

1. REPORT OF THE PROSTITUTION REFORM ACT SUBCOMMITTEE

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This is a report of the Prostitution Reform Act Subcommittee. It summarises the submissions received from the public during the special consultative procedure which was undertaken in respect of the draft Christchurch City Brothels (Location and Signage) Bylaw 2004. It contains recommendations by the Subcommittee that the draft bylaw be amended in certain respects following its consideration of those submissions. The draft bylaw with proposed changes highlighted is attached to this report as Attachment 1.

INTRODUCTION

On 14 July 2003 the Prostitution Reform Act Subcommittee was formed by the Regulatory and Consents Committee to consider the issues facing the Council presented by the Prostitution Reform Act 2003. The Subcommittee was charged with identifying, through consultation with stakeholders and the public at large, those issues, identifying and assessing the various options for addressing those issues and recommending 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.

The Subcommittee undertook a process of both stakeholder and public consultation in addition to researching the current rules under the Resource Management Act 1991 and the District Plan.

STAKEHOLDER CONSULTATION

The aim of this phase was to provide a “snapshot” of the prostitution industry as it currently operates, to gauge stakeholder perceptions of the Prostitution Reform Act, and to seek ideas on how to best communicate with specific stakeholders.

At a meeting with representatives of the NZ Police the three broad groups within the industry, including massage parlours, escorts and street workers were considered. The Police advised that they maintained a register of private escorts. Registration was necessary for the placement of newspaper advertisements. There are approximately 800 persons in the city on that register. The Police estimated there were between 50-100 street workers in the central city. Police resourcing and monitoring was discussed. It was noted that there was limited nuisance apparent at this time.

The meeting with youth and health workers raised a concern that over-regulation could result in driving the activity underground; there were issues around health inspections; there was to be a focus on health and harm minimisation, and there could be youth projects resource issues.

A meeting with massage parlour owners and operators raised the following matters. There were 14 licensed parlours, 11 within the CBD, two in small business areas and one in a residential zone. It was considered that most would remain in the CBD but some would like to expand. Some would want additional signage. It was advised there was a current industry downturn and uncertainty about the Prostitution Reform Act 2003.

The meeting with the Prostitutes Collective, escorts and social workers traversed the following matters. Escorts were working from the suburbs, either from their own home or rented motels or flats, or outcalls, and traded mostly on their own. The exact number was unknown but they were a significant part of the industry. It was important that they be discreet so they advertise in newspapers or on the Internet. It was considered that public signage should be kept “clean” and deal with proven nuisances. This group considered that the Council could not legislate for morality. Street workers chose not to work in parlours; this group also included transgendered and gay persons. There was a strong focus on Latimer Square and Manchester Street and in their opinion workers were unlikely to shift from these areas. Street work was considered the least safe way to work.

PUBLIC CONSULTATION

The prostitution issues questionnaire was released for public consultation on 8 October 2003 and was distributed extensively across the city through the ‘City Scene’, the Council’s “Have Your Say” website, and newspaper advertisements. The consultation period ran through to 13 November 2003. The consultation form contained a number of questions and provision for further comments.

Some 1,500 persons, (submissions which contained a petition, multiple signatories or which represented numbers of people were counted as a single submission) made submissions and 107 submitters sought to be heard in person by the Subcommittee. The Subcommittee met on 1, 2 and 3 December 2003 to consider all submissions and hear the 52 submitters who attended the hearings.

In response to the question as to where brothels should be allowed 61% considered they should be only allowed in the Central Business District or within the four avenues. Another 17% considered they could be in other industrial or commercial zones. The submissions were strongly against brothels being located in residential areas and many were opposed to such businesses being close to schools, places of worship, or any places where children, in particular, could be exposed to such activities. There were also comments made in regard to any brothels having street level openings wherever they may be situated. While the preferred location was the CBD this was seen as requiring further restrictions with a suggested distance from a large range of premises seen to be sensitive. These included the view that a distance of 250 metres from schools, places of worship, and other public places should be set down for brothels to be established. Some suggested the Council should define a "red light" area within the CBD on the grounds that this would enable people to avoid it. Others considered this would draw attention to the industry and it could appear that the Council was promoting such activities.

To the question "What advertising/signage would you find acceptable outside a brothel in the CBD?" 71% stated it should be very discreet/discreet signage only (not explicit pictures or words), or name only. Only a small proportion of respondents considered that signage for brothels should be similar to that permitted for other businesses. The large majority supported discreet advertising with requirements that prohibited pictorial images, neon lighting, flashing lights or similar, and a ban on having lists of available services in the public place. 25% suggested there should be no signage at all. Those accepting that some signage should be permitted considered it should be "G" rated or "family friendly" to the extent that children would not be affected, nor parents having to be placed in the position of having to explain such matters.

In the case of suburban brothels the majority suggested there be no signage at all with just under a third willing to accept very discreet signage. In general there was no support for suburban brothels in any case.

Other submissions expressed a considerable amount of concern about signage, not necessarily associated with brothels but with other activities people saw as promoting sexual activities, or at least where sexual images appeared to be used for commercial purposes.

A question was included on advertising of home occupation brothels. The submissions demonstrated an overwhelming consensus that all forms of signage or advertising should be strictly prohibited from home "brothels". Those that recommended discreet signage to be permissible suggested the content to be non-conspicuous and limited in size. The only reason for allowing signage at a home "brothel" was to prevent clients mistakenly entering the wrong property.

As a result of the above consultation the Subcommittee perceived several problems that it considered the Prostitution Reform 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.

These matters were reported to the Council at its meeting on the 19 December 2003.

THE PROPOSED BYLAW

The Subcommittee identified what it considered were all the reasonably practicable options for addressing the perceived problems, as required by section 77 of the Local Government Act 2002. It then assessed each of those options in accordance with that section. It concluded that a bylaw, made pursuant to the Council's bylaw making powers contained in sections 12 and 14 of the Prostitution Reform Act 2003, was the most appropriate means of addressing the perceived problems. Section 12 of the Prostitution Reform Act 2003 authorises territorial authorities to make bylaws controlling signage advertising commercial sexual services. Section 14 authorizes territorial authorities to make bylaws regulating the location of brothels.

These matters were detailed in a report of the Subcommittee which was subsequently considered by the Council at its meeting on 19 December 2003. After considering that report the Council in accordance with section 155 of the Local Government Act 2002 resolved that a bylaw was the most appropriate way of addressing the perceived problems. At its meeting on 26 February 2004, the Council approved a draft bylaw in terms of section 155(2) of the Local Government Act 2002 Act. The Council resolved that the special consultative procedure specified in the Local Government Act 2002 be commenced for the purpose of making the bylaw. It also resolved that the Subcommittee hear the submissions received during the special consultative procedure and report back to the Council with its findings and recommendations.

Provisions of the Draft Bylaw

The proposed bylaw addresses what were perceived to be likely problems if controls were not placed on the location of brothels and on signage advertising commercial sexual services in the city.

Signage advertising commercial sexual services is restricted to premises in the area designated for brothels in the bylaw, ie limited to being in the areas bounded by Moorhouse Avenue, Durham Street, Hereford Street and Madras Street; the block bounded by Oxford Terrace, Madras Street and Gloucester Street; the block bounded by the Avon River, Durham Street, Victoria Street, Salisbury Street and Manchester Street (the "scheduled area").

Such signs are limited to one per premises. The signs may not exceed 0.3 square metres in surface area, may not contain any pictorial image nor be illuminated by any flashing light. They may only contain the name of the business or person providing the commercial sexual services.

Brothels are restricted to the scheduled area. This applies to all brothels whether they are required to be operated by persons holding operator's certificates or small owner operated brothels as defined in the Prostitution Reform Act 2003. In essence a small owner operated brothel (SOOB) is a brothel at which not more than four sex workers work and each retains control over his or her individual earnings at the brothel.

OVERVIEW OF SUBMISSIONS RECEIVED THROUGH SPECIAL CONSULTATIVE PROCEDURE

In response to the statutory consultation process undertaken by the Council a total of 88 submissions were received. The majority of these (66%) were from members of the general public. A significant proportion of submissions (15%) were also received from brothel owners/operators and past or present sex workers. Table 1 presents a summary of submissions by source category. Twenty-two of the submitters presented their submissions orally at hearings by the Subcommittee on the 28 and 29 April 2004.

Table 1: Submissions by Source

Category	Number of Submissions
Brothel owners/operators, past/present sex workers	13
Business	6
Consulting/professional	4
Interest groups	7
Members of the community (general public)	58
Total	88

Of the submissions received from businesses, two were located within the scheduled area for brothels and four were sports massage therapists. None of these businesses were involved in the sex industry. Three of the submissions from consultants/professionals were from lawyers on behalf of brothel owners/operators and one was received from a property valuer. Interest group submissions were received from a range of sources including groups and organisations involved in promoting safe sex, community health and wellbeing, the Christchurch Combined Residents' Association, an independent research and public policy organisation and a religious group.

Key Themes

Submissions have been analysed, and interpreted as signalling support, conditional support or opposition to the proposed bylaw. The key themes which emerge from submissions are summarised in Table 2 below.

Table 2: Key themes for analysis

Key Theme	Sub-themes
Proposed central city scheduled area	<ul style="list-style-type: none"> • Effects on existing registered massage parlours outside this area. • Confusion what the bylaw says about small-owner operated residential brothels outside the scheduled area. • Parameters of Zone. • Legal capacity of the Council to prohibit brothels outside scheduled area. • Support for proposed bylaw and intent to keep brothels out of suburban areas.
Proposed brothel signage restrictions	<ul style="list-style-type: none"> • Recognition/acceptance of purpose and necessity for discretion. • Practical concerns of owners/operators ie cost, interpretation of guidelines. • The problems for premises with 2 or more street entrances.
Social impacts	<ul style="list-style-type: none"> • Creation of 'red light district' in Central City. • Driving prostitution underground again. • Potential discouragement to using and displaying Ministry of Health safety products and materials. • Isolation and vulnerability of sex workers. • Health and safety issues of sole workers.
Alignment with the purpose and intent of the Prostitution Reform Act 2003	<ul style="list-style-type: none"> • (Re-) criminalising some forms of prostitution. • Restricting employment options of sex workers.
Guidance/clarity sought	<ul style="list-style-type: none"> • Definition of 'brothel'/small owner operated brothels (SOOBs). • The Council's position with respect to SOOBs. • Policing/enforcement of location regulations.
Moral concerns about prostitution <i>per se</i>	<ul style="list-style-type: none"> • Prostitution not condoned. • Against the Bible teachings.

A proportion of submissions also raised certain key, unresolved practical or legal issues presented by the proposed legislation. These most commonly queried the issue of existing massage parlours that were licensed under the Massage Parlours Act 1978 that had historically operated outside the scheduled area, and the practical challenges of policing and enforcing the proposed bylaw.

Clear issues of concern can be identified among different interest groups and differing aspects of the proposed legislation are more or less acceptable depending upon the background of the submitter.

A number of submissions were received from individuals associated with the sex industry. These were most concerned for the issue of large brothels that would not be able to operate as a brothel in their current location under the proposed bylaw, as well as the ability of sex workers to continue to work in residential areas. Industry submissions suggested that banning these businesses is unnecessary given an historic peaceful and/or discreet track record, and would be to the serious detriment of those currently involved. Some submissions questioned the alignment of the proposed bylaw with the purpose and intent of the Prostitution Reform Act 2003.

Members of the community were largely supportive of the purpose and intent of the proposed bylaw and welcomed legislation restricting the location and activities the Christchurch sex industry. Non-residential location was applauded and signage restrictions accepted.

However, many submitters also wished to amend certain parts of the proposed bylaw. The size and location of the scheduled area was the most highly contested issue among members of the public. For various submitters, the scheduled area was too large, too near (or in) the central city and too close to areas commonly frequented by families, shoppers, children and tourists.

These differing concerns appear to demonstrate differences between perceptions and experiences of the realities of the sex industry, and a differing emphasis on and acceptance of the intention and necessity of the Prostitution Reform Act in promoting the safety of those within the industry. In particular, the concerns of the community often reflected a general desire to 'protect' residential areas and the community at large and workers of the sex industry from exposure to it.

Some submitters were reluctant to accept that it is no longer illegal to work in or operate a brothel within the city. The submissions of those who accept/sympathise with the intentions of the Act, on the other hand, address more practical aspects of the draft bylaw and its implementation.

Table 2 above summarises the key themes of the submissions. These are discussed in greater detail below.

- 25 submitters expressed full support for the proposed bylaw. In doing so, many acknowledged the efforts of the Council to respond to the strength of community sentiment made clear in previous consultation rounds.
- Two submitters argued that no restrictions should be placed on Christchurch's sex industry.

The proposed guidelines for signage were generally welcomed:

- 11 accepted the proposal.
- Six submitters welcomed the restrictions but asked that they be extended.
- Two rejected the proposal on the basis that it would mean that the sex industry, in spite of now being a legitimate industry, would be subject to restrictions not imposed on any other form of business in Christchurch.

A few submitters raised issues surrounding the practicalities of the proposed signage restrictions including the cost which brothel owners would face in replacing existing signs; the advantage to operators that would be lost in advertising services visually rather than continually having to discuss them with prospective clients; the interpretation of the legislation with respect to decorative features of brothels such as stained glass windows; the level of profanity in words such as "sauna", "spa" and "massage".

A large number of submitters expressed support for the purpose and intent of restricting the location of brothels but wished to amend the scheduled area. The most highly contested area for inclusion was the central city. Generally, public requests echoed previous ones for brothels to be kept away from residential areas, schools and places of worship. Many also wished to protect the character of the central city as an area deemed to be highly/most commonly frequented by families, children, shoppers and tourists.

- Nine argued in general that the scheduled area was far too large.
- Three requested that the area to the north of Cathedral Square be omitted.
- 11 requested that the Central City, particularly Cashel Mall and Colombo Street be omitted.
- Six requested that the area to the south of Cathedral Square be omitted.
- Two specifically requested that areas frequented by children and families such as Moorhouse Avenue surrounding Hoyts 8 and the central bus depot be omitted.
- One requested that the scheduled area include neither the central city nor the suburbs.
- Two recommend that brothels be isolated to industrial areas.

Many submitters were concerned for the negative implications of the location restrictions for the sex industry and for Christchurch city:

- Seven submitters suggested, that despite being contrary to the intention of the proposed bylaw, the scheduled area would actually create a red light district in the Central City by forcing all brothels into a small area of the city.
- Five argued that many existing sex workers would be forced to continue to operate illegally outside the scheduled area.

- Three suggested that the restrictions would result in the domination of the industry by a few larger operators and potentially increase the exploitation of sex workers.
- One predicted that the location restrictions would leave brothels owners with no bargaining power with central city landlords.
- 13 (all) submissions from owners/operators and past/present sex workers expressed significant concerns for the implications of the proposed bylaw for brothels already operating outside the scheduled area.
- Seven requested that specified brothels that had operated before the enactment of the Prostitution Reform Act 2003 be exempt from the location restriction referred to in the draft bylaw.
- Eight requested that the provisions in the Prostitution Reform Act 2003 which make a distinction between large brothels and small owner operated brothels (generally in residential areas) be adopted in the bylaw and that the bylaw only be applied to the former.
- Five submitters argued for the exemption of specific massage parlours. It is implied that, if a blanket ban must be enforced, that the legal status of brothels outside the scheduled area be determined based on the attributes of each of the premises in question. Specific arguments pertain to the historic operation of the business in question; proven track records of discretion and limited police involvement; contribution to surrounding land uses and businesses as a service provider; lack of suitability of the premises for other uses and/or commitment to leasing arrangements.
- One submitter challenged the legal capacity of the Council to prohibit brothels in Christchurch. It is noted that the Prostitution Reform Act 2003 legalised work in and operation of brothels. This submitter queried whether the power that the Act afforded Councils to 'regulate' brothel activity is equivalent to the power of prohibition.

The safety and choices of sex workers in small owner operated residential brothels was a serious concern of many submitters from the sex industry. Some 12 submitters argued for the right of sex workers to operate in small owner operated brothels (SOOBs). Particular concerns surrounded the ability of many sex workers to operate their own business from home while remaining within the law. In general, it was suggested that:

- Many workers in SOOBs would not be able to afford central city rentals thus forcing them either into large brothels, street work or to continue to operate illegally.
- Some sex workers who run their own residential businesses would have difficulties finding work in larger brothels due to age, gender and other physical characteristics.
- Many of these businesses have been discreetly operating for years with no disruption to surrounding neighbours. Some suggested that neighbours were not even aware of the existence of many SOOBs.
- SOOBs offer sex workers significant advantages over working in larger brothels including flexibility in work hours and control over clients.
- Some argued that this type of work provided a transition for sex workers out of the industry.
- All argued that residential businesses were extremely discreet and never advertised using signage, as their business was dependent on customer privacy.
- Significant concerns were raised with respect to the option of only being legally able to work from home in a sole operation. Seven submitters were adamant that this was a situation that the Council should not be advocating as it puts workers in an extremely vulnerable and unsafe position. Concerns were raised about sex workers with children operating from their own homes.

For these reasons, seven submitters argued that the draft bylaw was contrary to the spirit and intent of the Prostitution Reform Act 2003 in that it restricted the choices of sex workers by rendering key forms of sex work illegal. It was suggested that this would only force SOOBs workers to become clandestine, generating reluctance to use support services and safety products for fear of incrimination.

A key point of confusion among submitters appeared to be in the interpretation of the Council's position with respect to the legality of SOOBs. This confusion is related to an unclear cross-over between the provisions of the District Plan for operations with the equivalent of two full time workers, in the Prostitution Reform Act for up to four workers, and the interpretation that the proposed bylaw allows for only one worker in a home occupation situation provided that prostitution occurs there only occasionally.

A few brothel owners also expressed confusion with respect to the (apparent) provision for four workers on single premises. They asked whether this meant four employees in total, or four in a given shift. Two perceived a challenge for the Council in determining the legality of any given business outside the scheduled area when some establishments would employ workers licensed for sex work, but who might be on a certain premises to engage in non-sex work. It may not be clear whether a business offering sauna, spa and massage services also offer sexual services, particularly when the licensing procedure is confidential.

CONSIDERATION OF THE SUBMISSIONS

The Subcommittee met on 28, 29 and 30 April 2004 to hear and consider the submissions. It met again on 3, 24 and 28 May 2004 and on 23 June 2004 to consider whether it should recommend any amendments to the proposed bylaw in light of those submissions. The Subcommittee was provided with legal advice which stated that submissions alleging that it was not lawful to restrict the area in which brothels could be established under the provisions of the Prostitution Reform Act were not correct. It was lawful for the Council to exclude from the proposed bylaw some premises that might be currently operating as brothels, provided the Council clearly specified the reasons for such exclusions and those reasons were justifiable.

The advice given to the Council stated;

“It is clear that a new bylaw made under the power to regulate the location of brothels in section 14 can reasonably state that brothels may not be located in some parts of the district. Regulating the location of brothels must, in our view, be able to include a ban in some areas.”¹

The Subcommittee accepted this legal advice in determining the scope of the proposed bylaw.

Central City Scheduled Area

The draft bylaw approved by the Council would prohibit all brothels outside the scheduled area irrespective of the size of the brothel. Consequently it would prohibit small owner operated brothels, where each worker retained control over his or her individual earnings. The Subcommittee was previously advised by the Council’s solicitor that a person undertaking commercial sexual services occasionally from home would not be caught by the definition of “brothel” in the draft bylaw. That definition was taken from the Prostitution Reform Act 2003. It provides, among other things, that a brothel means any premises kept or habitually used for the purpose of prostitution. Premises used infrequently for such purposes would not be a brothel.

The scheduled area had been determined on the basis that it covered the Central City Business Zone and did not extend into Living Zones to the north.

The operators of several massage parlours in the central city submitted that brothels be permitted in business zones outside the scheduled area. The Subcommittee does not support these submissions. Allowing brothels into business zones would compromise the integrity of the scheduled area. Further, business zones extend deep into the heart of residential areas. There are no rules in the District Plan which would control these operations in the manner that the Plan controls relating to home occupations in Living Zones will control SOOBs in Living Zones.

The Subcommittee has obtained legal advice on the extent to which the Council could now change, and in particular reduce, the boundaries of the Scheduled Area. That advice is *“that minor alterations to the Scheduled Area boundary (whether to enlarge or reduce the area) could safely be made by the Council”*. Several submissions concerned the size and boundaries of the Scheduled Area: accordingly minor boundary adjustments could be regarded as broadly within the scope of those submissions, even if the particular adjustments made by the Council did not exactly match the adjustments sought in one or more submissions.

¹ Simpson Grierson, Liability for Compensation - Prostitution Reform Act - Location and Signage Bylaw, 11 February 2004

The Council has also received advice that minor adjustments could be made to the scheduled area boundaries notwithstanding that this might have an adverse effect on the rights of existing brothel owners (ie by making their businesses outside the scheduled area, and therefore unlawful once the bylaw comes into force). Any natural justice issues that might arise in making such a change are probably not fatal, given the comprehensive summary of submissions contained in the Subcommittee's report to the Council. If the affected brothel owner submitted in opposition to a boundary alteration, then that view will be reflected in the Subcommittee's report to the Council. On the other hand, if the affected brothel owner chose not to make a submission, in the hope or expectation that the boundary would remain the same, that represented a calculated risk on their part. The boundaries of the scheduled area was clearly an issue on which the Council was required to retain an open mind throughout the special consultative procedure. A reasonable person considering the statement of proposal would have appreciated that the boundaries of the scheduled area could well change from those originally proposed in the draft bylaw.

However, at some point changes by the Council to the size or boundaries of the scheduled area could become so significant that the bylaw adopted by the Council was substantially different from the draft bylaw contained in the statement of proposal. There is a real risk of this line being crossed if, for example, the Council were to remove the entire section of the scheduled area north of the Cathedral Square. The safer course if the Council wished to make a substantial change of this nature would be to resubmit the draft bylaw back through the special consultative procedure.

The Subcommittee considered that the scheduled area, as shown in the draft bylaw, was of a suitable area and size needed to satisfy the "reasonableness criteria" in regard to bylaws in general. If the scheduled area was too small then the bylaw was likely to be open to challenge on the grounds that it was unreasonable. It was considered that previous examination of the possibility of requiring distances between brothels would not be possible without modifying the area boundaries.

Subcommittee

Recommendation: 1. That there be no changes to the boundaries of the scheduled area defined in the draft bylaw.

Small Owner Operated Brothels

It was noted that in the submission process no submitter specifically asked for brothels to be allowed to establish in all business zones.

Allowing brothels to locate within Business Zones was also seen as possibly leading to an increase in brothels widely throughout the city with few constraints on locations that may be sensitive to members of the public. The District Plan presently contains no provisions relating specifically to activities associated with the prostitution industry. Under the District Plan such activities could be set up as of right in those parts of the city zoned B1, B2, B3, B3B, B4, B5, Central City, Central City Edge, Cultural or Special Purpose, subject to meeting relevant standards such as car parking requirements. Many of the business zones are located within residential areas and directly adjoin residential properties (Business 1 and 2 Zones in particular). While adverse environmental effects such as parking and noise could be controlled through compliance with the provisions of the District Plan, those provisions would not address the potential social effects on the community. There would also be nothing to prevent a concentration of brothels establishing in a small commercial centre.

The issue of allowing (SOOBs) to operate outside the scheduled area was given extensive consideration by the Subcommittee. It was accepted that such premises existed presently, largely in residential areas, with few complaints being received about such activities. While concerns were raised by members of the Subcommittee about compliance with District Plan requirements in some cases there was little evidence that these had caused significant problems. The Subcommittee took into account the views expressed by a number of submitters that brothels should not be allowed to operate in residential areas, regardless of scale. Conversely there were significant submissions on the draft bylaw arguing that excluding the SOOBs from a large part of the City could be seen as unreasonable and may go against the spirit of the Prostitution Reform Act as well as making it difficult for health and other agencies to provide their services. Some consideration was given to recommending an amendment to the draft bylaw to permit SOOBs to operate in any business zone. In terms of the District Plan they could operate in these zones as of right.

The Subcommittee considered that allowing SOOBs to operate in Business Zones would not be sensible. It was considered that this would be likely to compromise the integrity of the scheduled area. It was also considered likely to encourage large brothels to commence operating in these areas. The District Plan places tight restraints on small businesses operating in Living Zones. There are no such restraints on small businesses operating in Business Zones.

The Subcommittee considered that the draft bylaw should be amended so as to allow premises to operate situated in a Living Zone, as defined in the District Plan, at which no more than two sex workers work and each of those sex workers retain control over his or her individual earnings, by excluding these from the definition of brothel contained in the bylaw. It recommends that an explanatory note be appended to the bylaw outlining those provisions of the District Plan that govern such work in Living Zones.

The District Plan is non-prescriptive in relation to the establishment of most business activities within the Living Zones. Non-residential activities, including brothels, are able to establish as of right in Living Zones as long as they comply with all the relevant standards. In brief, these include restrictions on the floor area used (maximum 40m²), hours of operation (no later than 11pm), number of people employed in the business, and traffic generation. Adequate car parking must be provided, and there are rules which would prevent brothels from establishing in apartments with more than three storeys. The Plan also requires at least one of the workers to live on the site, which would prevent the situation occurring whereby a group of workers rent a house in the suburbs for use as a brothel but do not live on the premises. The Subcommittee understood from submitters that this situation is common among people who work in the suburbs. Compliance with all the relevant standards should ensure that brothels operating in Living Zones are small scale, home-based businesses with limited hours of operation, and consequently have minimal nuisance effects on neighbouring residents.

A resource consent would only be required if any of the standards in the District Plan were breached. If a resource consent is required for a land use relating to the business of prostitution, Section 15(1) of the Prostitution Reform Act provides that when considering an application for such the Council must have regard to whether the business of prostitution:

“(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or

(b) is incompatible with the existing character or use of the area in which the land is situated.”

Consideration of these matters should ensure that brothel activities which could impact adversely on the character or amenity of a residential area do not obtain resource consent.

Councillor Broughton asked staff to check whether any other Councils, which have made a bylaw regulating the location of brothels, have allowed SOOBs to operate in residential areas. A search revealed that a number of Council's had made no bylaws at all. Of the six Councils that were found to have made bylaws none had allowed SOOBs to operate in such areas.

Subcommittee

Recommendation:

2. That premises situated in a Living Zone as defined in the District Plan:
 - (i) at which no more than two sex workers work, and
 - (ii) where one of those sex workers permanently resides, and
 - (iii) where each of those sex workers retain control over his or her individual earnings

be excluded from the definition of a brothel contained in the bylaw.

(It should be noted that the operators of such premises must still comply with the current home occupation rules in the District Plan. These rules may be subject to change in the future and should therefore be checked by operators. These rules are summarised in an explanatory note to the bylaw. It should also be noted that the amended draft bylaw will prohibit signs advertising commercial sexual services on these premises unless the premises are situated in the scheduled area.)

Note: Councillor Helen Broughton stated she was opposed to such a provision being included in the bylaw.

Allowing Certain Existing Brothels Located Outside the Scheduled Area to Continue to Operate

The Subcommittee received submissions from several persons who stated that they had premises outside the scheduled area that they wished to continue to operate as brothels. Three of these premises were massage parlours which had been in existence for a number of years. Each had been licensed under the Massage Parlours Act 1978. Two other premises were alleged to be operating as brothels. Both of these were said to have commenced operating recently, however, neither had been registered under the Massage Parlours Act. The operators of all five of these premises requested that they be exempted from the proposed location control.

The Subcommittee considered that there were four options for dealing with existing brothels outside the scheduled area. They were:

1. Make no provision for these brothels in the draft bylaw thereby rendering them unlawful.
2. Extend the scheduled area so as to include all or some of those premises.
3. Amend the draft bylaw to exempt some or all of those premises from the location control (but confining the exemption to the present operators of those premises).
4. Amend the draft bylaw to exempt some or all of those premises from the location control (but prohibiting any change in the size of the premises).

The Subcommittee decided not to recommend option 1 on the grounds that this would be likely to result in legal challenges to the proposed bylaw by operators who would be forced to close their businesses. Further the Subcommittee considered that as several of the businesses concerned had operated for a considerable number of years without complaints having been received by the Council regarding nuisance, forcing them to close may be unreasonable. The Subcommittee decided not to recommend option 2. It was not prepared to recommend extensions to the scheduled area.

A legal opinion obtained by the Council recommended that whatever course the Council adopted it should be careful to point to strong reasons why it has established the scheduled area as it has. Should the Council choose to exempt some brothels from the location controls and not others then it must articulate the criteria upon which that decision making process has been based. Those criteria must be reasonable. In the case of brothels whose operation may become unlawful under the proposed bylaw, the Council must be able to demonstrate that it is aware of and accepts the threat to those brothel businesses yet it considers those factors to be outweighed by the need to achieve a socially desirable objective (such as the regulation of the location of brothels).

The Subcommittee considers that the scheduled area strikes the right balance between:

- (a) Allowing persons a reasonable choice as to where they may operate brothels (other than small two person owner operated brothels) in the City; and
- (b) Prohibiting such brothels from what it considers are unsuitable areas of the City (eg residential areas and the multitude of small business areas located outside the central city business area).

The Subcommittee considers that the scheduled area will:

- (a) Because of its size reduce the likelihood of a "red light district" becoming established; and
- (b) Keep larger brothels which are less likely to be discreet out of predominantly residential areas; and
- (c) Give brothel operators a reasonable choice of locations in which they may establish large scale brothels.

The Subcommittee decided not to recommend option 3. If good reason were made out for exempting any premises then limiting the exemption to the present operators of the premises was considered unreasonable. Such a limitation would effectively render such businesses unsaleable and thereby substantially diminish their value.

The Subcommittee preferred option 4. It recommends that only the three massage parlours, which had been registered as massage parlours under the Massage Parlours Act be permitted to operate outside the scheduled area. These premises are:

1. JoJo's, 464 Worcester Street
2. Givenchys, 284 Kilmore Street
3. B.J.'s, 127 Worcester Street

The collective reasons for recommending that these three businesses be allowed outside the permitted area are as follows:

1. Each had been a registered massage parlour under The Massage Parlours Act 1978;
2. The public could reasonably anticipate that by virtue of their long standing operation they would be allowed to continue to operate under the bylaw;
3. The Council has not received complaints relating to nuisance caused by these businesses in the past;
4. The owners of these businesses made submissions during the Special Consultative Procedure that their businesses be permitted to continue;
5. Each business has been operating over a considerable number of years;
6. Each business is in close proximity to the scheduled area, consequently allowing them to remain would not compromise the integrity of the scheduled area;
7. Each business had been operating for a considerable period of time and it is reasonable to assume that as a result would have built up a significant degree of value in terms of goodwill;
8. Each business had proven that their establishments were able to operate as successful businesses within the current visible scale of their operations.

It is recommended that these three premises be listed in a further schedule to the bylaw as being exempt from the location control. However, the exemption is to be confined to the existing premises so as to prevent further expansion of those premises.

The Subcommittee is not prepared to recommend that the two premises which had allegedly been established in the last 18 months and which were not registered under the Massage Parlours Act 1978 be permitted to operate outside the scheduled area. Those premises are:

1. Fur Girls, 15A Thackers Quay
2. Club 439, 439 Colombo Street.

Fur Girls was alleged to be operating as a brothel on the premises situated at 15A Thackers Quay, Woolston. Those premises are situated in a new subdivision zoned B5 in the District Plan. They are located approximately five kilometres away from the scheduled area. Allowing a brothel to operate this far from the scheduled area was considered likely to compromise the integrity of that area. Furthermore, several Subcommittee members expressed doubts as to whether the premises were genuinely operated as a brothel. The premises were a small two bedroomed apartment situated above a warehouse. The apartment was occupied as a residence.

Club 439 was alleged to be a brothel operating on the upper floor of a two storey building, situated at 439 Colombo Street, Sydenham. Several recent inspections of this property by Council staff have indicated that these premises are not being used as a brothel. The premises appear to be unoccupied.

In the case of both Fur Girls and Club 439:

1. There was no evidence that either premises had ever been licensed under the Massage Parlours Act 1978;
2. There was no relevant operation history of these premises as brothels known to the Council;

3. There was no evidence of any long standing operational history which would give rise to the assumption that a significant amount of goodwill had been built up over time thereby enhancing the value of business.

Subcommittee

Recommendation: 3. That the following premises be included in the Second Schedule and permitted to operate outside the scheduled area;

- JoJo's, 464 Worcester Street,
- Givenchys, 284 Kilmore Street,
- B.J.'s, 127 Worcester Street.

This listing will be subject to no change in the size of the premises and compliance with signage requirements as if they were situated in the scheduled area in the bylaw.

4. That any premises, which are to be exempted from the location control in the proposed bylaw, be treated, for the purpose of the signage controls contained in clause 5 of the draft bylaw, as if they were within the scheduled area. This will allow the operators of those premises to display a sign on those premises which otherwise conforms with all the other requirements of that clause (such as size and contents).

Signage

It was not to be expected that the signage requirements, despite being significantly tighter than those applying to other legal businesses, would cause major problems. It appears that this is due to businesses not having signage which causes offence to reasonable members of the public. It should be noted that the Act does allow for tighter controls over signage than would normally be considered justifiable under the Bill of Rights. There were few submissions on the draft bylaw provisions in this regard. One submitter drew the attention of the Subcommittee to the plight of premises with more than one entrance on different streets. The Subcommittee decided to recommend that provision be made in the bylaw for such situations. The information provided on the matter did not indicate any significant offensive signs currently being used by "massage parlours" or premises providing commercial sexual services as defined by the Prostitution Reform Act 2003. Most of the early submissions mentioning alleged offensive signs were in relation to other activities, including one submitter with a collection of overseas material. The controls were therefore introduced to preclude future possible signage that could be considered offensive, or to attempt to reduce the visibility of such operations. Another matter raised related to the use of the term "massage" in association with premises providing commercial sexual services. This was raised by those in the therapeutic massage business but it was pointed out that the Council had no powers to restrict the use in this manner under the powers under the Prostitution Reform Act 2003.

Subcommittee

Recommendation: 5. That the proposed bylaw be amended by making provision for more than one sign on premises with entrances on more than one street.

Further Action

The Subcommittee made the following recommendations related to future changes the Council may need to consider as a result of the introduction of the Christchurch City Brothels (Location and Signage) Bylaw 2004 and the Prostitution Reform Act 2003.

Subcommittee

Recommendation: 6. That any future decision on whether to notify a resource consent application related to the business of prostitution be brought before a Council Hearings Panel for a determination on whether notification is required.

7. That following the publication of the findings of the Parliamentary Working Party on the amendment to the Prostitution Reform Act 2003, an item be brought before the Council on whether a section 32 analysis should be undertaken to assess whether changes to the District Plan are required following the introduction of the Christchurch City Brothels (Location and Signage) Bylaw 2004.

Recommended Amendments to Draft Bylaw

It was suggested that the commencement date for the bylaw should be 7 July 2004, subject to its adoption by the Council at its meeting on 1 July 2004. This will give time for the required public notices of the making of the bylaw.

Attached to this report and marked Appendix 2 is the draft bylaw which highlights the amendments recommended by the Subcommittee following its consideration of the submissions received during the special consultative procedure.

The amendments proposed below summarise the majority view of the Subcommittee, and were not all unanimously endorsed. Councillor Broughton did not support the Subcommittee's recommendation that small owner operated brothels be allowed to operate in residential areas (with the specifications required in the bylaw).

The amendments may be summarised as follows:

1. An amendment to clause 6 by substituting the 7th day of July 2004 as the commencement date.
2. Amendments to clause 4:
 - (a) Inserting a definition of the word "Brothel". This new definition will allow small owner operated brothels, at which not more than two sex workers work to operate in Living Zones as defined in the District Plan.
 - (b) Inserting definitions of the words "District Plan", "Prostitution", and "Sex Worker" for the purpose of clarifying the meaning of the words as they appear in the new definition of the word "Brothel".
3. Amendments to clause 5:
 - (a) Inserting the word "First" before the word "Schedule" as it appears in clause 5(2)(b). This is in consequence of the addition of another schedule, referred to below.
 - (b) Inserting after the word "provided" in clause 5(4) the words "*unless those premises have more than one street frontage in which case there may be displayed upon the premises one sign at each street frontage*".
4. An amendment to clause 6 by inserting the word "First" before the word "Schedule". This is in consequence of the addition of another schedule referred to below.
5. Inserting after clause 6 a new clause 7 headed "Transitional Provisions". These provisions will allow any premises which are described in the Second Schedule to operate as a brothel notwithstanding that they are situated outside that area of the City referred to in the First Schedule as being the only area in which brothels are permitted to operate. They will also allow such brothels to display signs advertising commercial sexual services to the extent that brothels inside the scheduled area may do so.
6. Amendments to the Schedule:
 - (a) By deleting the heading "Schedule" and substituting the heading "First Schedule - Areas Where Brothels Are Permitted". This is to distinguish the two schedules.
 - (b) By including a key in the map contained in the Schedule.
7. Inserting a second schedule headed "Second Schedule - Premises Exempt from Location Control"

And describing in that schedule the three premises known as:

- (a) Givenchys at 284 Kilmore Street,
- (b) BJ's at 127 Worcester Street,
- (c) JoJo's at 464 Worcester Street.

The Subcommittee also recommends that an explanatory note concerning the District Plan provisions relating to home occupations in Living Zones be appended to the draft Bylaw.

Subcommittee

- Recommendation:**
8. That the draft bylaw be amended to reflect the changes highlighted in Attachment 1 of this report, and
 9. That the draft bylaw, as amended in Attachment 1 of this report, be adopted as the Christchurch City Brothels (Location and Signage) Bylaw 2004.

Delegations In Relation To Enforcement Of Proposed Bylaw

In the event that the Council resolves to make the bylaw, it is desirable in the interests of administrative efficiency that the Council delegate certain powers in relation to the enforcement of the bylaw. Those powers are the power to prosecute for a breach of the bylaw and the power to seek an injunction from the district court to prevent breaches of the bylaw. It is also desirable that the Council delegate the power, contained in the Christchurch City General Bylaw 1990 to appoint inspectors to ensure the provisions of the bylaw are observed.

Subcommittee

- Recommendation:**
10. That pursuant to Clause 9 of the Christchurch City General Bylaw 1990, the Council delegate to the Environmental Services Manager its power to appoint inspectors to ensure that all or any of the provisions of the Christchurch City Brothels (Location and Signage Bylaw) 2004 are observed.
 11. That the Council delegate to the Environmental Services Manager the power to initiate any prosecution under the Christchurch City Brothels (Location and Signage) Bylaw 2004 together with the power to make any decision on any matter relating to such prosecution.
 12. That the Council;
 - (a) Delegate to the Environmental Services Manager the power to apply to the District Court for an injunction restraining any person from committing an offence against any of the provisions of the Christchurch City Brothels (Location and Signage) Bylaw 2004; and
 - (b) Authorise the Environmental Services Manager to take enforcement action against any person who breaches any such injunction and to make any decision in any matter relating to such action.