

22. 9. 2011

6. REVIEW OF BROTHELS (LOCATION AND SIGNAGE) BYLAW

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PURPOSE OF REPORT

1. This paper considers options for addressing perceived problems with the location of brothels and signage advertising commercial sexual services. It seeks direction from the Council on whether it wishes to develop a bylaw to address either or both of these issues, or continue to address these issues using existing tools such as the Resource Management Act 1991.

EXECUTIVE SUMMARY

2. The Christchurch City Brothels (Location and Signage) Bylaw 2004 (the 2004 Bylaw) expired on 6 July 2011. On 20 December 2009, the Council requested that staff develop a proposal for a revised bylaw to address matters of advertising commercial sexual services. The Council did not originally intend to address the location of brothels. However, the effects of the February 2011 earthquake on the central city have changed the issues relating to signage advertising commercial sexual services and the location of brothels and so staff have considered these issues anew.
3. The location of brothels has not been of concern to date. However, the location of brothels may become an issue in the aftermath of the February earthquake. Other than small owner-operated brothels, most brothels were located in the central city area, and are now badly damaged and/or inaccessible. These businesses may wish to relocate to other parts of the district. The Prostitution Reform Act 2003 (PRA) requires the Council to consider whether a business of prostitution is likely to cause a nuisance or serious offence to ordinary members of the public, or is incompatible with the existing character or use of an area when considering an application for a resource consent for a land use relating to prostitution. However, a resource consent is not always needed and so the Council may not have the opportunity to consider these matters.
4. There have been limited problems with signage advertising commercial sexual services since the 2004 Bylaw came into effect. However, it is possible that the lack of significant problems is due to the existence, until recently, of bylaw controls. When the Council consulted on the revocation of the 2004 Bylaw in 2009, it received many submissions expressing concern that a lack of bylaw controls would result in signage that is offensive to ordinary members of the public, and that other tools (such as enforcement action through the Resource Management Act 1991 (RMA)) would not be effective in addressing these concerns. There is therefore a perceived problem to be addressed. This may be exacerbated if brothels wish to relocate to other parts of the city, with signage, following the February earthquake.
5. With regard to the location of brothels, there are two broad options: (1) maintain the status quo and continue to allow the location of brothels to be determined by the City Plan and District Plan rules, or (2) develop a bylaw to regulate the location of brothels. Under the status quo, brothels would be treated in the same way as other businesses, except for the additional considerations under the PRA when a resource consent is required. Developing a bylaw would enable the Council to give wider consideration to the appropriate location of brothels and direct them to certain areas of the city rather than allowing them to disperse. However, there are risks in developing a bylaw including a risk of prompting community opposition to brothels being allowed in some areas and not others and a risk of further judicial review from the industry. There may also be difficulties in enforcing a bylaw if evidence is required that a business is operating as a brothel.
6. There are two options for addressing the perceived problem relating to signage advertising commercial sexual services: (1) address any complaints about offensive signage through existing mechanisms (such as the RMA or the Advertising Standards Authority) or (2) develop a bylaw to control signage. Existing mechanisms recognise that what is offensive will depend on the context and enable action to be taken in response to the particular circumstances of a case. However, developing a bylaw provides an opportunity to provide a clear signal to the community about what sort of signage is acceptable before signage is installed.

22. 9. 2011

6 Cont'd

7. If the Council wishes to develop a bylaw to address one or both of these issues, there are a range of possible approaches for a bylaw that require further consideration. If Council wishes to proceed with a bylaw, staff propose to develop report back to the Council with more detailed options in November 2011. Consultation will then be required with the community by way of the special consultative procedure.

FINANCIAL IMPLICATIONS

8. If the Council wishes to develop a bylaw to address one or both of these issues, consultation will be required by way of the special consultative procedure. The associated costs include printing and distribution of the statement of proposal and summary of information, the placement of public notices, and staff costs in supporting a hearings panel. These costs are budgeted for in the City and Community Long-term Planning Activity in the LTCCP.
9. There would also be costs involved in enforcing any new bylaw. These costs are difficult to determine. Legal advice obtained during the review of the 2004 Bylaw indicated possible difficulties in obtaining evidence for offences, as it would be necessary to prove that commercial sexual services are being provided from the premises in question. This could significantly increase the costs of enforcement.
10. There have not been any signage-related offences under the 2004 Bylaw in the seven years of its operation, so it is unlikely that the need to enforce controls on signage would be common. Enforcement officers currently respond to complaints about the location and operation of brothels as part of their role in enforcing City Plan and District Plan requirements. This is a relatively straightforward process and these costs are budgeted for in the Enforcement and Inspections Activity in the LTCCP. Depending on their nature, new controls on the location of brothels could require different evidence to be gathered (for example, evidence relating to the nature of the business activity), which could be costly.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

11. As noted above, if the Council wishes to develop a bylaw, the costs of consultation can be met from within the Community and City Long-Term Planning Activity. The costs of enforcement would be met from the Enforcement and Inspections Activity. Depending on the scope and nature of the bylaw, the current enforcement budget may be insufficient to meet new evidential requirements.

LEGAL CONSIDERATIONS

12. The PRA provides for territorial authorities to make bylaws relating to the location of brothels and signage that advertises commercial sexual services. The provisions of the Local Government Act 2002 (LGA) must be applied when making such a bylaw. In addition, the law generally requires that any bylaw must be *intra vires* (in other words within the statutory powers that authorise the bylaw), certain, not repugnant to the general laws of New Zealand, and reasonable.

Location of brothels

13. Section 14 of the PRA states that a territorial authority can make a bylaw for the purpose of regulating the location of brothels.¹ No further guidance on this bylaw-making power is provided in the Act but section 15 of the PRA is also relevant. Section 15 requires that:

“(1) when considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority 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 ...”*

¹ A brothel is defined in section 4(1) of the Act as “any premises kept or habitually used for the purposes of prostitution.” Prostitution is defined as “the provision of commercial sexual services; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.”

22. 9. 2011

6 Cont'd

14. In making a bylaw, the Council also needs to be satisfied about the matters in section 155 of the LGA. Under section 155 of the LGA, the Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. If so, then it must determine whether the proposed bylaw is in the most appropriate form and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA). Section 155(3) states that no bylaw can be made that is inconsistent with the NZBORA.
15. During earlier stages of reviewing the 2004 Bylaw, the Council did not consider that there was a problem that needed to be addressed with respect to the location of brothels. However, the February 2011 earthquake has changed the situation. Most larger brothels were located in the central city and are now badly damaged and/or inaccessible. These businesses may wish to relocate to other parts of the city and they may not need a resource consent, which means the Council cannot consider whether the re-location is compatible with the character or use of that area, or would cause a nuisance or serious offence to members of the public in that area.
16. With regard to the form of any new bylaw, it is important note that the Council may only make a bylaw to regulate the location of brothels. It may require that brothels be confined to certain areas of the district, where there is good reason for this, but it does not have the power to prohibit the establishment of brothels in every area of the district. If the Council wishes to develop a bylaw to regulate the location of brothels, staff will provide further advice on the appropriate form of the bylaw, and any NZBORA implications, in November 2011.

Signage advertising commercial sexual services

17. Section 12 of the PRA states that a territorial authority can make bylaws that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.² The prohibition or regulation of such signs can be in any terms, and the terms can include the imposition of restrictions on the content, form or amount of signage on display. However, a bylaw can only be made:

*“(2) ... if the territorial authority is satisfied that the **bylaw 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....”***
18. In making a bylaw, the Council therefore needs to be satisfied the bylaw is necessary for at least one of these reasons, in addition to being satisfied about the matters in section 155 of the LGA. As with a bylaw relating to the location of brothels, Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is in the most appropriate form and whether it gives rise to any implications under the NZBORA. However, section 13(2) of the PRA provides that a bylaw relating to commercial sexual services signage may be made even if it is inconsistent with the NZBORA.
19. The Council has previously determined that a bylaw is the most appropriate way to address the perceived problem of signage advertising commercial sexual services, and that such a bylaw is necessary in terms of section 12(2) of the PRA. These determinations were made during the 2004 Bylaw review and following the Council's consultation process in 2009 on the revocation of the 2004 Bylaw. However, these matters should be re-considered by the Council and determined again, since the previous determinations were over 18 months ago and during the previous term of Council.
20. At that time the Council was satisfied from the submissions it received that there was a perceived problem with signage advertising commercial sexual services, and such signage would be offensive to ordinary members of the public. It was also satisfied that the other possible means of addressing or enforcing such signage would not be sufficient on their own to control signage, without a bylaw, and accordingly, it determined that a bylaw was necessary.

² Section 4(1) of the Prostitution Reform Act 2003 defines commercial sexual services as;

“... means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)”

22. 9. 2011

6 Cont'd

21. With regard to the form of a bylaw, the Council can only regulate signs that (a) advertise commercial sexual services **and** (b) cause nuisance or serious offence, and/or are incompatible with the existing character or use of an area. If a particular sign does not meet either of these requirements then it is beyond the Council's powers to regulate that sign under the PRA. It would also be beyond the Council's powers to prohibit every sign that advertises commercial sexual services, as not every sign will be one that causes nuisance or serious offence or is incompatible with the use of an area. Parliament could have used the word "district" in section 12 if it intended to allow Councils to prohibit signs across the whole of their districts.
22. If the Council wishes to develop a bylaw to control signage advertising commercial sexual services, staff will provide further advice on the appropriate form of the bylaw, and any NZBORA implications, in November 2011.

Have you considered the legal implications of the issue under consideration?

23. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

24. This report is broadly aligned to the City and Community Long-term Planning Activity through the provision of advice on key issues that affect the social, cultural, environmental and economic wellbeing of the city. It is also consistent with the Enforcement and Inspections Activity, which aims to protect people from hazards and nuisances and ensure compliance with the City Plan and other regulations.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

25. As above.

ALIGNMENT WITH STRATEGIES

26. There are no strategies that relate specifically to this issue.

Do the recommendations align with the Council's strategies?

27. See above.

CONSULTATION FULFILMENT

28. If the Council wishes to develop a bylaw to address the location of brothels and/or signage advertising commercial sexual services, formal consultation with the community will be required by way of the special consultative procedure. Staff have drawn on previous consultation and advice from key stakeholders, and engagement comments on the Central City Plan, in preparing this report.
29. Public consultation was undertaken on the proposed revocation of the 2004 Bylaw in late 2009. The Council received 345 submissions. The majority of submitters considered there should be a bylaw prohibiting or regulating signage advertising commercial sexual services. The reasons given by the submitters were wide ranging, from the perceived effects on the district of prostitution itself as well as exposure of young people to prostitution through signage advertising commercial sexual services. Some submitters considered that other tools such as the Advertising Standards Authority or the Resource Management Act 1991 would not be effective in the absence of a bylaw. It was suggested that the lack of any problem with signs could be attributed to the existence of the 2004 Bylaw.
30. While not the subject of the consultation, many submitters also commented that the location of brothels should be regulated. Some submitters considered that brothels should not be located in the suburbs near churches, schools and child care centres. Others expressed concern at a possible decline in property values.

22. 9. 2011

6 Cont'd

31. The New Zealand Police advised that they are unaware of any problems associated with the location of brothels, or indeed any nuisances from such sources. Community and Public Health representatives, who operate as Brothel Inspectors under the PRA, advised that they do not consider there are issues with either the location of brothels or signage.
32. During the 2009 consultation, some brothel operators advised they are unlikely to install further signage as they wish to keep signage discrete. They are also able to advertise in the classified advertisement sections of newspapers. The local branch of the Prostitutes Collective advised that they were not aware of any problems with signage, but considered there may be a need to provide controls over offensive signage. These controls could be through a bylaw or other means, such as the Resource Management Act 1991 for example. The local branch of the Prostitutes Collective has also advised that, following the February 22 earthquake, many sex workers are now working in small owner operated brothels and that, in their view, many sex workers are unlikely to return to working in larger brothels. They are unaware of any larger brothels seeking to relocate out of the central city.
33. The recent Share an Idea engagement for the Central City Plan elicited a number of comments about the location of brothels. While not specifically asked to comment on this issue, many people took the opportunity to express their concern about brothels lowering the tone of the central city. Some people expressed a preference for no brothels while others suggested they be concentrated in a small area.

STAFF RECOMMENDATION

34. Staff recommend that the Council:

Location of brothels

(a) EITHER

- (i) **agree** that there is sufficient evidence of a perceived problem relating to the location of brothels and a bylaw is the most appropriate way to address the perceived problem; and
- (ii) **direct** staff to develop options for a bylaw to regulate the location of brothels and report back to the Council in November 2011;

OR

- (iii) **agree** that the location of brothels should continue to be determined by City Plan and District Plan rules, and that no bylaw regulation is required;

Signage advertising commercial sexual services

(b) EITHER

- (i) **agree** that there is sufficient evidence of a perceived problem from signage advertising commercial sexual services and a bylaw is the most appropriate way to address the perceived problem; and
- (ii) **agree** that a bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public in the Council's district, or is incompatible with the existing character or use of certain areas in the Council's district; and
- (iii) **direct** staff to develop options for a bylaw to control signage advertising commercial sexual services and report back to the Council in November 2011;

22. 9. 2011

6 Cont'd

OR

- (iv) agree that any complaints about offensive signage advertising commercial sexual services should be addressed through existing mechanisms such as the Resource Management Act 1991 and the Advertising Standards Authority, and that no bylaw regulation is required.

BACKGROUND (THE ISSUES)

35. The Christchurch City Brothels (Location and Signage) Bylaw 2004 (the 2004 Bylaw) was adopted by the Council on 7 July 2004. The bylaw originally restricted the location of brothels, and signage advertising commercial sexual services, to specified areas within the central city, and placed controls on signage. However, the location provisions were quashed by the High Court in 2005 because they failed to make provision for small owner operated brothels³ which, by their nature, operate across the city. Only the signage provisions remained.

Review of the 2004 Bylaw

36. The LGA requires that the 2004 Bylaw be reviewed five years after it came into force. A review was commenced in 2008 and has been the subject of several reports to the Council. A brief chronology of events is set out in the following table.

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| 27 Nov 2008 | <p>A report is presented to the Council noting that there is insufficient evidence of a problem that needs to be addressed by way of a bylaw. The report recommends the revocation of the 2004 Bylaw.</p> <p>The Council agrees that there is no need for a bylaw regulating the location of brothels but resolves that there is sufficient evidence of a problem relating to signage advertising commercial sexual services that needs to be addressed by way of a bylaw. The Council agrees that a new bylaw should be investigated.</p> |
| First half of 2009 | <p>The Brothels Location and Signage Subcommittee is appointed to investigate the development of a new bylaw to replace the existing bylaw. A number of "grey" areas about the scope of a new bylaw, and complexities in drafting a new bylaw to cover signs under the PRA are identified. External legal advice is obtained from Buddle Findlay (Kerry Smith).</p> |
| 23 July 2009 | <p>A report to the Council meeting advises that having considered Mr Smith's opinion and following further work by staff, there are other tools available to deal with any problems relating to signage, such as the Resource Management Act 1991, rules in the City and District Plan, the Advertising Standards Authority, or the Films, Videos, and Publications Classification Act 1993.</p> <p>The Council agrees and resolves to revoke the resolutions made on the 27 November 2008, noting that although there may be sufficient evidence of a perceived problem with regard to signage advertising commercial sexual services, the most appropriate way to address any such problem is not by way of a bylaw. A special consultative procedure is commenced on the revocation of the 2004 Bylaw.</p> |
| 5-9 Oct 2009 | <p>The hearings panel appointed by Council hears submissions on the proposed revocation of the 2004 Bylaw. There are 345 submissions from individuals, groups and organisations. 17 submitters appear at the hearings.</p> <p>The hearings panel unanimously agrees that the current bylaw be revoked from 6 July 2011. However, the panel by a majority of 3:2 does not accept that the Council should rely on the ability to enforce the display of offensive signage through other means. It recommends that staff be requested to develop a proposal for a revised bylaw to address the matters of advertising commercial sexual services across the Christchurch City Council district prior to the existing bylaw lapsing in July 2011.</p> |

³ Section 4(1) of the Prostitution Reform Act 2003 defines a small owner operated brothel as "a brothel—

(a) at which not more than 4 sex workers work; and

(b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel."

22. 9. 2011

6 Cont'd

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| 10 Dec 2009 | The hearings panel report is presented to Council. The Council adopts the recommendations above and rejects a proposed amendment that a further legal opinion be obtained on the matter. |
| Early 2010 | The decision is made to bring the proposal for a revised bylaw to the "new" Council in late 2010/early 2011. |
| Feb 2011 | Staff prepare a report to the Regulatory and Planning Committee with a new proposed bylaw relating to signage. The earthquake of 22 February 2011 occurs the week before the report is due to be considered. |

37. The Council considered the 2004 Bylaw most recently on 10 December 2009 and resolved 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 2011.⁴ The Council also agreed to revoke the 2004 Bylaw from 6 July 2011.
38. Staff prepared a report with a new proposed bylaw that could have been in place before the expiry of the 2004 Bylaw. This report would have recommended restricting signage advertising commercial sexual services to an area within the central city. However, the earthquake of 22 February 2011 occurred before the report could be considered. The effects of the earthquake on the central city have changed the issues relating to signage advertising commercial services and the location of brothels and so staff have considered these issues anew.

Problem definition*Location of brothels*

39. Since 2005, when the location provisions of the 2004 Bylaw were quashed, the Council has controlled the location of brothels within Christchurch City via the City Plan. The City Plan treats brothels like any other commercial service. The following rules generally apply:
- In living zones there is limited scope for a brothel to be established as a permitted activity (that is, without resource consent) unless it is a small-scale home-based business with limited hours of operation.⁵
 - In business zones the rules are more permissive, but the brothel would need to meet standard requirements relating to bulk and location, car parking and traffic generation.
40. Brothels have never been subject to bylaw regulation in Banks Peninsula. Under the District Plan, brothels are treated as a visitor facility. Visitor facilities are permitted within the Town Centre zones and are a discretionary activity in the Industrial zones, subject to standard conditions relating to building size, height, parking and access provisions.
41. When considering a resource consent application for a business of prostitution, the Council is required, under section 15 of the PRA, to consider whether the business is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or is incompatible with the existing character or use of the area.
42. The Council has recently received an application for resource consent for a brothel located in a living zone in Churchill Street, near the intersection of Bealey and Fitzgerald Avenues. This is a retrospective application (the brothel is believed to have been in this location for up to two years) and has arisen as a result of City Plan enforcement action. The application will be put to a Hearings Panels for decisions on both notification and the substantive decision, and the matters under section 15 of the PRA will be taken into account.

⁴ Under section 160A of the LGA, bylaws lapse two years from the date when they should have been reviewed (if not reviewed or revoked).

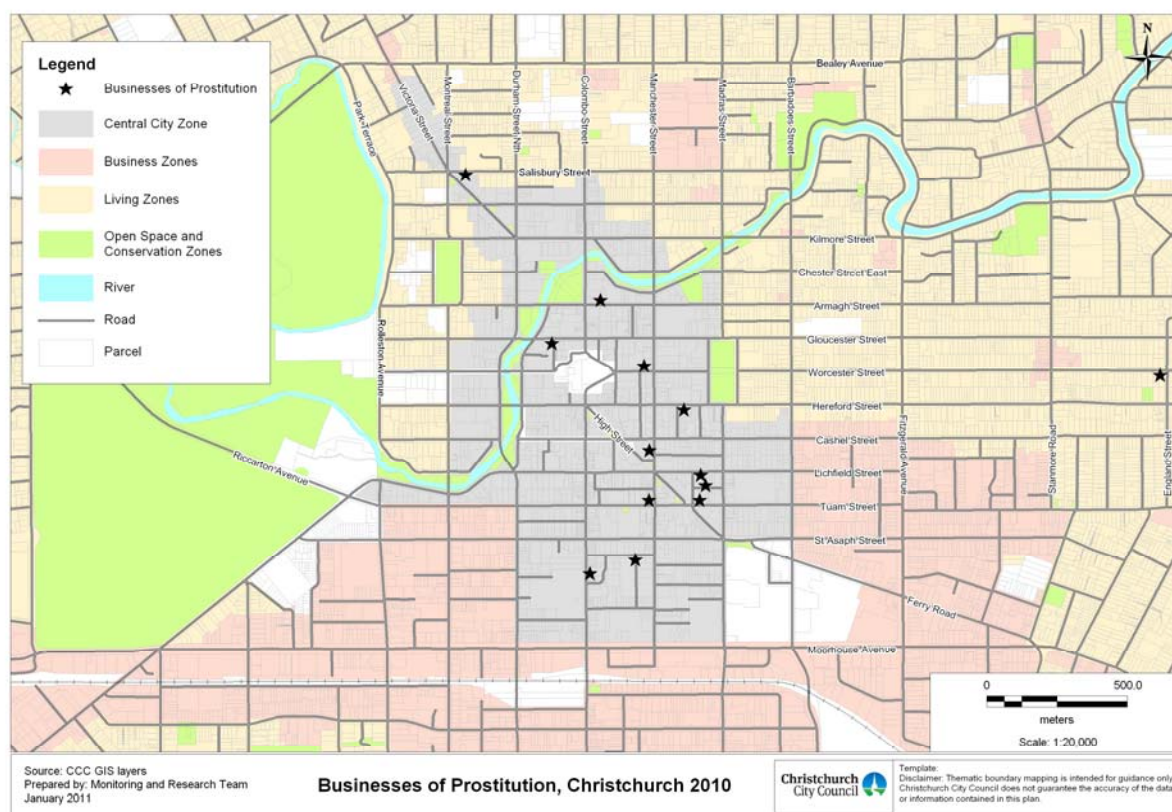
⁵ At least one worker would need to live on-site, only one person could be employed who lives elsewhere, the floor area would be restricted to 40m² and the business would need to be closed by 11pm. There are also limits on visitor numbers and at least four parking spaces would have to be provided on-site.

22. 9. 2011

6 Cont'd

43. The location of brothels has not been of concern to date. A small number of complaints are received by the Council each year and generally relate to small owner operated brothels. For example, there were 10 complaints in each of 2009/10 and 2010/11. Complaints tend to arise when a neighbour notices coming and goings from an address and expresses concern about the existence of a brothel. Complaints are investigated and are resolved either by confirming that City Plan or District Plan requirements are being met or by writing to the operator pointing out how City Plan or District Plan requirements are being breached. In the latter situation, operators will either comply or move on. Sometimes the property owner becomes aware of the activity and the operator is moved on, regardless of whether or not the business complies with the City Plan or District Plan. No complaints have been received about the location of larger brothels.
44. The location of brothels may become an issue, however, in the aftermath of the February 2011 earthquake. As shown in the following map, most of the larger brothels were located within the central city in 2010. Many were badly damaged in the February earthquake, and only one of these brothels, plus one new brothel, is known to be operating.⁶ It is possible that some of the affected businesses will wish to temporarily or permanently relocate out of the central city. (The location of small owner operated brothels is unknown and it is likely that most continue to operate across the city.)

Figure One: Map of businesses of prostitution 2010



45. The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 enabled the Council to establish new standards, by public notice, for residences and businesses to temporarily relocate without having to apply for a resource consent. These standards relaxed parking requirements and limits on traffic generation for commercial services. This means that some larger brothels may be able to temporarily relocate without needing to obtain a resource consent. If resource consents are not needed, then the Council will not get to consider whether the business is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or is incompatible with the existing character or use of the area (as required by section 15 of the PRA).

⁶ This includes an existing business at 464 Worcester Street and a new business at 484 Tuam Street.

22. 9. 2011

6 Cont'd*Signage advertising commercial sexual services*

46. The 2004 Bylaw, now lapsed, restricted signage advertising commercial sexual services to the specified areas within the central city and included the following controls:
- Only one sign was allowed (or two if the business had multiple street frontages).
 - The sign had to be attached to the premises.
 - Only the name of the business, the name of the person conducting the business and the street number could be included on the sign.
 - No pictorial images or flashing lights were allowed.
 - The sign could be no greater than 0.3 metres squared in surface area.
47. There is limited evidence of problems with signage advertising commercial sexual services since the 2004 Bylaw came into effect. The Inspections and Enforcement Unit have dealt with only one complaint about offensive signage since 2004, which was promptly addressed. There have been no problems since the 2004 Bylaw expired on 6 July 2011. Discussions with the local branch of the Prostitutes Collective and some brothel owners indicated a preference among this business community for keeping signage discreet. However, it is possible that the current lack of any significant problems with signs advertising commercial sexual services is also due to the existence, until recently, of bylaw controls.
48. When the Council consulted on the revocation of the 2004 Bylaw, the Council received many submissions expressing concern that a lack of bylaw controls on signage advertising commercial sexual services would result in signage that is offensive to ordinary members of the public. Many submitters were concerned about children and young people being exposed to such signage and did not consider that other tools (such as the Resource Management Act or the Advertising Standards Authority) would be effective in addressing these concerns. This indicates that while there have been few problems with signage to date, there may nonetheless be a *perceived* problem to be addressed. That was the view of the Council when it considered the hearing panel report in December 2009.
49. Many of the larger known brothels are located within the central city and most were badly damaged during the earthquake of 22 February 2011. It is possible that some of these businesses may wish to relocate, with signage, to other areas of the city.

THE OBJECTIVE

50. The desired objective is to ensure that both the location of brothels and signage advertising commercial sexual services:
- (a) are compatible with the character and use of areas within the district; and
 - (b) do not cause a nuisance or serious offence to ordinary members of the public.

THE OPTIONS***Location of brothels***

51. There are two options for ensuring that the location of brothels is consistent with the above objective:
- (1) Status quo – continue to allow the location of brothels to be determined by the City Plan and District Plan rules.
 - (2) Develop a bylaw to regulate the location of brothels.

22. 9. 2011

6 Cont'd

Option 1 - Status quo

52. Under this option, the location of brothels would continue to be determined by the City Plan and District Plan, as described in paragraphs 39 and 40 above. As with any other commercial service, there would be limited scope for brothels to establish in living zones (other than small-scale home-based businesses) and brothels would need to meet standard requirements relating to bulk and location, car parking and traffic generation in commercial and business zones. In situations where a resource consent is required, specific consideration would be given to whether the business is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or is incompatible with the existing character or use of the area (as required by section 15 of the PRA). As noted earlier, a resource consent is not always required and so the Council would not always have the opportunity to consider these matters.
53. The standards issued under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 potentially increase the situations in which resource consent is not required for businesses that are temporarily relocating. These standards could be amended to exclude businesses of prostitution, thus enabling the section 15 factors to be taken into consideration. However, it is not clear how many brothels would be affected or whether resource consent would even be required, given existing City Plan and District Plan rules. Staff are currently reviewing the operation of this Order and will report to Council with any proposed changes to the standards.

Option 2 – Develop a bylaw to regulate the location of brothels

54. Developing a bylaw to regulate the location of brothels would provide more specific controls on where brothels may and may not be established, bearing in mind the character and use of areas within the district and the likelihood of causing a nuisance or serious offence. The Council had not seen the need for such a bylaw in earlier stages of the review. However, given the significant damage of existing businesses in the central city, and the likelihood that at least some of these businesses will seek to relocate, the Council may wish to consider directing these establishments to certain areas of the city rather than allowing them to disperse.
55. Possible approaches include:
- (a) Specifying the planning zones in which brothels are allowed (for example business zones);
 - (b) Allowing brothels within a more defined mapped area (which could be different from City Plan and District Plan zones);
 - (c) Requiring brothels to be located a certain distance from some sites (for example schools or churches); and/or
 - (d) Requiring brothels not be located at ground level in some areas (for example the central city) to minimise the risk of brothels causing a nuisance or serious offence to ordinary members of the public.
56. Prohibiting brothels from operating in any location within the district is not an option – the Prostitution Reform Act only enables the Council to regulate the location of brothels. Thirteen councils, including five city councils, in New Zealand regulate the location of brothels.⁷ Approaches vary in different districts, but generally involve some combination of the approaches described above.
57. There are risks in developing a bylaw to regulate the location of brothels. Identifying certain areas of the district in which brothels are compatible with the character or use of the area creates the risk of opposition from businesses and residents in those areas. While prostitution is a legitimate business and there are currently no specific restrictions on the location of brothels, developing a bylaw that allows brothels to be located in some areas and not others will bring attention to the issue and could lead to some communities feeling stigmatised. There is also a risk of further judicial review if businesses of prostitution consider that their options have been unduly restricted.

⁷ These figures include the pre-amalgamation councils within the Auckland area as the bylaws of those councils remain in force until October 2015. Cities with bylaws regulating the location of brothels are Manukau, North Shore, Hamilton, Tauranga and Upper Hutt.

22. 9. 2011

6 Cont'd

58. This option could also increase the costs of enforcement. Enforcement of City Plan requirements is relatively straightforward as the same rules apply to all businesses. Depending on the nature of the bylaw, enforcing a bylaw that regulate the location of brothels could require new evidence to be gathered that demonstrates that the business is operating as a brothel and that commercial sexual services are being provided from the premise in question. This sort of evidence would be difficult to obtain and is likely to be expensive. However, the Council would still be able to use existing avenues to enforce City Plan rules.
59. If the Council wishes to develop a bylaw to regulate the location of brothels, staff will report back with more specific options. Any bylaw to regulate the location of brothels should take account of previous consultations with the community, which have generally indicated opposition to brothels being located in residential areas. When the 2004 Bylaw was being developed, the Council received around 1,500 submissions: 61 per cent of submitters considered that brothels should only be allowed in the central business district or within the four avenues; another 17 per cent considered they could be in other commercial or industrial zones. The 2009 consultation on the revocation of signage controls also highlighted opposition from some parts of the community to brothels being located in the suburbs near churches, schools and child care centres. The recent Share an Idea engagement for the Central City Plan elicited a number of comments about the location of brothels, with some people expressing a preference for no brothels and others suggesting they be concentrated in a small area.
60. Whichever approach is taken, the Council should consider making an exception for small owner-operated brothels as these are already operating across the city without any obvious problems. Making small owner-operated brothels subject to the same requirements as other brothels could drive them underground, be contrary to the intention of the PRA, and create the risk of further judicial review. Moreover, determining the location of such premises would be almost impossible as they do not require operating licences, nor can entry be obtained without Court warrant on very restricted grounds by the Police. The Council may also wish to make an exception for existing businesses of prostitution if they do not comply with any new bylaw controls on location.

Signage advertising commercial sexual services

61. There are two options for addressing the perceived problem with signage advertising commercial sexual services:
- (1) Address any complaints about offensive signage through existing mechanisms (such as the Resource Management Act 1991).
 - (2) Develop a bylaw to control signage.
- Option 1 – Address complaints through existing mechanisms*
62. As noted earlier, there are already several avenues available to the Council to address any complaints about offensive signage:
- The Resource Management Act 1991 enables an enforcement officer to issue an abatement notice where s/he considers that signage "is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment".⁸ The respondent must be given at least seven days to comply. The Environment Court can also issue an enforcement order, and it is an offence to fail to comply with either an enforcement order or an abatement notice.
 - The City Plan and District Plan place controls on signage, including area, height, illumination and the relationship to the site. Enforcement action can be taken if businesses fail to comply with these rules.
 - Any person, or the Council, can make a complaint to the Advertising Standards Authority if advertising codes of practice, which include criteria for offensiveness and decency of advertising, are breached. Complaints are heard by an independent board and requests to withdraw advertising are invariably complied with.

⁸ See Part 12. The environment is broadly defined to include people and communities, and amenity values [section 2].

22. 9. 2011

6 Cont'd

- A complaint may also be made under the Films, Videos, and Publications Classifications Act 1993.⁹

63. When the Council last considered this issue in December 2009, it did not accept that these avenues were adequate to address the perceived problem. The advantage of these approaches is that they recognise that what is offensive will depend on the context and enable action to be taken in response to the particular circumstances of a case. Conversely, however, they may not provide sufficient guidance to the community about what is and is not acceptable with respect to signage advertising commercial sexual services.

Option 2 – Develop a bylaw to control signage

64. Developing a bylaw to regulate signage advertising commercial sexual services would clearly signal what sort of signage is acceptable before signage is installed. As noted earlier, the Council may make a bylaw prohibiting or regulating signage that is in, or is visible from, a public place **only if** the Council is satisfied that a bylaw is necessary to prevent the public display of signage that is “likely to cause a nuisance or serious offence to ordinary members of the public using the area” or is “incompatible with the existing character or use of that area”. The signage must also be advertising commercial sexual services; a sign that only includes the name of a business is not advertising commercial sexual services.
65. Possible approaches for controlling signage are:
- (a) Prohibiting signage in some areas and regulating signage in other areas
 - (b) Prohibiting signage in some areas without any regulation in other areas
 - (c) Regulating the nature of signage allowed in the district in some areas, or across the whole district, without prohibiting signage.
66. Sixteen councils, including eight city councils, in New Zealand have bylaws relating to signage advertising commercial sexual services.¹⁰ Regulatory controls vary but generally include some combination of controls on: the number of signs that may be displayed; the size of signs; the type of sign that may be displayed (generally councils require they be fixed to buildings); illumination; and the information that may be included (for example, no pictures). Some councils also include a general requirement that signs not be offensive. As noted in paragraph 45, similar controls were employed in the 2004 Bylaw.
67. As with a bylaw to regulate the location of brothels, there could be difficulties in enforcing a bylaw controlling signage advertising commercial sexual services if evidence is required to demonstrate that commercial sexual services are being provided from the premise in question. However, given the lack of complaints under the 2004 Bylaw, it is not likely that signage controls would require frequent enforcement.
68. If the Council wishes to develop a bylaw to regulate signage advertising commercial sexual services, staff will report back with further advice on options. The key consideration will be whether proposed controls are necessary to ensure signs are compatible with the character and use of areas within the district, and do not cause a nuisance or serious offence to ordinary members of the public.

PREFERRED OPTIONS

69. Staff are seeking direction from the Council on whether it wishes to develop a bylaw to address either or both of these issues, or continue to address these issues using existing tools. As discussed above, there are benefits and risks associated with each option.
70. If Council wishes to proceed with a new bylaw, staff propose to report back in November 2011 with more detailed options and advice on considerations under section 12 of the PRA and section 155 of the LGA. Consultation will then be undertaken with the community by way of the special consultative procedure.

⁹ A publication is objectionable if it “describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good” [section 3].

¹⁰ These figures include the pre-amalgamation councils within the Auckland area as the bylaws of those councils remain in force until October 2015. Cities with bylaws relating to signage advertising commercial sexual services are Auckland, Manukau, North Shore, Hamilton, Tauranga, Upper Hutt, Wellington and Nelson.