

13. SUBMISSIONS ON THE MANUKAU CITY COUNCIL (CONTROL OF STREET PROSTITUTION) BILL AND THE MANUKAU CITY COUNCIL (CONTROL OF GRAFFITI) BILL

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PURPOSE OF REPORT

1. To provide some options to the Council for a draft submission on the Manukau City Council (Control of Street Prostitution) Bill and the Manukau City Council (Control of Graffiti) Bill.

EXECUTIVE SUMMARY

2. Two local bills have been introduced to Parliament by George Hawkins, MP on behalf of the Manukau City Council; one to control street prostitution and the other to control graffiti, in the Manukau district. Submissions on the bills are due to the Local Government and Environment Select Committee by 24 February 2006.
3. A summary of both bills was provided at the Council's seminar on 8 February 2006, and staff were asked to report further on the options for the Council concerning similar measures to address these issues in Christchurch and on wording for a draft submission the Council could make on the bills. (Staff received some guidance on the general views of the Council, including that the Council would make a submission generally in support of both bills, but not discussing the detail in the bills.)
4. The only way street prostitution can be effectively controlled and/or prohibited is through legislation. A bylaw would not be effective in that it may be ultra vires and it could not provide for sufficient enforcement powers.
5. In relation to graffiti problems, again a bylaw could not provide for sufficiently effective enforcement. The existing legislative measures are not regarded by Manukau as satisfactory, and there is nothing which currently controls the sale of spray paint.
6. Legislative measures the Council could use would be the promotion of a local bill, as Manukau has done, or lobbying for amendment to the Prostitution Reform Act (PRA), in relation to street prostitution, or for separate Acts, both of which would apply to the whole of New Zealand, unless some provision was made for them only to apply to certain districts in New Zealand.
7. Promotion of a local bill may prove easier, and more expedient, for the Council (in that it has greater control over the process), than trying to bring about an amendment to the PRA, or a new Act which would address street prostitution and/or graffiti. A comment in any submission by the Council on the Manukau bills, that the Council is to investigate promoting its own local bills, may prompt the Select Committee to consider legislative changes on a national basis rather than be faced with numerous local bills. Action taken by the Council in relation to promoting any legislative measures, will need to include ascertaining the community's views. This is a requirement of section 78 of the Local Government Act 2002.
8. Attached to this report, as appendices 1 and 2, are potential wording for draft submissions to the Select Committee on each bill.
9. As the Council's submissions must be lodged with the Select Committee by 24 February 2006, a clear direction on the content of the submissions (assuming the Council resolves to make the same) is requested at this meeting.

FINANCIAL AND LEGAL CONSIDERATIONS

10. None

STAFF RECOMMENDATIONS

- (a) It is recommended that the Council first consider and then resolve whether:
- it will initiate action to investigate putting forward to Parliament a local bill for the prohibition and control of street prostitution in the district of the Christchurch City Council; and
 - it will initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council.
- (b) If the Council resolves as suggested above then a decision is also required on which parts of the draft submissions attached to this report the Council wishes to adopt. The Council then needs to resolve to make a submission on each bill, with wording as decided by the Council, including whether or not the Council wishes to appear before the Select Committee in support of its submission. (See appendices one and two.)

BACKGROUND

The Control of Street Prostitution Bill

11. The Manukau City Council (Control of Street Prostitution) Bill (Prostitution Bill) aims to give the Manukau City Council and the Police power to prevent street prostitution by prohibiting soliciting in public places in Manukau City. The Bill will apply to both prostitutes and their clients, and contains a provision intended to regulate nuisance conduct connected with street prostitution. It also provides the Police with powers to request name and address information, to issue instant fines (infringement notices) of \$500, to arrest suspected offenders, and to prosecute offenders in Court that may result in a fine of up to \$10,000. This bill does not affect the business of prostitution on private premises carried out in accordance with the provisions of the PRA.
12. Manukau City Council saw the need for this bill for their district because the PRA (and its Bylaw under that Act) did not/could not provide for the control of street prostitution, and street prostitution is not illegal under any other legislation. (In fact, the PRA expressly states that its purpose is to decriminalise prostitution.) The same situation applies in Christchurch.
13. Although the Manukau City Council had thought that the PRA would take prostitutes off the streets, by decriminalizing prostitution and providing for brothels, in Manukau the experience has been the opposite (with street prostitute numbers estimated to have quadrupled since June 2003).
14. The Manukau City Council prepared a report in relation to street prostitution ("Report of Manukau City Council on Street Prostitution - July 2005"), which provides the background to the introduction of the bill, commenting on the issues for its district in relation to street prostitution, the approaches it has taken to address the problems (which includes closed circuit TV, crime prevention through environmental design, improved coordination of Council services and stakeholder and community networking and initiatives), and makes other findings in relation to the legal options available to it. (It also comments on, and quotes from, consultation with the community on the issue of street prostitution, which was conducted in 2004, at the time the Manukau City Council was consulting on its Brothels Bylaw.)
15. The Manukau City Council report describes the lack of other enforcement options at pages 12 and 13 as follows:

"... from the onset of this problem, Council identified that it had little power to become involved in an enforcement capacity and that enforcement and policing should be undertaken by the New Zealand Police as authorised under the Summary Offences Act 1981, and should be used as the appropriate vehicle for addressing the concerns regarding prostitution and soliciting.

The police have reported that due to legislative constraints the enforcement and policing of street prostitution is problematic..

...

In submissions to the then Prostitution Reform Bill, Manukau City Council supported aspects which removed a number of double standards relating to prostitution, but expressed concern that the legislation was silent on the problem of street prostitution.

...

Between May and August 2004, Council commenced a review of its general bylaw making powers under the Local Government Act 2002 to identify bylaw making options for the control of street prostitution. The Local Government Act 2002 provides Council with powers to make bylaws for the following purposes:

- (a) protecting the public from nuisance:*
- (b) protecting, promoting, and maintaining public health and safety:*
- (c) minimising the potential for offensive behaviour in public places.*

Council proceeded as far as preparing a draft bylaw to control street prostitution, which included consultation with the New Zealand Police, New Zealand Prostitutes Collective, the Honourable George Hawkins as Minister of Police and member of Parliament for Manurewa, and Tim Barnett as promoter of the Prostitution Reform Act 2003.

The outcome of the consultation was that a bylaw cannot contain adequate provisions to control street prostitution, nor contain appropriate provisions to enable effective enforcement by Council enforcement officers or the New Zealand Police."

16. Manukau City Council concluded that a local bill would overcome the inherent problems of a bylaw to control street prostitution, and decided it was appropriate to pursue this course of action after considering several concerns with this approach. One criticism was that the bill would be contrary to the purpose of the PRA, but Manukau argues that "the bill does not re-criminalise prostitution in the whole of the City. Prostitution would continue to be legal within safe, regulated and legal brothels." Manukau also took the view that street prostitution is not conducive to any outcomes set out in section 3 of the PRA to safeguard the health and safety of sex workers and limit persons in that industry to those over 18 years of age.
17. Another criticism raised Bill of Rights issues, but Manukau says that it considers that "the nature and extent of the problem of street prostitution is such that restrictions on people's freedoms would not breach the NZ Bill of Rights Act 1990, because the controls proposed can be demonstrably justified in terms of section 5 of that Act."
18. Manukau City Council was also aware that the Prostitution Law Review Committee is required to review the PRA by 27 June 2008. Manukau says it will take advantage of the opportunity to make submissions at that time, but that in the meantime, it says it is faced with the reality that, in relation to street prostitution in Manukau City, the PRA is not working, and urgent action is required.

The Control of Graffiti Bill

19. The purpose of the Manukau City Council (Control of Graffiti) Bill (Graffiti Bill) is to minimise the graffiti problem in Manukau City by penalising offenders and providing Police and the Council with the necessary powers to control the problem. It contains provisions relating to the sale of spray paint, including requiring retailers to secure cans so that the public cannot access them without assistance, and banning the sale of spray painting cans to persons under 18, as well as requiring that a notice be displayed stating it is unlawful to sell to a minor and that evidence of age can be required.
20. As well as offences by retailers, the bill also creates offences for marking graffiti (defacing property in any way), and carrying a graffiti implement, with the intention of using it to mark graffiti, or without lawful excuse in a public place or a private place to which the person has no right of entry. The bill will also provide the Council with the power to remove graffiti on private property if it is visible from a public place, provided the owner does not object, as well as providing the Police with powers to request name and address information, and to arrest suspected offenders.
21. The Manukau City Council considers this bill is needed in its district because its statistics indicate that over 2000 graffiti marks need to be removed each month in Manukau, resulting in the Council spending over \$1.5 million dollars in graffiti eradication and community education in the previous two years. Despite these efforts the problem has been escalating, and in addition to 'conventional' spray painted graffiti marks, new types of graffiti such as crayon marks and glass cutting marks have been appearing and are more difficult, and costly, to remove.

22. In considering the alternatives to a local bill the Manukau City Council made the following comments in the executive summary to its report, "Report of Manukau City Council on Graffiti Control 2004":

"Other alternative approaches to the local bill initiative have been undertaken or considered in Manukau. In addition to rapid graffiti removal and community education schemes, Council staff have been liaising with Local Government New Zealand staff to lobby government on legislative changes. The opportunity of introducing a bylaw to ban the sale of spray painting cans to juveniles has also been examined. Council's legal advice has said that Council, as a Local Authority, does not have the legal power to achieve such a control through a bylaw.

The proposed local bill for graffiti control will provide the Council with the authority that will not be achieved by a bylaw. It will not only deter graffiti offenders, but also regulate the possession, sale and display of graffiti implements, as well as the source and the effect of graffiti. It will be a practical way to implement the legislative changes which have been advocated by the Council in recent years.

...
Graffiti is ultimately an urban issue rather than a rural one. Even in urban areas, the level of the problem varies in each city. The need for legislative methods may be varied by jurisdiction. A Local Bill is, therefore, considered as the most appropriate option for introducing legal methods to address the graffiti issue in Manukau."

23. In relation to the graffiti offences provided for in the bill it seems likely that the graffiti marking offence is already covered by either the offence of wilful damage in section 11, or billsticking/defacing in section 33 of the Summary Offences Act 1981 (although the proposed offence in the Graffiti Bill carries a much greater fine). Whether such an offence is needed is likely to be raised in other submissions made on this bill. The controls proposed in relation to the sale of spray paint, however, are not covered by other legislation.

Solutions for Council

24. Implementing a bylaw could not effectively deal with these problems. In the case of prostitution this is partly because prostitution is a legal activity. The Council, like Manukau City Council, must consider other legislative measures if it wants to take action in relation to street prostitution and graffiti. The options available to the Council are to:
- promote local bills, similar to the Manukau bills; or
 - lobby for amendment to the Prostitution Reform Act (in relation to street prostitution) or for separate Acts, both of which would apply to the whole of New Zealand, unless some provision was made for each Act to only apply to certain areas.
25. The Council will have greater control of the process where it promotes a local bill as opposed to lobbying for changes to an Act or the introduction of a new Act, which may apply to the whole of New Zealand. In addition, in relation to amending the PRA, if it is to be reviewed in 2008 by the Prostitution Review Committee anyway, there is unlikely to be any amendments to the PRA successfully introduced before then.
26. A local bill is one of four types of bill that can be introduced to Parliament (the others being a Government bill, a Member's bill and a private bill). A local bill is a public bill promoted by a local authority which affects a particular locality only. A local bill cannot amend a public Act (for example the Local Government Act 2002), except purely consequentially. The support of a Member of Parliament is necessary to introduce the bill into the House. It is convention that a local Member of Parliament is in charge of the bill. The Council will have to request one of its local Members of Parliament to promote the bill.

27. The Council should consult with the community before it proceeds with either course of action, but particularly if it wishes to proceed with local bills. Under section 78 of the Local Government Act 2002, at each stage of its decision-making, the local authority must consider the views and preferences of those likely to be affected by, or to have an interest in the subject matter of the decision. Although compliance with section 78 does not, of itself, require the local authority to undertake a specific consultation process.
28. It should also request research and reports to investigate the basis for concerns with street prostitution and graffiti (as Manukau City Council has done, as set out in its reports), and other options that may be available to it to address the concerns (some of which may already be implemented by the Council). Identifying and considering all reasonably practicable options before reaching a decision is required by section 77 of the Local Government Act 2002. It may also wish to wait, if it is to take action to draft a local bill, for the outcome of the Manukau bills process.
29. The Council, if it is to promote local bills along similar lines to the two Manukau bills, can also "tailor" clauses to fit the situations which arise in Christchurch City, which may be different from Manukau. This may include whether some responsibility should be placed on parents or guardians of persons marking graffiti, or on those who supply minors with spray cans, not just those who sell it, and other issues which the relevant units of the Council who would advise on these matters might raise.

OPTIONS

30. The Council has the option of making submissions or not making submissions on these bills. On one hand, as these bills only affect the Manukau City District, and are not relevant to the Christchurch area, there is no actual need to make a submission. However, if the Council wishes to support another local authority in its efforts to enact local legislation, particularly on issues which are also of concern to the Council, then the Council should make a submission. The guidance given to staff at the seminar on 8 February was that the Council favoured making a submission on both bills on this basis, without submitting on the detail of the provisions in the bill, because they were not immediately relevant to Christchurch City. It is recommended that a submission is made on this basis.
31. Within the submissions it makes on the bills the Council also has a number of options. It can simply state that it supports the intent of the bills, and the action that Manukau City Council has taken in introducing these bills. Another option is to add to this statement, by submitting that the Council also intends to initiate action in relation to promoting its own local bills on the same topics. If the Council agrees to add this to the submission then it could also submit that, the Select Committee should investigate whether a national solution to these problems would be more appropriate, rather than individual local bills. Before it could make the second and third submission the Council would first need to have resolved that it will initiate action to investigate promoting its own local bills.

RECOMMENDATIONS

32. It is recommended that the Council first consider and then resolve whether:
 - it will initiate action to investigate putting forward to Parliament a local bill for the prohibition and control of street prostitution in the district of the Christchurch City Council; and
 - it will initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council.
33. If the Council resolves as suggested above then a decision is also required on which parts of the draft submissions attached to this report the Council wishes to adopt. The Council then needs to resolve to make a submission on each bill, with wording as decided by the Council, including whether or not the Council wishes to appear before the Select Committee in support of its submission.