

## 23. HEARING PANEL REPORT ON THE PROPOSED REVOCATION OF THE CHRISTCHURCH CITY BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

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| <b>General Manager responsible:</b> | General Manager   |
| <b>Author:</b>                      | Proposed Revocation of the Christchurch City Brothels (Location And Signage) Bylaw 2004 Hearing Panel |

### PURPOSE OF REPORT

This is the report of the Proposed Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004 Hearing Panel (the Panel). It summarises the submissions received on the Proposed Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004 (the Bylaw) and contains recommendations from the Panel. The Panel met on Monday 5 October 2009 and Wednesday 7 October 2009.

### EXECUTIVE SUMMARY

At its meeting of 23 July 2009 Council resolved to revoke its resolutions made on 27 November 2008 on the Review of Christchurch City Brothels (Location and Signage) Bylaw 2004:

- (b) *That the Council determines that under the section 155(1) analysis, there is sufficient evidence of a problem in regards to signage advertising of commercial sexual services that needs to be addressed by way of a bylaw.*
- (c) *To consider a new bylaw controlling signage advertising commercial sexual services, in conjunction with the Brothels Location and Signage Subcommittee, for adoption under the provisions of the Prostitution Reform Act 2003, and that once any new bylaw is introduced the current Brothels (Location and Signage) Bylaw 2004 be revoked.*

The Proposed Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004 was published for public consultation on 29 July 2009 and the submission period closed at 5pm on 4 September 2009.

The Council proposed revoking the Bylaw on the grounds that an examination under section 155 of the Local Government Act 2002 (LGA02) indicated that any perceived problems in regard to the location of brothels or signs advertising commercial sexual services could be controlled more appropriately by other means and therefore a bylaw was not the most appropriate way to address any perceived problems.

### SECTION 155 DETERMINATION - LOCATION OF BROTHELS

On the basis of over four years' experience with the current Bylaw, and over three years since the location requirements of the Bylaw were quashed by the High Court, there have been limited problems with the location of brothels. The current Bylaw applies only to the Christchurch City area pre-amalgamation with Banks Peninsula. The former Banks Peninsula District Council did not have a similar bylaw controlling location and signage, and no issues have been raised regarding the location of brothels in that area.

The analysis undertaken under section 155 of the LGA02 revealed there is no significant evidence of nuisance problems caused by the location of brothels, and if any issues arose, they could be controlled under the current provisions of the City or District Plan as appropriate.

The Council has therefore concluded that there is no need for a bylaw that addresses the location of brothels.

### SECTION 155 DETERMINATION - SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES IN, OR VISIBLE FROM, PUBLIC PLACES

Section 12 of the Prostitution Reform Act 2003 (PRA) allows the Council to make bylaws prohibiting or regulating signage in, or visible from, a public place, that advertises commercial sexual services. The Council has to be satisfied that a bylaw is the most appropriate way to address the problem of signage advertising commercial sexual services, and, also has to be satisfied that the signage is likely to cause nuisance or serious offence to ordinary members of the public using the area, or that such signage is incompatible with the existing character or use of the area.

The need to be satisfied as to such matters arises from the potential offensiveness of such signs. The Council has received advice that the offensiveness of a sign must be assessed in the context in which it is found, and the offensiveness of a sign would also be a determinative issue in the enforcement of any bylaw made under section 12. The Council considered whether it could draft a bylaw which would address the issues and regulate signs appropriately but has determined that a bylaw is not the most appropriate way to address the possible problem of signs advertising commercial sexual services.

The Council considers that other controls, in particular the ability to use the enforcement order or abatement notice provisions of the Resource Management Act (RMA) 1991, or to make complaints to the Advertising Standards Authority (ASA), or the Police, under the Films Videos and Publications Classification Act 2003 will provide sufficient controls over signs advertising commercial sexual services.

Before making a decision the Council considered four options under which it might control signage advertising commercial sexual services. The first three options were for bylaws in various forms made under the Prostitution Reform Act (PRA) 2003, and the fourth option recommended that no bylaw be adopted and that the Council rely on other existing regulatory means to control offensive signage. These other means provide for easier and more effective enforcement and remove the difficulties with drafting an appropriate form of bylaw that would withstand legal challenge. The Council adopted the fourth option as its preferred option

### **CONSULTATION AND SUBMISSIONS**

The Special Consultative Procedure took place from 29 July 2009 to 4 September 2009. 345 submissions from individuals, groups and organisations were received. Four of these submissions supported the proposed Revocation of the Bylaw but the remaining 341 submissions (99%) opposed it. Of the 345 submissions, 190 were received by email, 140 were received through the Have Your Say website, 5 were on the printed submission form and the remaining 10 were in the form of a printed letter. 43 submissions were from people out of Christchurch and one was from a national organisation's head office. 22 submitters wished to be heard although only 17 appeared.

### **SUMMARY OF SUBMISSIONS**

There was some confusion among submitters regarding what was or was not included in revoking the Bylaw. In particular many submitters (130 or 38%) made comments about the locations of brothels. Some submitters were concerned that brothels should not be located close to places such as churches, schools and day care centres. Some submitters tended to include their belief that property values would decline as a consequence of the proposed Revocation.

The table below shows the themes under which the submissions' comments were analysed. All these submissions wanted to retain the Bylaw. Most submissions made comments on more than one theme.

| <b>Theme</b>   | <b>Number of submissions</b> | <b>Percent of submissions</b> |
|--|------------------------------|-------------------------------|
| Supporting the use of bylaws to ban or control signage   | 280                          | 81%                           |
| Supporting the use of bylaws to restrict the both the location of brothels and signage   | 130                          | 38%                           |
| Lack of faith that other tools such as the Advertising Standards Authority or the Resource Management Act would be effective in the absence of a bylaw     | 99                           | 29%                           |
| General comments opposing prostitution because it has deleterious effects on the city's image, especially in regard to tourism, marriage and family values | 34                           | 10%                           |
| Support of Option 1 if amended to read: "Prohibition of all signage advertising sexual services"   | 17                           | 5%                            |

The 280 submitters who did not want the Bylaw revoked and wanted signage to be banned or controlled were mainly concerned that sex workers and brothel operators would advertise inappropriately, causing children to be exposed to offensive signage and approaches from clients.

The 130 submitters who did not want the Bylaw revoked and commented on the location of brothels and associated signage had the same concerns as those who wanted signage controlled or banned but commented additionally that they did not want brothels, in particular single owner operated brothels (SOOBs) in the suburbs, near churches, schools or child care centres.

99 submitters were concerned that other tools such as the Advertising Standards Authority or the Resource Management Act would not be effective in the absence of the Bylaw.

34 submitters had similar concerns to those who did not want the Bylaw revoked as they had moral objections to the existence of brothels and were concerned that brothels tarnished the City's image and/or had deleterious effects on marriages and family values.

17 submitters commented on Option 4, which they did not support at all, and on Option 1 which they said was closest to the position they held but considered it should be amended to read "Prohibition of all signage advertising sexual services".

Of the four submitters who were in support of revoking the Bylaw only two made substantive comments. These submitters agreed that sex workers who work privately tend to be very discreet and do not wish to draw attention to themselves or their clients. One of these submitters commented further that there is no need for a Bylaw as there are other tools that can be used if required. Furthermore this submitter believed that none of the perceived fears that were expressed by previous submitters in 2004 regarding inappropriate signage and decline in property values had been borne out.

Seventeen submitters presented verbal submissions in support of their written submissions. They were:

Trevor Foster, Mark Wells, Jo Wall, Leighton & Sue Baker, John Alpe, Owen Dryland, Andrew Hunter, Krysia Krawcsyk, Roshan Alpress, Simon Roughan, Phillipstown Community Centre Charitable Trust (Wayne Hawker), Gay Barretta, Michelle Beavon, Reformed Church of Bishopdale (Robert van Wichen), Max Palmer, John McNeil, Christchurch Branch of NZ Prostitutes Collective (Anna Read).

Following the hearing of oral submissions the panel considered the 328 written submissions.

#### **ADDITIONAL STAFF ADVICE**

#### **LEGAL ADVICE**

The Council's solicitor tabled information on questions asked by the Panel on:

- Bylaw control provisions versus Resource Management Act provisions
- Signage Control – Public land versus Private land
- Removal of Signs process – Notice provisions
- Mobile Signs on Trailers etc.

This information is attached as Attachment 1.

#### **ADVICE REGARDING OTHER TERRITORIAL AUTHORITIES BYLAWS**

The Panel adjourned at 3.40pm on Monday 5 October 2009 to enable staff to prepare further answers to other questions raised during the course of the Hearing and to prepare additional information on matters identified during the course of the Panel's deliberations; namely Sign Requirements in Bylaws made under the Prostitution Reform Act by other Territorial Authorities. The latter is attached as Attachment 2.

The panel reconvened at 10am on Wednesday 7 October 2009.

#### **UNIT MANAGER INSPECTIONS AND ENFORCEMENT ADVICE**

The Unit Manager Inspections and Enforcement gave his advice regarding the use of the RMA processes relative to the use of the Bylaw:

Council has been on a path of continuous improvement with regard to enforcement over the past three years to improve enforcement service delivery and to overcome a reputation and perception that the Council's Enforcement Unit is ineffective.

One factor contributing to this perception is the existence of bylaws that prima facie outlaw activities and/or behaviour but in reality are all but impossible for Council enforcement staff to take definitive action when complaints in relation to the bylaw are received.

A good example of this was the previous provisions of the Public Places Bylaw where there were offences in relation to graffiti and wilful damage. These provisions caused confusion within the community because these behaviours are also offences under the Summary Offences Act. Any customer ringing the Council call centre or checking the Council bylaws perceived that Council enforcement had 'power' to act in relation to such matters.

In reality however, bylaws are ineffective in dealing with such anti-social behaviour because if a person is mindful to create wilful damage or graffiti, they are not going to stop that activity simply because a Council officer asks them to stop. Without the power of arrest (that is a means to immediately stop the activity from occurring), any Council attendance at such incidents re-enforces the perception that the Council does nothing, because if the offender refuses to stop Council Enforcement staff have no power to do anything at that time. Council needs to be very careful when considering passing bylaws that advertise that Council has powers to address issues but in reality it does not, without having recourse to the Court processes. Enacting a new, untested bylaw, with the only enforcement options being injunction and prosecution, and with the test as to whether the signage advertises commercial sexual services and is offensive being difficult to establish, sets the Council Enforcement Unit up to fail.

Advice has been provided that a bylaw is unnecessary to control offensive signs advertising commercial sexual services and that the RMA is more effective. Council enforcement staff are now skilled and well placed to enforce the RMA provisions as the RMA is a well tested enforcement tool.

In addition, it appears that due to the nature of the industry it is in the interests of the businesses involved to be discreet. Even if a new bylaw was enacted, testing this in Court would, in the public interest, require a blatant example of an objectionable sign (not, for example, a sign advertising 'Candy's good time parlour'). With the burden of proof for RMA matters being on the balance of probabilities as opposed to that of a bylaw being beyond a reasonable doubt Council is far wiser to utilise the RMA provisions as opposed to any bylaw provision.

#### **PROGRAMME MANAGER STRONG COMMUNITIES ADVICE**

The Programme Manager Strong Communities provided advice on problems associated with the way the current Bylaw is worded – there are some ambiguities which make for difficulties in applying it. The wording means that the existing bylaw is unlikely to be able to control the types of signage advertising commercial sexual services it purports on the face of it to do.

#### **DELIBERATIONS**

The Panel then discussed at some length the matters raised in submissions and brought forward by officers, much of which has been described and explained in the Executive Summary section above:

- The Panel noted that advertising provisions were included in the PRA but not the RMA or the Local Government Act 2002;
- The Panel queried whether it was more appropriate to use the PRA Regulations because signs bylaws under the PRA did not need to comply with the Bill of Rights;
- The Panel queried whether there was a link that could be made to Brothels when only commercial sexual services was referred to;
- The Panel determined there would be a need to go through a further consultation process if a new Bylaw was decided on;
- The Panel noted the difficulty of determining whether information on a Billboard was offensive or not and whether it was advertising a service or a building;
- The Panel queried the level of enforcement being conducted by the Council in respect of signs on footpaths (size, shape, placement, number of signs for a business etc can be controlled under the Public Places Bylaw 2008);
- The Panel noted the need to keep rules made simple so they were easy to interpret by Council officers;

- The Panel queried whether there was a perception by the public that the RMA, ASA and other provisions were at a lower level of enforcement than the Bylaw's;
- The Panel considered whether the RMA has a greater number of tools to use;
- The Panel noted that the RMA is easier to enforce than a Bylaw and does not require a prosecution through the Courts, however that at times enforcement of some RMA issues has involved a lengthy process;
- The Panel noted that under section 155 the Council had to determine whether the Bylaw is the most appropriate way to address the possible problem of signs advertising commercial sexual services;
- The Panel noted some submitters felt that the Council was not giving any guidance to its communities if it revoked the Bylaw;
- The Panel queried public understanding of what the Council was trying to achieve and what it could and could not do;
- The Panel noted there was nothing to stop signs going up anywhere across the city; the issue is what enforcement tools are available to get a sign removed.
- The Panel noted an implication of the High Court decision on the Bylaw; that the map in the Bylaw was drawn for the purposes of the location provisions, and not signage, was not revoked but still applies in respect of the signage provisions;
- The Panel considered resolving to revoke the Bylaw but to delay the revocation until 06 July 2011, the day before the current Bylaw lapses;
- The Panel considered the possibility of preparing a new Bylaw which would cover controls over signs and then revoking the current Bylaw once the new Bylaw came into effect;
- The Panel considered continuing the current Bylaw with no changes even though there were difficulties with its drafting. The Panel appreciated that the current Bylaw will lapse in July 2011 which is two years after its review date of 7 July 2009;
- The Panel briefly discussed whether or not to include location of brothels in a bylaw and confirmed Council's proposal not to have a bylaw for this;
- The Panel noted it could not recommend adoption of a bylaw that was not one of the options listed in the SCP without a further SCP being carried out.

The Panel explored a number of options regarding the development of a new bylaw.

1. Create a bylaw under the Local Government Act 2002; that is incorporate the Brothels Signage Bylaw into the Public Places Bylaw. This is the approach adopted by the Wellington City Council which requires Council approval prior to any sign advertising commercial sexual services being erected. There was serious doubt about whether the LGA02 provided appropriate provisions to control signs advertising commercial sexual services in this way, particularly given that there is specific legislation (in the form of the Prostitution Reform Act) designed to do so. Considerations under the New Zealand Bill of Rights Act 1990 would also apply to a bylaw made under the LGA02 but do not apply to a PRA bylaw.
2. Create a generic bylaw prohibiting signage advertising commercial sexual services across the city on the basis that such signs are likely to cause offence to ordinary members of the public. This approach would require considerable levels of judgement by Council Enforcement officers on a case by case basis to determine whether the sign concerned was (a) advertising commercial sexual services; and (b) that the sign was likely to cause offence to ordinary members of the public in the context within which it was displayed. The Council has been strongly advised not to provide any further guidance as to what would or would not be considered offensive. Rather each case would have to be considered individually. The Council has also had advice that it may only have power to prohibit signs under a PRA bylaw in parts of the Council's district rather than the whole district.
3. Create a bylaw that prohibits advertising commercial sexual services in some parts of the city based on incompatibility with the use and character of these areas. This approach is available to the Council and could potentially be used to create a bylaw that prohibits signs advertising commercial sexual services in residential areas and control them in the central city for example. This was not one of the options consulted on through the SCP.

The Panel then considered its recommendations. Initially the Panel was divided in its response to the recommendations it was being asked to consider; that is, it found it difficult to determine what those recommendations should be. There were a number of schools of thought:

1. The Council's proposal of revocation of the current Bylaw should be endorsed as other means of dealing with issues are able to be found;
2. That the existing Bylaw should be retained, despite the advice provided concerning its inadequacies. The Council's solicitor was of the opinion that this option is not legally viable.
3. That a Bylaw similar to the existing one be developed but with wording that overcomes the inadequacies in the existing Bylaw. This was not an option in the SCP, and would require a bylaw to be drafted and then consulted on under a further SCP.

#### **HEARING PANEL RECOMMENDATIONS**

The Panel unanimously recommends to Council that:

1. The Council's preferred option, Option 4, is confirmed in part and the current Bylaw is revoked from 6 July 2011. (Option 4 also provides that there be no Bylaw and that Council relies on the ability to enforce the display of offensive material through other means.)

The Panel (by a majority of 3:2) recommends to the Council that:

2. In light of the submissions received that staff be requested to develop a proposal for a revised Bylaw, which would address the matters of advertising "commercial sexual services" across the Christchurch City Council area prior to the existing Bylaw lapsing on 7 July 2011.

*For:* Councillors Broughton, Shearing and Wall  
*Against:* Councillors Wells (Chair) and Johanson.