

11. CHRISTCHURCH CITY BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

General Manager responsible:	General Manager Regulation and Democracy Services
Officer responsible:	Legal Services Manager
Author:	David Rolls, DDI 941-8892

PURPOSE OF REPORT

1. The purpose of this report is to provide legal advice sought by the Council at its meeting on 6 October 2005.

EXECUTIVE SUMMARY

2. On 29 July 2005 the High Court issued a decision in which it quashed Clauses 6 and 7 of the Christchurch City Brothels (Location and Signage) Bylaw 2004 ("the Bylaw") as they related to the location of brothels.
3. On 4 August 2005 the Council resolved to appeal that decision to the Court of Appeal. The Council also resolved to apply to the High Court for a stay of that decision pending the determination of the appeal by the Court of Appeal.
4. At its meeting on 6 October 2005 the Council was advised that its application to the High Court for a stay of the decision of the High Court of 29 July 2005 had been unsuccessful. After considering legal advice given at that meeting the Council decided not to pursue the option of making a further application to the Court of Appeal for such a stay.
5. The Council did, however, request that staff report back as to whether, having regard to the decision of the High Court of 21 September 2005 refusing the stay, the Council should pursue its appeal in the Court of Appeal against the High Court decision of 29 July 2005.
6. A legal opinion in this regard has been obtained from Simpson Grierson, the Council's legal advisers in this matter. That opinion is attached to this report.
7. It is Simpson Grierson's view that the High Court's decision of 21 September 2005, in relation to the stay application, is not relevant to whether or not the Council proceeds with the appeal to the Court of Appeal.

FINANCIAL AND LEGAL CONSIDERATIONS

8. In summary Simpson Grierson point out that the key issue in the stay application was whether the Court had jurisdiction to grant a stay in a situation where a bylaw had been partially quashed. The Court found that it did not have jurisdiction.
9. The key issues in relation to the appeal to the Court of Appeal concern the Council's powers to make bylaws under section 14 of the Prostitution Reform Act 2002 and the scope of its powers to regulate an activity by means of such a bylaw. These issues were not relevant to the stay application and were not discussed in the judgment of the High Court of 21 September 2005 regarding that application.
10. Simpson Grierson conclude that the judgement of the High Court dated 21 September 2005 in relation to the stay application is not relevant to whether or not the Council proceeds with the appeal to the Court of Appeal.
11. The author of this report fully endorses Simpson Grierson's advice in this regard.
12. Finally, in the letter containing their opinion, Simpson Grierson have advised that the Court of Appeal had indicated that the appeal was likely to be heard in March 2006. Since that letter was written the Court of Appeal has formally advised the parties that the appeal will be heard on 3 and 4 May 2006.

STAFF RECOMMENDATION

That the information be received.