



Christchurch City Council

**BROTHELS LOCATION AND SIGNAGE BYLAW
SUBCOMMITTEE**

WEDNESDAY 10 DECEMBER 2008

AT 1PM

IN THE CAMELLIA ROOM, CIVIC OFFICES

Committee: Councillors Sue Wells (Chairperson), Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid, Bob Shearing, Mike Wall, and Chrissie Williams.

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1. **APOLOGIES**

2. **CONSIDERATION OF STAFF REPORT – CONTROLS OF SIGNS ADVERTISING COMMERCIAL SEXUAL SERVICES**

Attached.

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BRIEFING NOTE

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Brothel Location and Signage Bylaw Subcommittee meeting

Meeting date: 10 December 2008

Subject: Controls over signs advertising commercial sexual services

ADOPTED COUNCIL RECOMMENDATION

1. On 27 November 2008 the Council determined that a bylaw controlling signage advertising commercial sexual services should be examined, in conjunction with the Brothels Location and Signage Subcommittee, and that a possible appropriate option be considered for consultation. The staff recommendation that (on the basis of a section 155 analysis) the current bylaw should be revoked and not replaced was rejected.

ISSUE

2. Due to the lack of any evidence that current, or indeed past signage, on businesses of prostitution have created nuisance or offence to ordinary members of the public, it is difficult to determine a basis for a perceived problem.
3. As such, advice is needed from Councillors to staff as to what specific issues they wish to be considered as fitting within the criteria under the bylaw-making powers of the Prostitution Reform Act 2003.

BYLAW-MAKING POWERS UNDER THE PROSTITUTION REFORM ACT 2003

4. In relation to signage the Prostitution Reform Act provides for territorial authorities to make bylaws:
 - prohibiting or regulating signage in, or visible from, a public place that advertises commercial sexual services.¹
5. In the case of a bylaw prohibiting or regulating signage, the Prostitution Reform Act requires that the Council must be:

“...satisfied that a 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”.²

SECTION 155 OF THE LOCAL GOVERNMENT ACT 2002

6. In order to comply with section 155, the Council needs to identify the perceived problem and formally determine that a bylaw is the most appropriate way to deal with the perceived problem. It then needs to determine 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 (NZBORA).
7. However, for a bylaw regulating or prohibiting signage advertising commercial sexual services made under the bylaw-making power in the Prostitution Reform Act, the last part of section 155 (NZBORA) does not apply, for example, freedom of expression.³

¹ Section 4(1) of the Prostitution Reform Act 2003 defines these as;

“commercial sexual services means sexual services that—

(a) involve physical participation by a person 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)”

² Section 12(2) of the Prostitution Reform Act 2003

³ This is specifically stated in the bylaw-making power in the Prostitution Reform Act.

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8. 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.

THE CURRENT BYLAW

9. The Council introduced a bylaw covering both the location and signage of brothels in 2004.
10. A judicial review in 2005 determined that the location provisions within the bylaw were unreasonable and those provisions were quashed.
11. The provisions regarding signage were not appealed, hence they remain in force.
12. The current bylaw only covers the former Christchurch City Council area, having been made prior to the amalgamation with Banks Peninsula District Council. Banks Peninsula District Council did not have a similar bylaw controlling location and signage.
13. In the current bylaw, businesses of prostitution, or any possible SOOBs, in the inner city "brothel zone" are permitted signage advertising commercial sexual services subject to compliance with a number of requirements, including the signage being affixed to the premises in which the commercial sexual services are provided, and the signs not displaying information other than:
 - (i) The name of the business which provides those commercial sexual services; or
 - (ii) The name of the person conducting the business of providing those commercial sexual services; or
 - (iii) The number of the property on which the premises are situated.⁴
14. Signs must not display pictorial images, exceed 0.3 m² in surface area or be illuminated by flashing lights.
15. Some of the matters covered by the current bylaw can be controlled through the provisions in the City Plan or District Plan and the Advertising Standards Authority Code of Practice, although may not be as restrictive in certain areas or zones.

OTHER TOOLS FOR ADDRESSING SIGNAGE CONCERNS

16. When reviewing a bylaw, as with any Council decision-making, other options for addressing the problem need to be considered. Additionally, the Local Government Act requires consideration of the *appropriateness* of a bylaw for addressing the problem/s.

City Plan

17. The display of outdoor advertisements (such as signs advertising commercial sexual services) is controlled under the provisions of the City Plan. The City Plan covers area, height, illumination and relationship to the site.⁵ Similar provisions apply under the Banks Peninsula District Plan.
18. The City Plan does not allow signage that fails to comply with Advertising Standards.⁶

⁴ Subclause 5(3) Signage Advertising Commercial Sexual Services, Christchurch City Brothels (Location and Signage) Bylaw 2004

⁵ Christchurch City Plan, Volume 3, Chapter 10

⁶ Christchurch City Plan Volume 3 : Part 10 Heritage and Amenities : 3 Display of outdoor advertisements

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Advertising Standards

19. The Advertising Standards Authority Code of Practice contains criteria for offensiveness and decency in advertising. The Advertising Standards Complaints Board adjudicates on complaints received about advertisements which may be in breach of the Code of Practice. The Code contains the following:

Decency - Advertisements should not contain anything which clearly offends against generally prevailing community standards, taking into account the context, medium, audience and product (including services).

Offensiveness - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence, taking into account the context, medium, audience and product (including services).⁷

20. Such rules apply to advertisements for commercial sexual services, the same as they would for any other legitimate businesses.

COMPLAINTS TO CCC ABOUT SIGNAGE

21. On the basis of over four years' experience with the bylaw, and three years since the location requirements were quashed, there have been limited problems with signage.
22. There has been one complaint received in the four years since the introduction of the bylaw.
23. The signage provision in the current bylaw prohibits signs from most parts of the city, except limited inner city areas. There have been no problems with such signs and any problems of offensive signs would have been able to be dealt with under provisions of the City Plan and/or the Advertising Standards Authority.
24. The major issue initially raised during the development of the 2004 bylaw with regards to signage appeared to refer to alleged "offensive" or "sexually explicit" signage that was seen to exist in the city, but those signs were not associated with advertising "commercial sexual services" *per se*. Examples raised at the time included signs on a hotel advertising "topless" barmaids, a sex shop window, and a billboard advertising lingerie.

PUBLIC NUISANCE AND EXISTING CHARACTER

25. The Prostitution Reform Act allows a bylaw to be made to prevent the public display of signs that are "likely to cause a nuisance or serious offence to ordinary members of the public using the area".
26. 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.⁸
27. It may be unlikely that signage only indicating that a business of prostitution (a legal activity) is undertaken at a premises would necessarily "cause a nuisance or serious offence to ordinary members of the public using the area".

⁷ Advertising Standards Authority, Advertising Codes of Practice – September 2008, http://www.asa.co.nz/pdfs/ASA_Codes.pdf

⁸ Laws of New Zealand, Nuisance at Para 14

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28. Likewise, in commercial or business zones where signage is extensive and may show partially clothed people or sexually suggested imagery, it may be difficult to justify that signage advertising commercial sexual services would be incompatible with the existing character of the area. Additionally, the City Plan requires some consideration of the “existing character of the area” for signage.
29. The Council must have evidence that signage creates nuisance or be offensive to ordinary members of the public or is incompatible with the existing character or use of the area. The Council may hold the view that there is a perceived problem that may become real if regulatory controls presently existing are not continued.

CONCLUSION

30. The Council needs to determine: (in order):
 - (a) That there is a problem, and in order to comply with the Prostitution Reform Act’s bylaw-making power, it must determine if the identified problem (signage) may be either:
 - Offensive or a nuisance to ordinary members of the public (section 12(2)(a)), or
 - Fails to fit in with the existing character of the area (section 12(2)(b)).
 - (b) Whether or not a bylaw is the *most appropriate* way of dealing with the identified problem (section 155(1) of the Local Government Act). This will require some consideration of other tools eg the City Plan and Advertising Standards.
 - (c) The form of the bylaw. This would include the extent to which signage is regulated or prohibited, and the areas in which, or times during which, the regulation or prohibition would apply (section 155(2) of the Local Government Act).