



16 June 2004

Christchurch City Council
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Draft Brothels (Location and Signage) Bylaw 2004

1. We refer to your email of 10 June 2004 and to our recent telephone discussions. You have asked us to:
 - Consider the draft report prepared by the Prostitution Reform Act Subcommittee and the draft Brothels (Location and Signage) Bylaw ("the draft bylaw"), and advise whether adequate reasons are given for the approach taken in those documents to exemption of existing brothels;
 - More generally, scrutinise the bylaw and suggest any improvements.

Exemption of existing brothels outside the permitted area

2. The Subcommittee's report recommends that three existing establishments outside the permitted area be exempted from compliance with the location control in clause 6:

JoJo's, 464 Worchester Street
Givenchys, 284 Kilmore Street
B.J.'s, 127 Worchester Street
3. The stated reasons for exempting these three establishments are:
 - Each had been a registered massage parlour under the Massage Parlours Act 1978;
 - The public could reasonably anticipate that by virtue of their long standing operation they would be allowed to continue to operate under the bylaw;

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- The Council has not received complaints relating to nuisance caused by these businesses in the past;
 - The owners made submissions during the special consultative procedure;
 - Each business has been operating over a considerable number of years.
4. The report suggests that two other existing establishments not be exempted:
- Furotica, 15A Thackers Quay
Club 439, 439 Colombo Street
5. The report's reasons for recommending that these two establishments not be exempted are:
- That there is no evidence of having been licensed under the Massage Parlours Act 1978;
 - They have no operational history known to the Council.
6. We are not convinced that the Council's reasons for granting exemptions to some existing premises, but not others, are the most appropriate. In particular, while registration under the Massage Parlours Act 1978 was one aspect of legal compliance for existing establishments, massage parlours were never allowed to operate as brothels under that or any other Act, before the Prostitution Reform Act 2003 came into force. Therefore, registration under the Massage Parlours Act should not be seen as having conferred something analogous to existing use rights. Second, we are not sure whether the public *would* reasonably anticipate that longevity of operation would be sufficient to allow an existing establishment to continue: the Subcommittee's report does not provide any evidence to support this statement. Third, the fact that owners of some existing establishments but not others made submissions can only be of relatively minor relevance, compared to a solid policy foundation for any distinctions drawn between existing premises.
7. Finally, the fact that existing establishments have operated over a considerable number of years is not in itself particularly relevant if the Council has already taken into account the "track record" of the establishment in terms of complaints etc. We also note that in relation to the two establishments the report proposes not be exempt, it is not clear why the Council is unaware of their operational history. Without a history of complaints, operational history should not in our view count *against* a particular establishment.
8. There are also factors which weigh in favour of all existing premises outside the permitted area being treated on an equal footing: for example, that they may have long term leasing or employment arrangements that stand to be affected if they can no longer operate after 7 July 2004.

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9. In our view it is appropriate to go back to the underlying reasons why the Council is prepared to allow existing brothels outside the permitted area to continue. We presume that aside from legal risks associated with the contrary approach, the major policy reason is that the effects of these establishments are, in all the circumstances, considered to be acceptable. Such a conclusion is likely to be based on a number of factors including the nature of the surrounding area in which the brothel is located, the character, scale and intensity of the operation, and the effects generated by the operation.
 10. You have advised us that Club 439 located at 439 Colombo Street is no longer in operation, and the premises is currently vacant. This leaves Furotica at 15A Thackers Quay as the only existing establishment that might be caught by the location control in clause 6.
 11. If this or any other existing premises is to be singled out as not exempt from the location control, in our view there should be a clear reason for that distinction such as the effects of the existing operation and/or the character and amenity value of the surrounding area. From our brief telephone discussion with you it is not apparent that Furotica, being located in an industrial zone, is in a particularly sensitive area with a high level of amenity. The Subcommittee's report also states that the operational history of this establishment is not known to the Council.
 12. In conclusion, we suggest that this section of the Subcommittee's report be rewritten, and that any distinctions between existing premises in relation to exemption from the location control be based primarily on factors such as the nature of the surrounding area in which the brothel is located, the character, scale and intensity of the operation, and the effects generated by the operation, and operational history including complaints. We also consider it advisable for the Council to ensure that any existing premises which are exempted not be permitted to alter the character of their operations or increase their scale and intensity, as this would undermine the rationale for their exemption in the first place. Accordingly, we have suggested some additional wording to this effect at the end of clause 7.1 of the draft bylaw.
 13. We will email you separately the draft bylaw with our suggested changes redlined. We are also finalising our thoughts on the approach of distinguishing between different types of brothel and different location controls applying accordingly. We will provide you with these tomorrow morning.

Yours faithfully
SIMPSON GRIERSON

Padraig McNamara