

1. INTRODUCTION OF BROTHELS (LOCATION AND SIGNAGE) BYLAW

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The purpose of this report is to recommend that the Council:

- (a) approve the attached draft bylaw to regulate the location of brothels and signage advertising commercial sexual services in the Council's district; and
- (b) commence the special consultative procedure under the Local Government Act 2002 to make that bylaw.

BACKGROUND

On 14 July 2003, the Prostitution Reform Act Subcommittee was formed by the Regulatory and Consents Committee to consider the major issues facing the Council presented by the Prostitution Reform Act 2003. The Subcommittee, through consultation with stakeholders and the public at large, was charged with identifying and assessing the various options for addressing issues raised by the Act. The Subcommittee was also to recommend the most practicable option, if any, the Council should adopt to address those issues. On 24 July 2003 the Council resolved that the Subcommittee report to a special meeting of the Council on 19 December 2003.

Subsequently, the Subcommittee examined the issues and undertook extensive consultation, both with stakeholder groups and the general public. As a result several problems were perceived which the Act was likely to create if the location of brothels and signage advertising commercial sexual services were not controlled in some way. These were:

- (a) the likelihood of explicit and offensive signage developing;
- (b) the nuisance effects of brothels;
- (c) the creation of a red light district in the city;
- (d) brothels operating in predominantly residential areas.

The Subcommittee considered and assessed, in accordance with section 77 of the Local Government Act 2002, what it identified were all the reasonably practicable options for addressing the perceived problems. It concluded that a bylaw, made pursuant to the Council's bylaw-making powers contained in sections 12 and 14 of Prostitution Reform Act, was the most appropriate means of addressing the perceived problems. Section 12 of the Act authorises territorial authorities to make bylaws controlling signage advertising commercial sexual services. Section 14 authorises territorial authorities to make bylaws regulating the location of brothels.

The Subcommittee's report, together with a report detailing the assessment of the options identified by the Subcommittee, were considered by the Council on 19 December 2003. At that meeting the Council resolved that a bylaw was the most appropriate way of addressing the perceived problems.

PROCEDURE FOR MAKING THE BYLAW

Before commencing to make the bylaw, the Council must first address the matters referred to in section 12(2) of the Prostitution Reform Act 2003 and in section 155 of the Local Government Act 2002. Once those matters have been addressed, the Council must then follow the special consultative procedure set out in Section 83 of the latter Act.

Section 12(2) of the Prostitution Reform Act 2003

This section provides that a bylaw may only be made under section 12 of that Act if the Council is satisfied that it 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.”*

On 19 December 2003 the Council considered a report from the Subcommittee which set out in detail its findings in regard to the public consultation it undertook. That consultation was in the form of a questionnaire inviting responses to specific questions and making provision for comments on matters outside the scope of the questions. A number of the questions specifically related to signage. The Subcommittee found that:

- (a) In regard to signage outside a brothel in the Central Business District, the large majority of respondents supported discreet advertising only, with requirements that prohibited pictorial images, neon lighting, flashing lights, explicit wording and the listing of services. They considered that signage should be "G" rated and "family friendly" to the extent that children would not be affected;
- (b) In relation to signage outside a suburban brothel, an overwhelming majority of respondents supported a total prohibition on signage (most respondents were in fact strongly opposed to the presence of brothels in residential areas);
- (c) In relation to the content of signage advertising commercial sexual services generally, the majority of respondents were opposed to signage which was prominent, sexually explicit, contained nudity, graphic pictures or neon lighting.

Through the consultation process the Subcommittee found that there was already a considerable amount of serious offence caused to ordinary members of the public by some signage, associated with massage parlours, which was already present in the city.

In summary, the consultation process resulted in a wide range of concerns being expressed by members of the public especially to the signage likely to be associated with brothels and the perceived explicit nature and offensiveness of that signage.

Having regard to the results of the public consultation the Subcommittee has no doubt that a bylaw, controlling signage advertising commercial sexual services, is necessary in terms of section 12(2)(a).

The provisions of the attached draft bylaw which relate to signage have been drafted in a manner so as to address the concerns expressed by the majority of those members of the public who participated in the consultation process.

Section 155 of the Local Government Act 2002

Section 155(1) provides that before commencing the process to make a bylaw, the Council must determine whether a bylaw is the most appropriate way of addressing the perceived problems. On 19 December 2003 the Council resolved that a bylaw was the most appropriate way of addressing those problems perceived by the Subcommittee.

Section 155(2) provides that once the Council has determined that a bylaw is the most appropriate way of addressing the perceived problem it must, before making the bylaw, determine whether the proposed bylaw:

- (a) is the most appropriate form of bylaw; and
- (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.

Section 155(3) provides that no bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990.

Attached (Appendix 1) is a draft bylaw considered by the Subcommittee to be the most appropriate form of bylaw for addressing the perceived problems.

Section 13(2) of the Prostitution Reform Act 2003 provides that a bylaw may be made under section 12 of that Act (that is, controlling signage advertising commercial sexual services) even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

Council officers consider that the draft bylaw would not give rise to any implications under the New Zealand Bill of Rights Act 1990 in terms of section 151(3) of the Local Government Act as modified by section 13(2) of the Prostitution Reform Act 2003.

COMMENCEMENT OF SPECIAL CONSULTATIVE PROCEDURE FOR MAKING THE BYLAW

To commence the special consultative procedure to make the bylaw the Council must comply with section 83(1) of the Local Government Act 2002. For this purpose the Council must, amongst other things:

- (a) Adopt, in accordance with section 83(1)(a) a statement of proposal together with a summary of the information contained in that proposal. That summary must comply with section 89; and
- (b) Include, in accordance with the requirements of section 83(1)(b), the statement of proposal on the agenda for a subsequent meeting of the Council; and
- (c) Make, in accordance with section 83(1)(c), the statement of proposal available for public inspection both at the Civic Offices and such other places as the Council determines necessary to provide all ratepayers and residents of the district with reasonable access to the statement; and
- (d) Give, in accordance with sections 83(1)(e) and 83(1)(g), public notice (and such other notice as the Council considers appropriate) of the proposal and the consultation being undertaken, together with notice of the period within which submissions on the proposal may be made to the Council. (This period must not be less than 1 month after the date of first publication of the notice).

Statement of Proposal

The attached statement of proposal (Appendix 1) will comply with the requirements of sections 83(1)(a) and 86 of the Act. It comprises:

- (a) a draft of the bylaw as proposed to be adopted (as required by section 86(2)(a)); and
- (b) the reasons for the proposal (as required by section 86(3)); and
- (c) a report of the Council's consideration under section 155 of the problems being addressed by the proposal (as required by section 86(3)(b)(i)).

Summary of Information Contained in the Statement of Proposal

Section 83(1)(a)(ii) of the Act requires the Council to prepare a summary of the information contained in the statement of proposal. That summary must comply with section 89.

Section 89 requires that the summary:

- (a) be a fair representation of the major matters in the statement of proposal; and
- (b) be in a form determined by the Council; and
- (c) be distributed as widely as reasonably practicable (in such manner as determined appropriate by the Council, having regard to the matter to which the proposal relates) as a basis for general consultation; and
- (d) indicate where the statement of proposal may be inspected and how a copy may be obtained; and
- (e) state the period in which submissions on the proposal may be made to the Council.

Attached (Appendix 2) is a summary of information which complies with the requirements of Section 89. It is recommended that the Council formally adopt this summary (for the purposes of section 89(b)) and resolve to publish it in both the 'The Press' and the 'Christchurch Star' newspapers and on the Council's website (for the purpose of satisfying section 89(c)).

Timetable for Special Consultative Procedure

On 19 December the Council approved a timetable for the special consultative procedure for making the proposed bylaw. It resolved, on the basis that it approved the proposed bylaw at its meeting on 26 February 2004:

- (a) that the proposed bylaw be open for public consultation from March to mid April this year; and

- (b) submissions on the proposed bylaw be heard by the Prostitution Reform Act Subcommittee on 28, 29 and 30 April 2004; and
- (c) the Subcommittee report direct to the Council at its meeting on 27 May 2004.

In order to comply with the requirements of the Local Government Act 2002 and the Council's timetable referred to above it is recommended that the first public notice of the proposal and the consultation to be undertaken be given on Wednesday 3 March 2004. It is also recommended that the period within which submissions may be made on the proposal be from Wednesday 3 March until Friday 16 April 2004.

Recommendation: That the Council resolve:

1. That the draft bylaw contained in the attached statement of proposal is the most appropriate form of bylaw for addressing the perceived problems that the Prostitution Reform Act 2003 is likely to create if the location of brothels and signage advertising commercial sexual services is not controlled.
2. That it is satisfied that such a bylaw is necessary in terms of section 12(2)(a) of the Prostitution Reform Act 2003.
3. To adopt the statement of proposal and the summary of information attached to this report.
4. That the statement of proposal be made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
5. That public notice of the proposal be given in 'The Press' and in the 'Christchurch Star' newspapers and on the Council's website on Wednesday 3 March 2004.
6. That the summary of information be distributed by way of publication (together with the public notice of the proposal) in 'The Press' and in the 'Christchurch Star' newspapers and on the Council's website on Wednesday 3 March 2004.
7. That the period within which written submissions on the proposal may be made to the Council be between Wednesday 3 March 2004 and Friday 16 April 2004.
8. That officers further investigate issues around the scheduling of existing massage parlour operators and prepare a supplementary report advising the Council of these issues on 26 February 2004.
9. That the solicitor provide a rationale to the Subcommittee for clause 5(3)(a)(ii) of the proposed Christchurch City Brothels (Location and Signage) Bylaw 2004.