

24. **ADVICE ON POWERS OF COUNCIL IN RELATION TO HEARING PANEL REPORT ON THE PROPOSED REVOCATION OF THE CHRISTCHURCH CITY BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004**



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Introduction

1. This paper contains advice from staff about the powers available to the Council in considering the Hearing Panel Report on the Proposed Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004.
2. The decision the Council needs to make is whether to accept or reject the Hearing Panel's recommendations (in whole or in part).

If the Council accepts the Hearing Panel's recommendations in whole:

3. Given the Council's expressed desire that the review of any bylaw take place wholly within a single term of Council, staff could either:
 - (a) Develop a proposal for a revised Bylaw, which would address the matters of advertising "commercial sexual services" across the Christchurch City Council area, so Council could consider and adopt the new Bylaw prior to the elections in October 2010. Clearly this would require the Council to make decisions on this matter in the lead up to the local body elections in 2010.
 - (b) Develop a proposal for a revised Bylaw, which would address the matters of advertising "commercial sexual services" across the Christchurch City Council area, so the Council could consider and adopt the new Bylaw after the elections but prior to the existing Bylaw lapsing on 7 July 2011. This will require the new Council to begin consideration of the new bylaw early in its new term (probably in late 2010) to be able to complete the bylaw review prior to 7 July 2011.

If the Council rejects the Hearings Panel's recommendations in whole or in part:

4. The Council can make a decision that differs from the Hearings Panel recommendations provided that in doing so the Council's decision is reasonable and can be justified by giving reasons, including identifying the submissions that have caused it to come to the view it has. The new decision may not have been expressly included in any submission, but must in some way arise out of the submissions made on the proposal.
5. Adopting one of the options the Council identified in its statement of proposal, as an alternative to the Hearings Panel recommendations, will be easier to justify than a completely new decision (although adopting one of those options would require a new special consultative procedure (SCP) because it requires the preparation of a new bylaw).
6. A decision that does not arise out of any of the options, and is different from the Hearings Panel could still be made, provided it is clearly referable to a submission on the proposal, and the Council can also explain why it is departing from the Hearings Panel recommendation. However, the Council will need to ask itself whether anyone who did not submit on the proposal would have wanted to submit on its new decision in order to decide whether the new decision does or does not required a further SCP before it can be confirmed.
7. The reasons the Council can decide that it will adopt the Hearing Panel's recommendations or make a different decision from the Panel's recommendations, if it chooses (or) are as follows:
 - (a) The Council is the only body able to make final decisions in relation to this Bylaw (see clause 32(1)(b), Schedule 7, LGA02).
 - (b) It delegated to the Hearings Panel the task of hearing the submissions and making a recommendation, not to make a final determination on any submission.

- (c) The Council already has a background to this matter, by way of the reports it has received and decisions it has made (including under section 155 of the LGA02) on the SCP for the bylaw. This is a point of difference from other matters heard by Hearings Panels or Commissioners, where the final decision is left to the Council.
- (d) The SCP documents included discussion of other options which the Council considered in addition to the preferred option.
- (e) As final decision maker it should be in as good a position as the Hearings Panel as it can be. It can do this by reading the report on the oral submissions made to the Panel, and also reading the written submissions.
- (f) The Hearings Panel members are also councillors, rather than a completely separate commissioner or committee making recommendations to the Council, and so some of the decision makers have heard all of the submissions. (This means it can also seek further information from those Councillors about the oral submissions, if it requires.)
- (g) The Council is entitled to ask for additional comments from staff or others under section 83(3) of the LGA02 before making its decision, and that may add to or provide further information on the issues that is different from what the Hearings Panel considered.