

# REGULATORY AND PLANNING COMMITTEE AGENDA

WEDNESDAY 29 FEBRUARY 2012

AT 9.15AM

IN COMMITTEE ROOM 2, CIVIC OFFICES, 53 HEREFORD STREET

**Committee:** Councillor Sue Wells (Chairperson),  
Councillors Peter Beck, Helen Broughton, Sally Buck, Tim Carter, Jimmy Chen, Barry Corbett,  
Jamie Gough, Yani Johanson, Aaron Keown, Glenn Livingstone and Claudia Reid.

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- PART A - MATTERS REQUIRING A COUNCIL DECISION
- PART B - REPORTS FOR INFORMATION
- PART C - DELEGATED DECISIONS

## INDEX

PAGE NO

- PART C 1. APOLOGIES
- PART B 2. DEPUTATIONS BY APPOINTMENT
- PART A 3. FEEDBACK FROM STREET WORKERS WORKING PARTY
- PART C 4. SUBMISSION ON THE MANUKAU CITY COUNCIL (REGULATION OF PROSTITUTION IN SPECIFIED PLACES) BILL

**REGULATORY AND PLANNING COMMITTEE 29. 3. 2012**

- 1. APOLOGIES**
- 2. DEPUTATIONS BY APPOINTMENT**
- 3. FEEDBACK FROM STREET WORKERS WORKING PARTY**

Verbal feedback will be given at the meeting from the Chairperson of the Working Party.

## REGULATORY AND PLANNING COMMITTEE 29. 3. 2012

### 4. SUBMISSION ON THE MANUKAU CITY COUNCIL (REGULATION OF PROSTITUTION IN SPECIFIED PLACES) BILL

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services
<b>Officer responsible:</b>	Legal Services Manager
<b>Author:</b>	Judith Cheyne

#### PURPOSE OF REPORT

1. To seek the Committee's approval of a submission on behalf of the Council on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill ("the Bill") (a copy of the Bill is attached as **Appendix 1** of this report).

#### EXECUTIVE SUMMARY

2. The Bill had its first reading in Parliament on 8 September 2010, and the submissions period for the Bill closed on 5 November 2010. The Christchurch City Council did not make a submission on the Bill at that time as a result of the September earthquakes. The Bill has now been taken over by the new Auckland Council, and the Local Government and Environment Select Committee has issued an interim report on the Bill (attached as **Appendix 2**).
3. The interim report notes that the Auckland Council has released a supplementary order paper with proposed amendments to the Bill to make the new Auckland Council the promoter of the Bill and to change the definition of "district" in the Bill. The Select Committee has noted in its interim report that as the new "district" (the Auckland Council district) could apply to a much wider area it may affect more people than the original Bill and they have decided to call for additional submissions on the Bill and the supplementary order paper. The supplementary order paper does not suggest any other changes to the bill. The closing date for the submissions is 29 February 2012.
4. The Regulatory and Planning Committee was given a delegation by Council on 23 February 2012 to approve a submission on the Bill on behalf of the Council. A submission must be approved and sent to the Select Committee immediately following this meeting in order to meet the submissions closing date.
5. In brief the aim of the Bill is to provide for a specific local bylaw-making power to control the location of prostitutes who work on the street, and not in a brothel or a small owner-operated brothel. The business of prostitution in private premises carried on in accordance with the provisions of the Prostitution Reform Act 2003 will not be affected.
6. The power to make bylaws can be used only if the Council is first satisfied that it is necessary to do so to prevent activities or behaviour in a public place that are likely to cause a nuisance or serious offence to ordinary members of the public using the area, or because the activities or behaviour are incompatible with the existing character or use of that area. No bylaw may be made that has the effect of prohibiting street prostitution in all public places in the district.
7. The Bill, as drafted/amended by the Supplementary Order Paper (SOP), will only apply within the Auckland district. If the Council wanted the provisions in the Bill to apply to its district, it will have to make a submission that the Government should take over the Bill. The Government would need to include provisions in the Bill that would allow any Council to use the bylaw making power, as considered necessary for their districts.
8. Such provisions could be similar to the "opt in" power to make bylaws that was provided for in the Land Transport Act 1998 (as amended by the Land Transport (Enforcement Powers) Amendment Act 2009) in relation to bylaws to control cruising. At the time those provisions were included in the Act the problems associated with cruising were not a significant issue for every Council in New Zealand (only the Christchurch and Manukau Councils were mentioned in the regulatory impact statement for the Bill).

## REGULATORY AND PLANNING COMMITTEE 29. 3. 2012

### 4 Cont'd

9. There are, however, a number of provisions in the Bill that need to be amended so that the Bill provides for an effective bylaw-making power to control the location of street prostitutes. The issues in the Bill identified as requiring rectification include:
  - There is no clear definition in the Bill that means the bylaw-making power can apply to the solicitation side of the street prostitution activity. It is presently unclear in the Bill because there is no definition of “business of prostitution” in the Bill, even though this phrase is used in the Bill, and there is a definition of “business of prostitution” in the Prostitution Reform Act 2003.
  - It is not clear whether the Council has to apply the section 155 Local Government Act (LGA) tests in making the bylaw, in addition to the tests in clause 7 of the Bill. The suggested submission is that it be made clear that section 155 does not apply. If section 155 did apply it would require that the Council be satisfied the bylaw is the most appropriate way to address the perceived problems. As most of the “problems” arising from the street prostitution activity are already illegal and could be enforced by the Police through the Crimes Act, Summary Offences Act, Litter Act etc, it is difficult for the Council to be satisfied that a bylaw made under the Bill is the most appropriate way to address the issues.
  - The use of the phrase “reasonably necessary” in clause 5 of the Bill. Greater clarity is needed as to how the Council is to assess whether or not a bylaw is reasonably necessary.
  - Clause 6 states a Council “must, where reasonably practicable,” signpost specified places (the places it specifies in a bylaw. As there is no penalty if the Council does not signpost a specified place, this requirement should be the Council “may” signpost a specified place.
  - Clause 12 needs to be amended so that prostitution activity occurring in hotels and motels is not caught and it needs to be made clear whether pimps and minders will be committing an offence under the Bill if they are in a specified place.
  - Clauses 13 & 14 provide reasonably wide powers to the Police. The Council should discuss whether or not those powers are appropriate, or whether it is a matter for the Police rather than the Council.
10. The matters that require amendment in the Bill are discussed in greater detail in the draft submission (appendix 3 – the draft submission will be tabled at the meeting).
11. The Council also has the option of not making a submission in respect of the Bill. It could decide that there is no need for it to make a submission on the Bill, given that the Bill does not currently apply to the Council’s district. It could take steps to promote its own local Bill to deal with issues arising from street prostitution. It has established a working party to deal with the issues presented by the street prostitutes currently located in the residential part of Manchester Street, north of Bealey Avenue so it may also prefer to wait until the working party has completed its terms of reference before taking any other steps.
12. On the other hand, making a submission for the Government to take over the Bill and provide a bylaw-making power for any Council in New Zealand to use, while also recommending improvements to the Bill, does not mean the Council would necessarily use any powers that might be provided. It may, however, result, in better legislation being enacted.
13. The Council would still have to make a separate decision, if a New Zealand wide bylaw making power was provided for, on the need to make a bylaw to control street prostitution in its district. That decision would need to consider the current state of matters within the Councils district, and the effect of other measures the Council may have adopted. Therefore, making a submission on the Bill now, seeking a New Zealand-wide bylaw-making power, does not pre-determine any future Council decision on whether or not it would seek to enact a bylaw, or what form such a bylaw would take.

## REGULATORY AND PLANNING COMMITTEE 29. 3. 2012

### 4 Cont'd

14. If the Council does not make a submission at this time, and it did wish to consider making a bylaw in the future, then it would have no choice but to promote its own local bill (or attempt to use existing bylaw-making powers, which the Council has been advised could be difficult to use and provide for an effective bill with effective means of enforcement). A local bill would be significantly more costly for the Council than making a submission on this Bill and attempting to persuade the Government that a national bylaw-making power should be provided.

#### **FINANCIAL IMPLICATIONS**

15. This report recommends a submission to be made to a Parliamentary Select Committee. If the Council wishes to speak to its submission before the Committee and the Committee allows for that then there may be a cost in having a Councillor and/or staff attend on the Committee.

#### **LEGAL CONSIDERATIONS**

16. No legal considerations are involved with this information report.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

17. Not applicable.

#### **ALIGNMENT WITH STRATEGIES**

18. Not applicable.

#### **CONSULTATION FULFILMENT**

19. The report and draft submission have been reviewed by the Strategy and Planning Unit, and the Inspections and Enforcement Unit. A workshop with Councillors on the submission will take place on 24 February 2012.

#### **STAFF RECOMMENDATION:**

That the Committee:

- (a) Resolve to approve the draft submission
- (b) Advise whether it wishes to appear in support of its submission before the Select Committee, and if so, which Councillor should appear.

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BACKGROUND

20. The policy statement for the Bill states that the Bill:

*“... provides for local bylaw control over the locations where the business of prostitution or commercial sexual services may occur when that business or those services take place or are conducted other than in a brothel or a small owner-operated brothel in Manukau City.*

*The purpose of the Bill is to authorise the Manukau City Council to make bylaws prohibiting the business of prostitution or commercial sexual services in specified public places in Manukau City. The business of prostitution in private premises carried on in accordance with the provisions of the Prostitution Reform Act 2003 will not be affected.*

*The Bill gives the Manukau City Council the power to make bylaws for this purpose only if it is first satisfied that it is necessary to do so to prevent activities or behaviour in a public place that are likely to cause a nuisance or serious offence to ordinary members of the public using the area, or because the activities or behaviour are incompatible with the existing character or use of that area. No such bylaw may have the effect of prohibiting the conduct of the business of prostitution or commercial sexual services in all public places in the district.”*

21. The Bills Digest (prepared for Parliament to assist it in its consideration of the Bill) explains more about the Bill and the history behind the Bill, including the earlier local bill promoted by Manukau City Council: the Manukau City Council (Control of Street Prostitution) Bill 2005 (the 2005 Bill).
22. The 2005 Bill had the aim of prohibiting street prostitution by making it an offence to solicit for prostitution in a public place in Manukau City, and the offence was applicable to both sex worker and client. The bill also sought to create offences for conduct associated with prostitution, such as “loitering”, and provided police with the powers to require information and to arrest suspected offenders.
23. The current Bill also proposes that the Police will exercise powers of enforcement in respect of any Bylaws that might be made by the Council (if the Bill is passed in its current form). This removes the need for the Council to undertake the difficult task of enforcement. It is much easier for the Police to carry out effective enforcement of such activities as the Police powers are greater than Councils’ powers. An example of the Police effectively enforcing a Council bylaw is the enforcement of liquor bans in place under the Council’s Alcohol Restrictions in Public Places Bylaw 2009.
24. The 2005 Bill was referred to the Local Government and Environment Committee which reported back on the Bill on 24 February 2006, recommending that it not be passed. The 2005 Bill was negated at its second reading on 11 October 2006. The Select Committee acknowledged that the Council had problems but stated: “In our view, there are various options available to Manukau City Council to increase street safety for all people which are more likely to be effective than the passing of a local Act.”
25. The Select Committee also believed the 2005 Bill presented enforcement and jurisdictional difficulties. In effect it would be a localised amendment to the Prostitution Reform Act 2003. That Act decriminalised soliciting in New Zealand, but the 2005 Bill sought to re-criminalise street soliciting within the geographical boundaries of Manukau City. Allowing a local Act to amend a public statute in this way would set a significant and undesirable precedent. There was also a concern that clause 12 of the 2005 Bill was inconsistent with the New Zealand Bill of Rights Act 1990.

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26. The report also noted that the review of the Prostitution Reform Act 2003 may recommend that further support for communities be developed at a national level, including in relation to street prostitution issues. The Select Committee noted that it was keen to see the intent of the 2005 Bill and its report included in the Prostitution Law Review Committee's consideration, and that it would welcome any action that enhances the efficacy of the Act. The Prostitution Law Review Committee presented its report on 14 May 2008. The executive summary of that report included the following statement about street based sex workers, and the following four recommendations:

*"Street-Based Sex Workers*

*The Committee endorses the findings of the CSOM [Christchurch School of Medicine] study that 'the numbers of street-based sex workers have remained stable since the enactment of the PRA, with comparable numbers on the streets to estimates done prior to decriminalisation'. The CSOM survey found that the street-based sector made up 11% of the sex industry in 2006, making it by far the smallest sector.*

*Complaints about street-based sex workers have predominantly been made about the Christchurch and Manukau street prostitution areas. The Committee concludes the effects of street-based prostitution can be managed through proactive measures taken by local councils (the provision of lighting and street cleaning), Police (Police presence to discourage disorderly or anti-social behaviour), and NGOs (providing support services). Further, because under age people are more likely to work in the street sector, a Police presence is necessary to discourage clients seeking contact with under age people. Such Police action should be used in conjunction with other child protection measures.*

*The Committee considers that the purpose of the PRA, particularly in terms of promoting the welfare and occupational health and safety of sex workers, cannot be fully realised in the street-based sector. The Committee recognises the danger street work poses to sex workers, and acknowledges the concern and upset it causes communities. The Committee considers street-based sex workers should be encouraged to either move to a safer, indoor setting, or leave sex work altogether.*

*Street-Based Sex Workers*

- *Legislative approaches that aim to criminalise street-based sex workers should be avoided.*
- *Street-based sex workers should be supported to work safely and with consideration for local communities.*
- *Street-based sex workers should be encouraged to find alternatives to street-based sex work. NGOs should be adequately funded to facilitate this.*
- *Local government should adopt practical solutions to manage areas used by street-based sex workers and their clients."*

27. The current Bill is quite different from the 2005 Bill as it does not seek to completely prohibit and criminalise street prostitution but seeks a bylaw-making power so that the Council can specify particular public places where the activity is prohibited on the basis of nuisance and/or serious offence to members of the public. The Bill also states that the Council cannot prohibit the conduct of the business of prostitution or commercial sexual services in all public places in the district. In the first reading debate on the new Bill George Hawkins stated that the Council needed this new Bill being proposed because:

*"...It has used all the options we would expect a council to use. It has used better street lighting, closed-circuit television, Māori wardens and ambassadors, and of course the police have been directed to look at the problem. But prostitution is just one of many social problems that are impacting on South Auckland. ... we have a lot of people who are very upset that there is a mix of alcohol abuse and street prostitution going on at the same time. Last time, I said it was a plea from Manukau City Council for help. This bill is also a plea for help from Manukau City Council..."*

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**Options**

28. The Council has options to make a submission or not. If it chooses to make a submission now, including a submission that the Government should take over the Bill and provide a national bylaw-making power to regulate the location of street prostitutes, which the Government acts on, the Council still has to make a further decision on whether or not to make a bylaw. If the Council does not make a submission on the Bill then the Government may not pass the Bill, as either a local Bill or a Government Bill. The Council then has no opportunity to make a bylaw unless it pursues its own local bill.