as signs advertising commercial sexual services is controlled under the provisions of the City Plan in regard to area, height, illumination, and relationship to the site. Similar provisions apply under the Banks Peninsula District Plan. Advertising, including signs, must comply with the Advertising Standards Authority Code of Practice relating to criteria for offensiveness and decency of advertising.⁹ Such rules would apply appropriately to advertisements for commercial sexual services, the same as they would for any other legitimate businesses.
20. The location of businesses is controlled under the provisions of the City Plan in regard to the rules both for Living zones and Business zones. There is limited scope for a business of prostitution to be established in Living zones because of restrictions on the hours of operation for home activities, the area allowed to be used, and vehicle movement restrictions.¹⁰ In the case of businesses of prostitution in Business zones brothels would not be specifically precluded from being established subject to compliance with the zone standards, some of which may limit the scale of such a business, or trigger the resource consent process. That would include having regard to whether the business of prostitution is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or is incompatible with the existing character or use of the area in which the land is situated.¹¹

Legal requirements for the special consultative procedure

21. The special consultative procedure under the Act when revoking a bylaw requires that the Council prepare a statement of proposal that "must include:

⁹ Christchurch City Plan, Volume 3, Chapter 10

¹⁰ Christchurch City Plan, Community Standards for "other activities" in Living Zones includes a maximum floor area of 40m², not more than one fulltime equivalent residing off site may be employed; hours of operation restricted to 50 per week and between 7am to 11pm Monday to Friday and 8am to 11pm Saturday, Sunday and public holidays; vehicle generation is limited to 16 to 50 trips per day; and at least one person engaged in the activity must reside permanently on the site.

¹¹ Prostitution Reform Act 2003, section 15

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- (ii) a statement that the bylaw is to be revoked; and
- (iii) the reasons for the proposal; and
- (iv) a report on any relevant determinations by the local authority under section 155".

22. The LGA02 also requires the Council to determine the form of the summary of information. Section 89(c) requires that it be distributed "as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...". Section 83(e) of the LGA02 also requires the Council to give public notice of the proposal and the consultation being undertaken.
23. Since the introduction of the new bylaw and revocation of the current Brothels (Location and Signage) Bylaw 2004 is likely to be a matter of interest throughout the Christchurch City Council district, it is proposed that the summary of information be published through local newspapers, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries and on the Council's "Have Your Say" Website.
24. Submissions called for on the proposal will be considered by the Council and any persons wishing to present orally would be heard prior to the final determination being made.

Have you considered the legal implications of the issue under consideration?

25. Yes, as above and in the consultation fulfilment section below.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

26. Not applicable.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

27. Not applicable

ALIGNMENT WITH STRATEGIES

28. There are no specific strategies in relation to this issue

Do the recommendations align with the Council's strategies?

29. See above.

CONSULTATION FULFILMENT

30. Briefings covering the Act, the Bylaw, the results of the judicial review of the bylaw, the findings of the Prostitution Law Reform Review Committee review, and the results of the initial section 155 analysis were presented to the Brothels Location and Signage Bylaw Subcommittee and a Combined Community Board Seminar.
31. Information was obtained from the Inspections and Enforcement Unit of the perceived extent of problems and whether or not the current legislation under the City Plan was able to be used to control activities where use of the premises failed to meet City Plan rules.
32. Consultation was undertaken with the New Zealand Police who have advised that there was no evidence of problems associated with the location of brothels, or indeed any nuisances. Where other offences under the Act had been brought to their notice they have taken action. There have been a limited number of these in the city largely related to under 18 year old persons.

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33. Discussions have taken place with the local branch of the Prostitutes Collective who advised that they could see no need for provisions relating to controlling location beyond the powers contained, for example, in the City Plan. They were not aware of any problems with signage, as currently permitted in the bylaw, but considered there was a need to provide for controls over offensive signage that could occur if no bylaw existed. They would support the introduction of such a bylaw.
34. Discussions have been held with Community and Public Health representatives, who operate under the Act as Brothel Inspectors, and some owners of businesses of prostitution. They did not consider there were issues with the location of brothels nor signage. The brothel operators advised they were unlikely to install further signage as they wished to keep such signage discreet.
35. The issue has been considered by the Brothels Bylaw Subcommittee who considered that the other options of dealing with such signage, through the City or District Plan or on the basis of permitting such signs in some areas and not others were not satisfactory. The Subcommittee advised that it was difficult to distinguish between areas or places on the grounds of offensiveness or character and suggested that a total prohibition on such signage should apply over the whole of the City Council area. This was based on grounds that the controls were restricted to advertising commercial sexual services by signage but not other means and did not cover advertising businesses per se.
36. Formal public consultation of any proposal adopted by the Council will then go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the LGA02). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

STAFF RECOMMENDATION

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

- (a) Determine that under the section 12 of the Prostitution Reform Act 2003, signage advertising commercial sexual services in or in view of public places is considered to be likely to cause serious offence to ordinary members of the public and should be controlled by a bylaw.
- (b) Agree that the attached proposed Christchurch City Council Commercial Sexual Services Signage Bylaw 2009 is the most appropriate form for the purpose of controlling the signage advertising commercial sexual services.
- (c) Adopt the proposed Christchurch City Council Commercial Sexual Services Signage Bylaw 2009, Statement of Proposal, and Summary of Information and commences the Special Consultative Procedure under section 83 of the Local Government Act 2002.
- (d) Agree that public notice of the consultation be given in The Press and on the Council's website on 4 May 2009, and that public notice of the proposal be given in the and Christchurch Star newspaper, Akaroa Mail and other community newspapers distributed in the Christchurch area, as close as possible to 4 May 2009.
- (e) Agree that the period within which written submissions may be made to the Council be between 4 May 2009 and 18 June 2009.
- (f) Appoint a hearings panel to hear submissions between the 27 to 30 July 2009, deliberate on those submissions and to report back to the Council on its recommendations.
- (g) Note that the Christchurch City Brothels (Location and Signage) Bylaw 2004 will be revoked when the new bylaw is approved.
- (h) Dissolve the Brothels Location and Signage Subcommittee.

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BACKGROUND (THE ISSUES)

The regulatory context

37. At its meeting on 27 November 2008, the Council:
- (a) *Determines that under the section 155(1) analysis, there is not sufficient evidence of a problem in regards the location of brothels that needs to be addressed by way of a bylaw.*
 - (b) *Determines that under the section 155(1) analysis, there is sufficient evidence of a problem in regards signage advertising of commercial sexual services that needs to be addressed by way of a bylaw.*
 - (c) *Consider a new bylaw controlling signage advertising commercial sexual services, in conjunction with the Brothels Location and Signage Subcommittee, for adoption under the provisions of the Prostitution Reform Act 2003, and that once any new bylaw is introduced the current Brothels (Location and Signage) Bylaw 2004 be revoked.*
38. At the subsequent 10 December 2008 meeting of the Brothels Location and Signage Bylaw Subcommittee, the Subcommittee considered the criteria in the Prostitution Reform Act 2003 ("The Act") under which the Council could introduce a bylaw controlling advertising in or in view of a public place commercial sexual services. These criteria are contained in section 12(2) of the Act and include the signage likely to cause a nuisance or serious offence to ordinary members of the public using the area or were incompatible with the existing character or use of that area. The Subcommittee determined that the criteria of nuisance as legally defined¹² was likely to be difficult to justify hence decided that the two remaining criteria "serious offence to ordinary members of the public" and "incompatible with the existing character or use of an area" should be considered as rationales for the examination
39. The Subcommittee also requested further information on the following: clarification of the definition of commercial sexual services; the signage issues the Council can control through bylaws; clarifying options of either City-wide regulation, or "grey areas" including industrial zones; options for prohibition of such signage in smaller areas of the City.¹³

What Signage can the Council regulate or prohibit under the Act

40. The Act provides some limited powers to territorial authorities to control certain matters in their districts, as follows: There are powers under section 12 to make bylaws prohibiting or regulating signage advertising commercial sexual services that is in or visible from a public place, provided the Council is satisfied that a bylaw is necessary to prevent the display of signs that are likely to cause nuisance or serious offence to the public, or is incompatible with the existing character of an area. The bylaw must be made in accordance with the provisions of the LGA02, except that in the case of signage: a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.
41. Legal advice is that commercial sexual services requires the element of physical participation in sexual acts for reward and in addition to sexual intercourse, masturbation procedures and oral sex, the legal advice is that such could also include activities such as lap dancing and nude massage. It is arguable whether the latter two activities are commercial sexual services, the advertising of which would be controllable through a bylaw. However, on the basis of the advice to date, the Council may regard these activities as being covered by the definition. The Select Committee when reporting on the matter of the definition of "commercial sexual services" clearly considered it related to "physical or intimate contact" and identified that it may include lap dancing and nude massage but excluded stripping and phone sex. It is considered that activities such as "striptease" or "massage" (but possibly not "nude massage" however that may be defined) are not likely to be commercial sexual services hence signs advertising these services would not be able to be controlled through a bylaw under the Act.

¹² To claim a public nuisance exists requires some consideration of an appreciable interference with a public right which causes damage, injury, discomfort or inconvenience to **all** members of the public. Laws of New Zealand, Nuisance at Para 14

¹³ Notes of meeting of the Brothels Location and Signage Bylaw Subcommittee, 10 December 2008

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42. Advice has been obtained from the Legal Services Unit in regard to the matters which the Council may control in regard to signage under the Prostitution Reform Act 2003 (the Act) and some clarity of the definition of "commercial sexual services". These are issues closely related as the Act permits bylaw control relating to the latter explicitly. The view is held that any signage merely advertising a business of prostitution or brothel per se by providing the name of the business, address and instructions how to enter the premises would not be a sign advertising commercial sexual services. It would, however, depend on the name of the business used, for example the name "XYZ Brothel" **could** be considered advertising commercial sexual services while XYZ Lounge would not. These would be considered building identification outdoor advertisements if attached to the building in which the services are provided.
43. The legal advice is that merely identifying the business with no reference to commercial sexual services is not a matter that could be controlled under the powers contained in the Act. Even if a sign included information on some of the things available at the business of prostitution or brothel, then provided those things were not sexual services (for example, that a spa, sauna, coffee/food, etc were available), such signs would not be advertising commercial sexual services. It would be unreasonable for the Council to prohibit such signs as they are not offensive per se, and another business such as a hotel spa could easily have similar advertising that the Council would not be able to regulate or prohibit.
44. It should be noted that provisions exist for other means of advertising commercial sexual services [see section 11 of the Act –advertisements are allowed in the classified sections of a newspaper] and a number of web sites are also used for such purposes.
45. Signs with pictorial representations on them would need to be assessed taking an objective view as to whether the "picture" could be regarded as one that notifies the availability of, or promotes the sale of commercial sexual services. A picture of a provocative looking women's face is not likely to do this, but a picture of a topless women might, particularly when associated with a brothel/business of prostitution and not as an advertisement for a theatre production. However, it is to be noted that in the Robinson case¹⁴ the judge found that a "mere strip tease" would not constitute prostitution. A picture of a topless woman on a sign that is associated with a striptease business, and not one that provides commercial sexual services is not likely to be a sign that could be regulated under a PRA bylaw.

Actual or Potential Signage Advertising Commercial Sexual Services

46. There is no evidence of any problem of signage related to advertising commercial sexual services in, or in view of, a public place, nor was any provided at the time of the introduction of the current bylaw. In the report of the Prostitution Reform Act Subcommittee to the Council meeting of 1 July 2004 it was stated:

It was not to be expected that the signage requirements, despite being significantly tighter than those applying to other legal businesses, would cause major problems. It appears that this is due to businesses not having signage which causes offence to reasonable members of the public. ... The controls were therefore introduced to preclude future possible signage that could be considered offensive, or to attempt to reduce the visibility of such operations.
47. Submissions received during the 2004 process indicated that premises such as SOOBs operating in residential areas were unlikely to use signage in any case and other businesses of prostitution that may operate outside the designated zone were likely to be limited to drawing attention to such activities even before the location provisions were quashed. The Council determined that a prohibition should apply to any brothels outside the designated area under the bylaw, including those which were permitted initially under the bylaw outside that location control. This prohibition was considered necessary in addition to City Plan regulations to prohibit signage describing the details of the services available in the premises (which are permitted for other businesses). In general this application was supported by the then known industry and certainly by the few submissions received on the bylaw and the views of persons completing the pre bylaw questionnaire. Support for controls was expressed through the submission process on the proposed bylaw, although limited numbers raised that issue following the SCP (17 of the 88 submitters supported the bylaw proposals) with only 2 concerned that the now legitimate business should be restricted compared with other businesses.

¹⁴ *R v Robinson 1978 1 NZLR 709*

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48. It should be noted that almost no cases or complaints in relation to brothels signage have occurred in the five years the bylaw has been in force. Whether the current bylaw has precluded the development of such possible signage or not is moot, but certainly there is no evidence of substantive complaints being received about signage.¹⁵ The Council¹⁶ however, does consider that a perceived problem exists, under the provisions of section 12 of the Act, in relation to future possible signage advertising commercial sexual services which could be offensive through explicit content that was not able to be controlled under the City or District Plan requirements.
49. The test adopted by the Brothels Location and Signage Subcommittee for introducing a bylaw was that the signage advertising commercial sexual services is likely to cause ... serious offence to ordinary members of the public using the area;¹⁷ The legal advice is that, ...for a Council to be satisfied that a bylaw is necessary on the basis of serious offence to members of the public the signs it was attempting to control would need to be ones that aroused feelings of anger, resentment, outrage and disgust, not just feelings that the signs are tactless, inappropriate and in bad taste.¹⁸ It is yet to be proven in either way as to whether **ordinary members of the public** would consider signage specifying that services such as intercourse or oral sex or other matters included in the term commercial sexual services were available, were offensive per se or could cause serious offence or whether they were just tactless and in bad taste. It could, of course, relate to where such signs were displayed and whether persons sought them out. Until this matter is tested it could be assumed that a reasonable person may find such public signage offensive in general terms.
50. Members of the Subcommittee considered that the potential for the display of signage advertising commercial sexual services was sufficiently large that prohibition was required.
51. On the basis of the Council's decisions on the 27 November 2008 the options are as follows:
- (a) Do nothing. This option could mean that the current 2004 Bylaw requirements of regulation of some signs within the Appendix 1 Brothels (Location and Signage) Bylaw 2004 central city area and prohibition in any other areas, except the Banks Peninsula Ward could continue until July 2011. Advice is that continuing with the 2004 Bylaw and allowing it to lapse after a section 155 analysis had been undertaken would be *ultra vires* the Local Government Act 2002. The options are to revoke the provisions or introduce a new bylaw in accordance with the LGA02. The requirements for controlled signage exclude mention of advertising commercial sexual services and largely relate to premises identification signs. The basis is largely on excluding signage from residential or suburban areas of the City rather than offensiveness. The option, given the above, would also mean relying on requirements of the Advertising Standards Authority Code of Practice relating to offensiveness and decency of advertising.
 - (b) Prohibition of signage advertising commercial sexual services in or in view of a public place throughout the whole of the area of the Christchurch City Council. The basis for such a prohibition would be the Council determining that such advertising was likely to cause serious offence to ordinary members of the public in any parts of the area of the City. Such a prohibition would not restrict the right to advertise the business location or other non sexual services provided there, nor advertise commercial sexual services by other means permitted under the Act. It would mean that the view that such signage was seriously offensive applied throughout the City and could not be distinguished between one area or another.

¹⁵ Only one complaint has been received since the bylaw has been in force.

¹⁶ Report of the Regulatory and Planning Committee to the Council meeting of 27 November 2008

¹⁷ Section 12(2)(a) Prostitution Reform Act 2003

¹⁸ Judith Cheyne, Solicitor, *Brothels Bylaw – Clarification of legal issues*, 16 January 2009

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- (c) Regulation of signage advertising commercial sexual services in or in view of a public place throughout the whole of the area of the Christchurch City Council. This option would permit signage advertising the availability of commercial sexual services in, or in view, of public places anywhere in the City but controls would be placed on the content and form of the signage. It may be difficult to determine exactly what content was able to be controlled and still be considered reasonable within the power to make a bylaw. It perhaps could permit the use of terms such as a "brothel"; "business of prostitution"; or "sex worker" all of which are associated with commercial sexual services but unlikely to be "offensive" to ordinary members of the public. The requirement applying to the whole of the City would be difficult to support on the basis of the character or use of the area which contains a number of various uses from residential to industrial. Controls over content may be difficult to specify objectively.
- (d) Prohibition of signage in selected areas of the city. This option could effectively permit signage advertising commercial sexual services in some areas on the basis of the character or use of the areas. Determining an area where signage advertising commercial sexual services could be prohibited based on the incompatibility with the character or use of the area is somewhat subjective. The term character¹⁹ is variously defined as the collective qualities or characteristics, esp. . mental and moral that distinguish a person or thing or reputation, esp. good reputation. Characteristic is defined as typical, distinctive. These anthropomorphic terms being applied to physical areas of the City could be considered arguable. However, an attempt has been undertaken to at least apply one of the criteria, either incompatibility with the character or use, of zones under the City or District Plan. Using the definition of character of reputation, esp. good reputation it may be that areas used as residential predominantly may fall within the criteria where such signage should be prohibited. One area which does not have such a good reputation is the Central City where as least portions exist where the character is such that it could be argued such signage would not be out of place with the area's character. On that basis all areas outside the Central City could be considered suitable for a prohibition. Such an approach, however, avoids the issue of whether the signage is seriously offensive to ordinary members of the public. It also assumes that all residential areas, except those in the central city, are of a similar character.
- (e) Regulation of signage in selected areas of the city. This option could be based on permitting signage advertising commercial sexual services in areas selected on the basis of compatibility or use of selected areas and no controls in other areas of the city. Controls may be included on the content, form or size of such signs which may be difficult to introduce given the definition of commercial sexual services. If they do not mention matters within such a definition they would not be able to be covered by the bylaw. If they do include such matters it is likely, but not certain, that they may fall into the category of being seriously offensive to ordinary members of the public. Permitting such signs in selected areas may create the view that certain areas are suitable for such signs no nuisance being obvious, while other areas are not. It is difficult to determine the basis for such an approach and what criteria would be used to determine the appropriate areas as there is no evidence for present signage issues.

Preferred Option

52. **Option (b)** Prohibition of signage advertising commercial sexual services in or in view of a public place throughout the whole of the area of the Christchurch City Council is the preferred option because:
- (i) It could be introduced on the basis that signs advertising commercial sexual services could cause serious offence to ordinary members of the public;
 - (ii) Such signs are likely to cause offence in all areas of the city;

¹⁹ The Concise Oxford Dictionary, Oxford University Press, New York, 1991

4 Cont'd

- (iii) Avoids the subjectivity involved in determining character of different parts of the city;
- (iv) Such a bylaw would meet the reasonableness test required to introducing such a bylaw as the power exists to prohibit under the Act, it does not have to comply with the Bill of Rights requirements, it would not restrict the right to advertise the business location and other non sexual services provided there, and other opportunities exist to advertise commercial sexual services;
- (v) Avoids labelling some parts of the city as being, in the Council's opinion, areas where the character is such that advertising commercial services is compatible.