

15. REGULATION OF SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES



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**PURPOSE OF REPORT**

1. This paper presents a proposed option for the development of a bylaw under the Prostitution Reform Act 2003 (PRA) to regulate signage advertising commercial sexual services that is in, or is visible from, a public place. Council direction is sought through this report before a proposed bylaw, a statement of proposal, and a summary of information are drafted.

**EXECUTIVE SUMMARY**

2. The Christchurch City Brothels (Location and Signage) Bylaw 2004 (the 2004 Bylaw) expired on 6 July 2011. Since that time signage advertising commercial sexual services has only been subject to the same rules for signage as other activities regulated by the City Plan and Proposed Banks Peninsula District Plan.
3. On 22 March 2012, the Council considered options to regulate the location of brothels and to control signage advertising commercial sexual services that is in, or is visible from, a public place. The Council determined that staff develop a proposed bylaw, Statement of Proposal and Summary of Information that would require that all brothels, other than small owner-operated brothels, be located within specific areas based on particular zones identified in the City Plan and Proposed Banks Peninsula District Plan and the Draft Central City Plan. The Council also determined that further legal advice on the proposed signage controls was required before a decision could be made on the proposed controls for signage advertising commercial sexual services.
4. Staff have now received further legal advice, which has been taken into account in preparing this report. Staff propose that a bylaw be prepared regulating signage advertising commercial sexual services in the areas where operator-run brothels are permitted to locate through controls on the number, placement and content of signs. Signage advertising commercial sexual services would be prohibited in the rest of the city.
5. If the Council agrees with the proposal to control signage advertising commercial sexual services, staff will prepare the recommended bylaw to regulate location of brothels *and* signage advertising commercial sexual services for adoption for public consultation at a Council meeting in late May 2012. The Special Consultative Procedure is then expected to run from mid June to mid July with hearings anticipated in mid to late July. Staff expect to take the bylaw for adoption at a Council meeting in late August, and for the proposed bylaw to be implemented by September of this year.

**FINANCIAL IMPLICATIONS**

6. Consultation on any new bylaw must be undertaken 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.
7. The costs of enforcing the bylaw are difficult to determine. However, as there were no signage-related offences under the 2004 Bylaw in the seven years of its operation, it is unlikely that the need to enforce controls on signage will be common. Moreover, enforcement officers already respond to complaints about signage in general as part of their role in enforcing the requirements of the District Plan. These costs are budgeted for in the Enforcement and Inspections Activity of the LTCCP. Any increase in costs will be brought to the attention of the Council.

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

8. As noted above, the costs of consultation are provided for within the Community and City Long-Term Planning Activity and the costs of enforcement will be met from the Enforcement and Inspections Activity.

**LEGAL CONSIDERATIONS**

**Resource Management Act 1991 (RMA)**

9. The Council has previously considered, as part of the review of the 2004 Bylaw, its powers under the Resource Management Act 1991 (the Act) in relation to signage advertising commercial sexual services. The Act enables the Council to apply for an enforcement order or serve an abatement notice requiring a person to cease doing something, that, in the opinion of the Environment Court or an enforcement officer, is (or is likely to be) offensive or objectionable to such an extent that it has (or is likely to have) an adverse effect on the environment. (Complaints to the Advertising Standards Authority can also be made in respect of offensive advertising.) However, the Council did not consider this a sufficient option for preventing the display of offensive signage.

**The Prostitution Reform Act 2003 (PRA) and the Local Government Act 2002 (LGA 02)**

10. 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.<sup>1</sup> 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...**”

11. In making this bylaw, the Council therefore needs to be satisfied the bylaw is necessary for at least one of these reasons. The Council must also apply the bylaw-making provisions of the LGA 02 and be satisfied that the matters in section 155 have been compiled with. This requires the Council to 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 New Zealand Bill of Rights Act 1990 (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.

**Determinations under the PRA and LGA in respect of signage advertising commercial sexual services**

12. 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. These matters were re-considered by the Council in September 2011 and the Council again determined that a bylaw is the most appropriate way to address the problem.

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<sup>1</sup> 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)”

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13. The Council can only regulate signs that advertise commercial sexual services **and** that cause nuisance or serious offence, **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 all signs that advertise commercial sexual services, as not every sign will be one that causes nuisance or serious offence or be incompatible with the use of every area in the Council's district. 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.
14. The form of the proposed bylaw will not prohibit all signs in the district. This is discussed in greater detail in paragraphs 33 to 39. The proposed bylaw has a similar scope to the 2004 Bylaw in that it prohibits signs in most of the district but allows signs, with restrictions on content and form, in the areas where operator-run brothels are allowed. This is on the basis that signage in these areas, with appropriate controls placed on it, as to size, nature, number and image is not incompatible with the use of these areas. Signage advertising commercial sexual services would not be allowed in all other areas in the district.
15. The proposed bylaw and the manner in which it prohibits signage in most of the district may give rise to implications under the NZBORA, specifically the right to freedom of expression in section 14 ("everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form"). However, even if there was considered to be an inconsistency with section 14, as noted above, any inconsistency with the NZBORA does not prevent the bylaw from being made. Note that a prohibition on signs does not prevent a business advertising commercial sexual services because section 11(1)(b) of the PRA allows for classified advertisements in newspapers.

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

16. As above.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

17. The proposed bylaw 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?**

18. As above.

#### **ALIGNMENT WITH STRATEGIES**

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

#### **Do the recommendations align with the Council's strategies?**

20. See above.

#### **CONSULTATION FULFILMENT**

21. The proposed bylaw is subject to formal consultation with the community by way of the Special Consultative Procedure (as required by section 83 of the LGA). Staff have drawn on previous consultation and advice from key stakeholders in preparing the recommended option for the proposed bylaw and this report.

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22. Public consultation was undertaken on the proposed revocation of the 2004 Bylaw in late 2009. The Council received 345 submissions, the majority of which considered there should be a bylaw prohibiting or regulating signage advertising commercial sexual services. It was also suggested that the lack of any problem with signs could be attributed to the existence of the 2004 Bylaw.
23. The New Zealand Police, Community and Public Health representatives (who operate as Brothel Inspectors under the PRA), advised that they do not consider there are issues with signage advertising commercial sexual services.
24. 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 such as through a bylaw.

### STAFF RECOMMENDATION

25. That the Council resolves to:
  1. Direct staff to prepare a proposed bylaw that:
    - (a) prohibits signage advertising commercial sexual services in all areas of the district except the areas where brothels are permitted:
    - (b) regulates signage advertising commercial sexual services by requiring that only one sign be displayed and that signs:
      - be attached to the premises at which the commercial sexual services are provided;
      - clearly display the number of the premises to which the sign relates;
      - not be offensive;
      - not display any pictorial image;
      - not exceed 0.3 square metres in surface area; and
      - not be illuminated by any flashing light; and
  2. Note that the proposed signage provisions may give rise to implications under section 14 of the New Zealand Bill of Rights Act 1990, but that the Bylaw can still be made, pursuant to section 13 of the Prostitution Reform Act 2003.

### BACKGROUND (THE ISSUES)

26. 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 SOOBs which, by their nature, operate across the city. Only the signage provisions remained. The Bylaw expired on 6 July 2012.
27. This Bylaw was considered most recently at the 22 March 2011 Council meeting at which the Council determined that further legal advice on the proposed signage controls was required before a decision could be made on the proposed controls for signage advertising commercial sexual services.

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**Problem definition**

28. The 2004 Bylaw, now expired, 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.
29. 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. 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.
30. 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.
31. Many of the known operator-run brothels were 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. At the time of this report, there has only been one application to relocate under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. There have also been two new businesses that have opened.<sup>2</sup>

**THE OBJECTIVE**

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

**THE OPTIONS**

33. Under section 155 of the LGA, the Council is required to identify non-bylaw options to address the issue. The Council has previously considered and dismissed non-bylaw options relating to signage in the earlier reports on this matter and the review of the 2004 Bylaw.
34. The Council determined at its 22 September 2011 meeting that a bylaw is the most appropriate way to address the perceived problem of signage advertising commercial sexual services and to prevent the public display of signage that 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 certain areas in the Council's district.

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<sup>2</sup> At 484 Tuam Street and 134 Papanui Street.

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35. The earthquakes have created complexity in identifying areas in which signage advertising commercial sexual services would not be out of character. The Draft Central City Plan and rebuild will change the original nature of the district. Staff recommend that the areas in which signage be permitted align with the proposed areas for the location of brothels. This includes selected areas based on particular zones identified in the City Plan, Proposed Banks Peninsula Plan and the Draft Central City Plan. As there is no evidence that SOOBs have ever sought to provide signage in suburban areas, a prohibition in the rest of the district is considered reasonable.
36. In order to reduce the risk of signage causing offence to ordinary members of the public, it is proposed that the bylaw regulate signage by requiring that only one sign be displayed and that signs:
- be attached to the premises at which the commercial sexual services are provided;
  - clearly display the number of the premises to which the sign relates;
  - not be offensive;
  - not display any pictorial image;
  - not exceed 0.3 square metres in surface area; and
  - not be illuminated by any flashing light.
37. The proposed controls are very similar to those in the 2004 Bylaw. The 2004 Bylaw also required that any signs be attached to the premises they are advertising and provided for no pictorial images on signs, a maximum sign size and no illumination of signs. Continuing these controls would ensure that any sign a business uses will be relatively small and discreet. Applying similar controls to the proposed bylaw would also mean that any new bylaw should be easily applied and understood.
38. There are two proposed differences from the 2004 Bylaw. First, the 2004 Bylaw enabled the display of two signs where a building had multiple street frontages. It is considered that a single sign should be sufficient. Second, the 2004 Bylaw only enabled the sign to include the name of the business, the name of the person conducting the business and the street number. Legal advice suggests that this requirement may be too restrictive in that it effectively prohibits the advertising of commercial sexual services. It is proposed that this requirement be replaced with a new requirement that the sign not be offensive.
39. A more conservative option for the proposed bylaw, would be to retain the restriction that the only content permitted is the name of the business, the name of the person conducting the business and the number of the property (as per the 2004 Bylaw), instead of inserting a "not offensive" restriction. If the Council wishes to retain these restrictions, any potential risk of doing so is considered to be low. Council staff note that several other Councils include similar "name" restriction provisions in their PRA bylaws that regulate signs.

### PREFERRED OPTION

40. It is proposed that the bylaw prohibits signage advertising commercial sexual services in all areas of the district except in the areas where brothels are permitted **and** regulates signage within these areas by requiring that only one sign be displayed, and that signs:
- be attached to the premises at which the commercial sexual services are provided;
  - clearly display the number of the premises to which the sign relates;
  - not be offensive;
  - not display any pictorial image;
  - not exceed 0.3 square metres in surface area; and
  - not be illuminated by any flashing light.