



6. **BROTHELS LOCATION AND SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES BYLAW**

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PURPOSE OF REPORT

1. This paper presents for consideration a proposed bylaw under the Prostitution Reform Act 2003 (PRA) to regulate the location of brothels¹ and control signage advertising commercial sexual services that is in, or is visible from, a public place. It is recommended that the Council adopt the proposed bylaw, statement of proposal, and summary of information for consultation by way of the special consultative procedure. For the purposes of this report, "brothel" refers to small owner-operated brothels (SOOBs)² and operator-run brothels³.

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 (the District Plan) in the same way as other businesses. The location of brothels has not been subject to any bylaw controls since July 2005, when that part of the 2004 Bylaw was quashed by the High Court.
3. The Council determined at its 22 March 2012 meeting that staff develop a bylaw to regulate the location of brothels. At its 26 April 2012 meeting the Council determined that staff develop a bylaw to control signage advertising commercial sexual services.
4. The proposed bylaw will require that all brothels, other than SOOBs, be located in areas based on business zones identified in the district plans and the Draft Central City Plan, and be prohibited from all remaining areas. Specifically, it will allow operator-run brothels in certain areas based on the commercial business zones of the Draft Central City Plan, the City Plan and the Lyttelton Town Centre Zone of the Proposed Banks Peninsula District Plan. **Attachment 1** provides details of the permitted areas for the location of brothels. The proposed bylaw will also provide that operator-run brothels cannot be located in any building that is on a property that shares a boundary with a school, or is immediately adjacent to any important space area (based on City Plan Map 39f and marked on the Central City map in **Attachment 1**). No regulation is proposed for the location of SOOBs. Staff also recommend that known existing operator-run brothels should be exempt from the bylaw location requirements.
5. The proposed bylaw will regulate signs 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 will be prohibited in the rest of the city.
6. Section 156 of the Local Government Act 2002 (LGA) requires that the special consultative procedure be used in making a new bylaw. A Statement of Proposal (including the proposed bylaw) (**Attachment 2**) and a Summary of Information (**Attachment 3**) are attached for this purpose. The Special Consultative Procedure is expected to run from 11 June to 10 July 2012 with hearings anticipated in mid to late July. Staff expect to take the bylaw to Council for adoption at the Council meeting in late August 2012, and for a bylaw to be implemented by September of this year.

¹ Section 4(1) of the Prostitution Reform Act 2003 defines a brothel 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."

² 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."

³ Where the operator holds an operator certificate (under section 34 (1) of the PRA) issued by the Registrar of the District Court in Auckland

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FINANCIAL IMPLICATIONS

7. 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, public information sessions 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.
8. The costs of enforcing the bylaw are difficult to determine. Legal advice obtained during the review of the 2004 Bylaw indicated possible difficulties in obtaining evidence for offences, which could add to the cost of enforcement. 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 the location and operation of brothels 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. Investigations of complaints may, however, require the use of resources outside of Council's core business hours — by virtue of the nature of brothel operations. The need for such resources will be monitored and any increase in costs will be brought to the attention of the Council.

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

9. 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)

10. The Council has previously considered, as part of the review of the 2004 Bylaw, its powers under the Resource Management Act 1991 in relation to signage advertising commercial sexual services. The RMA provides the Council with the ability to apply for an enforcement order or serve an abatement notice to require a person to cease or prohibit them from commencing, or require the person to do 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.
11. At the 22 March 2012 meeting the Council considered and discarded the option of using district plan provisions under the RMA, as provisions can only be included in the District Plan for regulating the location of brothels and signage advertising commercial sexual services, if there are actual or potential effects on the environment such as visual aspects, traffic, parking and noise. Adverse social effects as a result of people's attitudes can not be considered as an environmental effect. Furthermore, there would need to be evidence of adverse effects or a risk to the environment from brothel specific activities to consider changes to district plan.

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

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 LGA must be applied when making such a bylaw.

Location of brothels

13. Section 14 of the PRA states that without limiting section 145 of the LGA a territorial authority can make a bylaw for the purpose of regulating the location of brothels under section 146 of the LGA. 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—

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- (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 “

14. In making a bylaw, the Council needs to be satisfied that the matters in section 155 of the LGA have been complied with. 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. The relevant determinations the Council must make under section 155 were made at a previous Council meeting, and are discussed below.

Signage advertising commercial sexual services⁴

15. 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. 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....”

16. In making this bylaw, the Council therefore needs to be satisfied the bylaw is necessary for at least one of these reasons, in addition to being satisfied that the matters in section 155 of the LGA have been complied with. 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. The relevant determinations the Council must make under section 12 and section 155 were made at a previous Council meeting, and are discussed below.

The Council's determinations under the PRA and LGA

Location of brothels

17. In 2009, 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 effects of the February 2011 earthquake, including closure of the Central City have caused concerns regarding the potential relocation of operator-run brothels to other areas of the district. Most operator-run 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, subject to compliance with standards relating to noise, hours of operation and parking.

⁴ 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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18. 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. Previous consultation has indicated strong community opposition to brothels being located in residential areas. The areas in which brothels will be permitted under the recommended option for a proposed bylaw does not include residential areas. However, an exception should be made for SOOBs, which already operate across the city without any obvious problems and minimal complaints, and for existing brothel premises outside the proposed permitted areas. Options are further discussed in paragraphs 53-56.
19. The proposed bylaw would allow operator-run brothels to locate within a selected area of the commercial business zones in the final Draft Central City Plan, the City Plan and the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan. It is considered that, with the exception for SOOBs and existing operator-run brothels these controls, are reasonable and that a proposed bylaw of this nature would be the most appropriate form.
20. The location provisions of the proposed bylaw are consistent with the NZBORA.

Signage advertising commercial sexual services

21. 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 recently in March and April 2012. The Council again determined that a bylaw is the most appropriate way to address the problem.
22. 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 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.
23. The form of the proposed bylaw would not prohibit all signs in the district. This is discussed in greater detail in paragraphs 60-62. It 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, 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.
24. The Council must also determine that the proposed bylaw is in the most appropriate form. It should still make a determination about whether the bylaw gives rise to any NZBORA implications but it can propose to make the bylaw even if it is considered to be inconsistent with that Act.
25. The proposed bylaw and the manner in which it prohibits signage completely in most of the district may give rise to implications under the NZBORA. It has implications for the right to freedom of expression in section 14 of the NZBORA ("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"). 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.

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Scope of proposed bylaw

26. It is clear that a bylaw made under section 14 of the PRA/section 146 of the LGA can reasonably state that brothels (including SOOBs) may not be located in some parts of the district. If the Council makes such a bylaw then any existing brothels operating outside the defined area where brothels are allowed would become unlawful if they were still operating on the day the bylaw comes into force. There is no provision for "existing use rights" in relation to a bylaw, in the same way as there is in the Resource Management Act 1991.
27. However, the Council should consider making an exception for SOOBs as these currently operate across the city generally without any problems. Making SOOBs subject to the same requirements as other brothels could drive them underground, be contrary to the intention of the PRA, and open up the Council to further judicial review proceedings. 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.
28. The Council may also wish to make an exception for existing operator-run brothels that do not comply with any new bylaw controls on location, as there may also be a risk of judicial review proceedings from those businesses, unless the Council can provide clear reasons for not providing an exception. In making the 2004 Bylaw, the Council was advised that although it would not have to pay compensation to any business, the Council should nonetheless have good reasons for justifying its proposed boundaries and not extending them or making an exception for any brothels outside the area, given the relatively severe impact on any business concerned. However, consideration should be given to whether the Council should provide a limited period of time for these existing brothels to relocate, after which the bylaw would apply and they would need to cease to operate.

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

29. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

30. 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?

31. As above.

ALIGNMENT WITH STRATEGIES

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

Do the recommendations align with the Council's strategies?

33. See above.

CONSULTATION FULFILMENT

34. 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). It is proposed that information be provided to the public and key stakeholders through the distribution of consultation material including the Statement of Proposal and Summary of Information. Public notices will be published in The Press and local newspapers. It is also proposed to hold public information sessions during the consultation period.

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35. Staff have drawn on previous consultation and advice from key stakeholders, and engagement comments on the Draft Central City Plan, in preparing the recommended option for the proposed bylaw and this report. 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. While not the subject of the consultation, many submitters also commented that the location of brothels should be regulated. Formal comment received from the public on the Draft Central City Plan undertaken in August-September 2011 elicited a number of comments about the location of brothels. Some people expressed a preference for no brothels; others suggested they be concentrated in a small area.
36. The New Zealand Police advised that they are unaware of any problems associated with the location of brothels, or 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.
37. 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 22 February 2011 earthquake, many sex workers are now working in SOOBs and that, in their view, many sex workers are unlikely to return to working in operator-run brothels. The Prostitutes Collective is unaware of any operator-run brothels seeking to relocate out of the Central City. One brothel owner who is still operating has advised staff that most businesses would prefer to reopen in the Central City when it is open.
38. The local branch of the Prostitutes Collective has raised concerns over creating specific areas where brothels are allowed, as this may imply that there are many brothels seeking to set up businesses throughout the city which will now be concentrated in these areas. The Prostitutes Collective is of the opinion that this is likely to cause more angst among the public as opposed to addressing issues.

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STAFF RECOMMENDATION

39. It is recommended that the Council resolve that:

1. The proposed Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012 is in an appropriate form and that it:
 - (a) Requires all brothels, other than small owner-operated brothels, to be located within specific areas indicated in Attachment 1 and placed in Schedule 1 of the Bylaw;
 - (b) Prohibits operator-run brothels in any building located on a property that shares a boundary with a school;
 - (c) Prohibits operator-run brothels in any building immediately adjacent to an area marked as important open space indicated in Attachment 1;
 - (d) Prohibits signage advertising commercial sexual services in all areas except those in (a) above;
 - (e) Regulates signage advertising commercial sexual services within the areas in (a) above 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.
 - not be illuminated by any flashing light.
 - (f) Provides an exemption from the location provision for known existing operator-run brothels, that are not small owner-operated brothels, by listing them in Schedule 2 of the Bylaw;
 - (g) Adopt Schedule 2 of the Bylaw.
2. It notes 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.
3. A special consultative procedure be commenced to make the Bylaw and for that purpose the **attached** Statement of Proposal (which includes the proposed Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012) and Summary of Information be adopted for consultation and made available for public inspection at Council Service Centres, Council libraries and on the Council's website, and that;
 - (a) The period within which written submissions may be made to the Council be between 11 June 2012 and 5pm on 10 July 2012;
 - (b) Public notice of the proposal be given in "The Press" on 11 June 2012;
 - (c) The Summary of Information be distributed to the list of general stakeholders used for all bylaw reviews, as well as the following key stakeholders: known businesses of prostitution, the Christchurch Branch of the Prostitutes Collective, the Brothels Inspector Community and Public Health, Christchurch School of Medicine and Health Sciences, Central City Business Association and Youth and Cultural Development (YCD); and

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- (d) A hearings panel be appointed to consider submissions on the proposed Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012 in July 2012.

BACKGROUND (THE ISSUES)

40. 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 2011.

Review of the 2004 Bylaw

41. 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. The Bylaw was considered most recently at the 22 March and 26 April 2012 Council meetings at which staff were requested to draft a bylaw to regulate the location of brothels and control signage advertising commercial sexual services.

Problem definition

Location of brothels

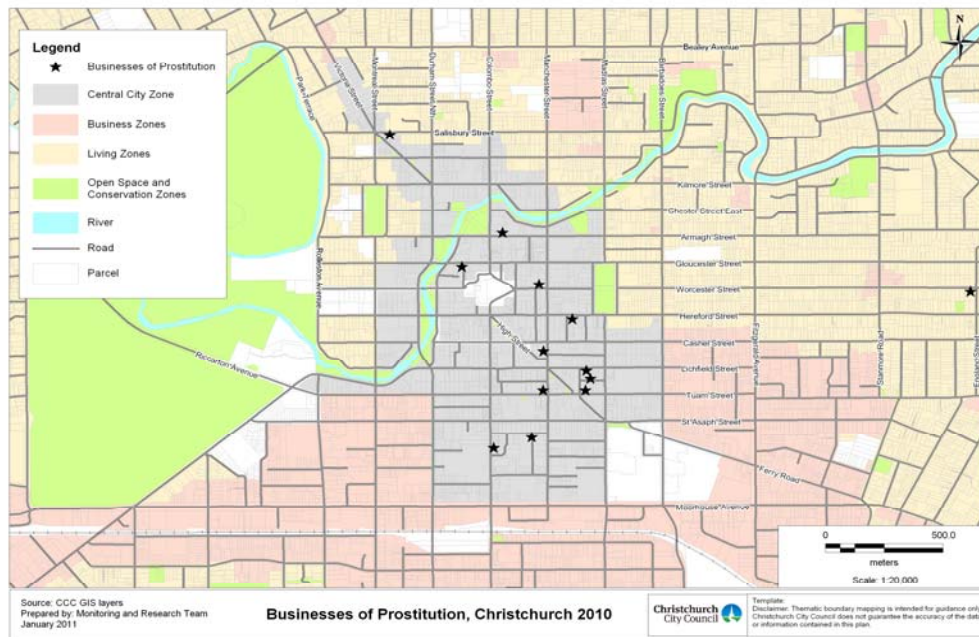
42. Since 2005, when the location provisions of the 2004 Bylaw were quashed, the Council has controlled the location of brothels within Christchurch City via the City Plan. The City Plan treats brothels like any other commercial service. The following rules generally apply:
- In living zones there is 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.
43. Brothels have never been subject to bylaw regulation in Banks Peninsula. Under the Proposed Banks Peninsula District Plan, brothels are treated as a permitted activity 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.
44. 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.
45. A small number of complaints are received by the Council each year and generally relate to SOOBs. For example, there were ten complaints in 2009/10 and eleven complaints in 2010/11. So far there have been nine complaints in 2011/2012. Complaints tend to arise when a neighbour notices comings and goings from an address and expresses concern about the existence of a brothel. Complaints are investigated and are resolved either by confirming that the requirements of the District Plan are being met or by writing to the operator pointing out how the requirements of the District Plan are being breached. In the latter situation, operators will generally comply or move on. Continued non-compliance has meant the issue of infringement and abatement notices in the past. 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 District Plan.

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

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The effect of the earthquakes on the location of brothels

46. As shown in the following map, most known operator-run brothels were located within the Central City in 2010. Many were badly damaged in the February earthquake, and only one of these brothels (other than SOOBs) are operating. The two new operator-run brothels⁶ discussed in the March report are no longer operating.
47. It is possible that some of the affected businesses will wish to temporarily or permanently relocate out of the Central City, although the Council has only received one application for a brothel previously located on Lichfield Street to relocate under provisions of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. This application has now been withdrawn. The location of SOOBs is unknown and it is likely that most continue to operate across the city.

Figure One: Map of known operator-run brothels 2010*Signage advertising commercial sexual services*

48. 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 square metres in surface area.
49. There is limited evidence of problems with signage advertising commercial sexual services since the 2004 Bylaw came into effect. The Inspections and Enforcement Unit has 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.

⁶ The businesses at 484 Tuam Street and 134 Papanui Street.

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50. 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.
51. As discussed above, it is possible that some of the affected businesses previously located in the Central City may wish to relocate, with signage, to other areas of the city.

THE OBJECTIVE

52. 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
 - (b) do not cause a nuisance or serious offence to ordinary members of the public.

THE OPTIONS

Location of brothels

53. Several options were considered to regulate the location of brothels (other than SOOBs) at the 22 March 2012 meeting. Three high level options were proposed: restricting operator-run brothels to certain parts of the city, requiring operator-run brothels to be located a certain distance from sensitive sites, and requiring operator-run brothels to be located above the ground floor.
54. Previous consultation in 2004 indicated strong community opposition to brothels being located in residential areas. The 2009 consultation on the revocation of signage controls also highlighted opposition from some sectors of the community to brothels being located in the suburbs near churches, schools and child care centres. Prohibiting brothels from locating near all similar sites would require the Council to clearly identify "sensitive sites". Some of the facilities that could be identified as sensitive sites, such as community centres and places of worship may change location, which would and therefore create uncertainty about where operator-run brothels can and cannot locate.
55. The Council decided on the options of identifying specific areas based on certain commercial business zones in the district plans where operator-run brothels will be permitted to locate. Using district plan zones would best meet the Council's objectives, through providing clear direction as to areas where operator-run brothels are allowed and where they are not. These zones are also subject to existing Plan Rules that control activities that are associated with what is allowed in the zone. District Plan zones are well established and provide general guidance on what activities are appropriate. Their broad characteristics are also described in the district plan.
56. Of the business zones in the district plans, the retail and industrial business zones were investigated and discarded as areas to allow brothels to locate in as the activities currently located in these areas would not be compatible with brothel activities. The retail business zones include small scale shopping "strips" along road frontages in local centres, shopping malls and supermarkets providing for the communities living in nearby residential zones. The industrial business zones include heavier industrial businesses and large areas around the peripheral of the city, some in the more rural areas such as along Johns Road. These areas tend to be located in the more peripheral areas of the city, potentially raising issues of safety for sex workers and concerns about the security of other businesses that only operate during day-time hours.

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Recommended Option

Option outside the Central City

57. It is proposed to permit operator-run brothels in areas based on the larger commercial business⁷ zones of the City Plan and in the Lyttelton town centre of the Proposed Banks Peninsula District Plan. The commercial business zones in the City Plan consist of inner city industrial areas, retail parks and the industrial buffer areas. Activities in these areas consist mainly of service and repairs businesses and large format retail businesses. There are several areas of commercial business zones located throughout the city. The commercial business zone in Lyttelton provides for a range of light service businesses including retailing, offices and community facilities. Refer to **Attachment 1**.

Option within the Central City⁸

58. It is proposed that operator-run brothels be allowed to locate in areas based on certain parts of the commercial business zones of the Draft Central City Plan. The Council also proposes that areas and places of cultural or environmental sensitivity (for example, Cathedral Square, the Avon River, and Latimer Square), and the Retail Priority Area (including Cashel Street Mall) of the Draft Central City Plan, be excluded as areas for operator-run brothels. Operator-run brothels will not be permitted in buildings adjacent to areas marked as important open space on the Central City map in **Attachment 1**.

Locations adjacent to school⁹ boundaries

59. It is also proposed to further restrict operator-run brothels in the permitted areas, by not allowing them to operate in any building that is located on a property that shares a boundary with a Registered School as defined in the Education Act 1989.

Signage advertising commercial sexual services

60. The Council had previously determined in September 2011 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.
61. The earthquakes have created complexity in identifying areas in which signage advertising commercial sexual services would not be out of character. The Central City Plan and rebuild will change the nature of that area, and the suburbs are also changing. It is therefore proposed to regulate signage in areas where operator-run brothels are allowed and prohibit signage in the rest of the district.

⁷ An area in the Burnside Business Zone was identified as a residential area after the March Council meeting. The Westpark subdivision has been removed from the permitted brothel area.

⁸ The Draft Central City Plan and its proposed zones have not been approved in its entirety by the Canterbury Earthquake Recovery Minister. The proposed zones and/or the activities proposed to be allowed in those zones may change with feedback from the Minister. If this is the case it may be necessary for the Council to reconsider the areas within the Central City in which to permit the location of brothels.

⁹ Where "School" means a Registered School as defined in the Education Act 1989 (being a primary, intermediate, composite, secondary or special school), and can be either a state school or a private school.

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Recommended Option

62. Signage will allowed in the areas the Council proposes to allow operator-run brothels to locate in and prohibited in the rest of the City. In order to reduce the risk of signage causing offence to ordinary members of the public, the bylaw will 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
 - not be illuminated by any flashing light.

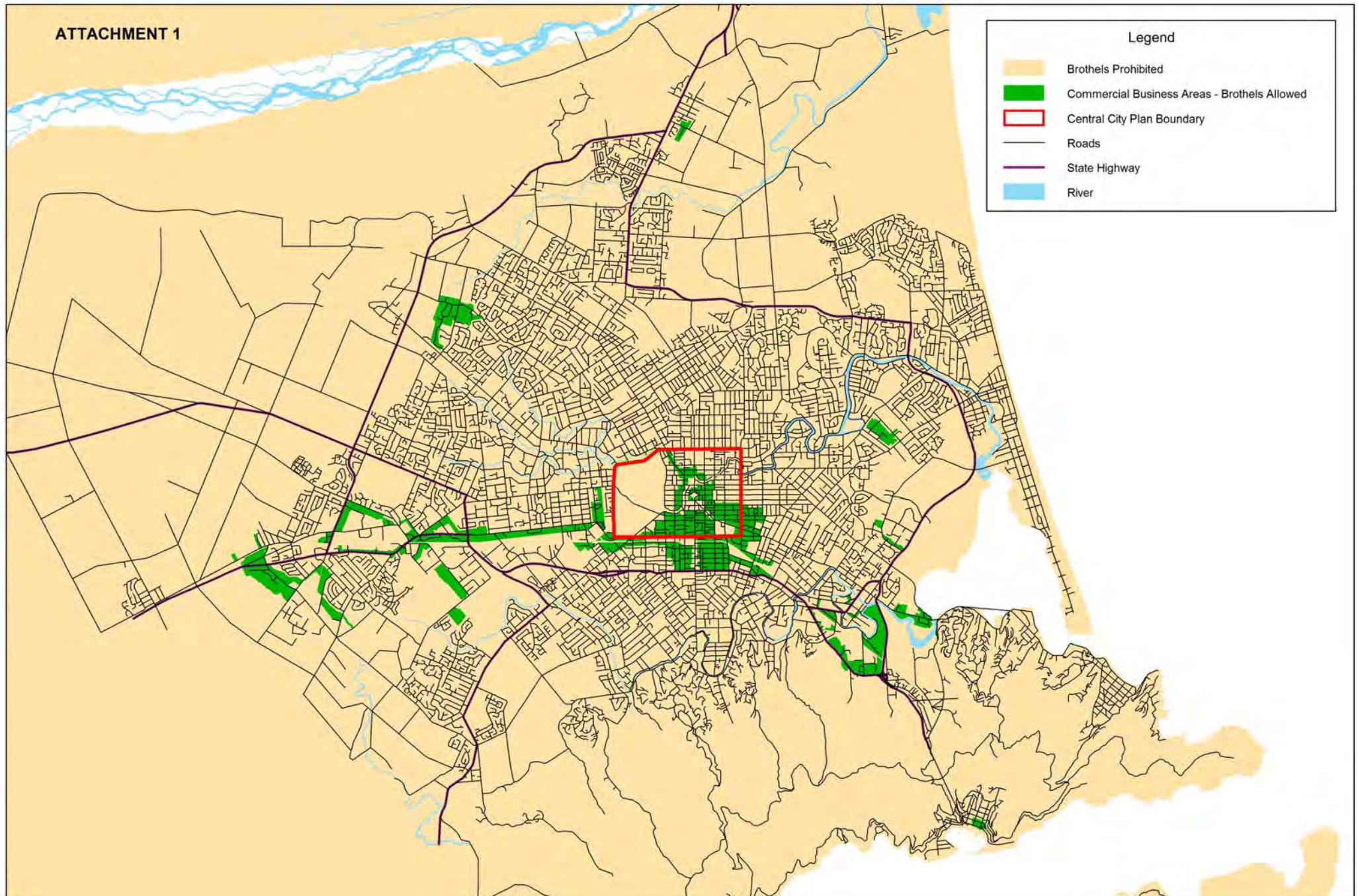
Exceptions for SOOBs and existing premises

63. Staff recommend that an exception be made from the location provisions of the bylaw for SOOBs as these businesses are already operating across the city without any obvious problems. Making small owner-operated brothels subject to the same location requirements as other brothels could drive them underground, contrary to the intention of the PRA, and create the risk of further judicial review.
64. If location provisions are introduced as proposed above, there are several options for addressing existing premises outside the areas allowed by the bylaw. The Council can choose to:
- exempt existing premises; or
 - apply the location provisions to them, in which case they would be in breach of the bylaw when the bylaw comes into force; or
 - exempt existing operator-run brothels for a set time (for example five years) for those businesses to relocate, after which they would be in breach of the bylaw.
65. The last two options are considered high risk as existing premises were originally exempt from the 2004 Bylaw. There have been no complaints about pre-earthquake operator-run brothels. Specifically, there have been no complaints about the remaining pre-earthquake operator-run brothel still operating at its original premise at 464 Worcester Street. Therefore, there is little reason to require existing premises to meet the proposed location requirements of the bylaw.
66. The Council decided at the March meeting to make an exception for existing businesses of prostitution that are currently located out of the proposed areas by listing those operator-run brothels in a schedule to the bylaw. As discussed above, at the time of this report the Council is only aware of one operator-run brothel still operating. "Jo Jo's", located at 464 Worcester Street, Linwood, Christchurch will be exempted from the location provisions of the bylaw by being listed in a schedule to the bylaw. If there are any other existing operator-run brothels of which the Council is not aware, that will be in a prohibited area, then it can be expected that submissions will be made in respect of those brothels. The Council can consider during its deliberations on the bylaw whether there is a need for any other operator-run brothels to be listed in the schedule.

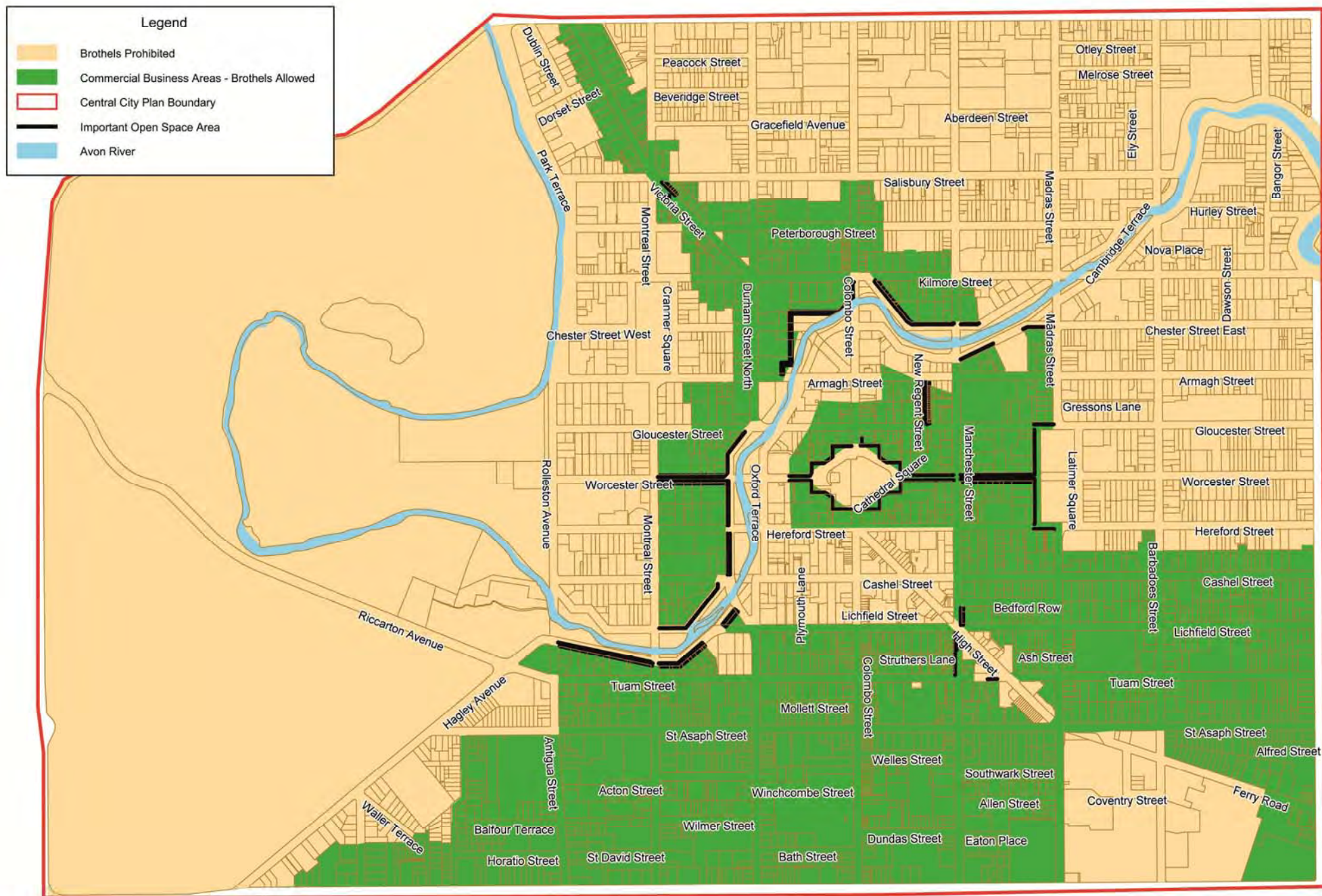
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PREFERRED OPTION

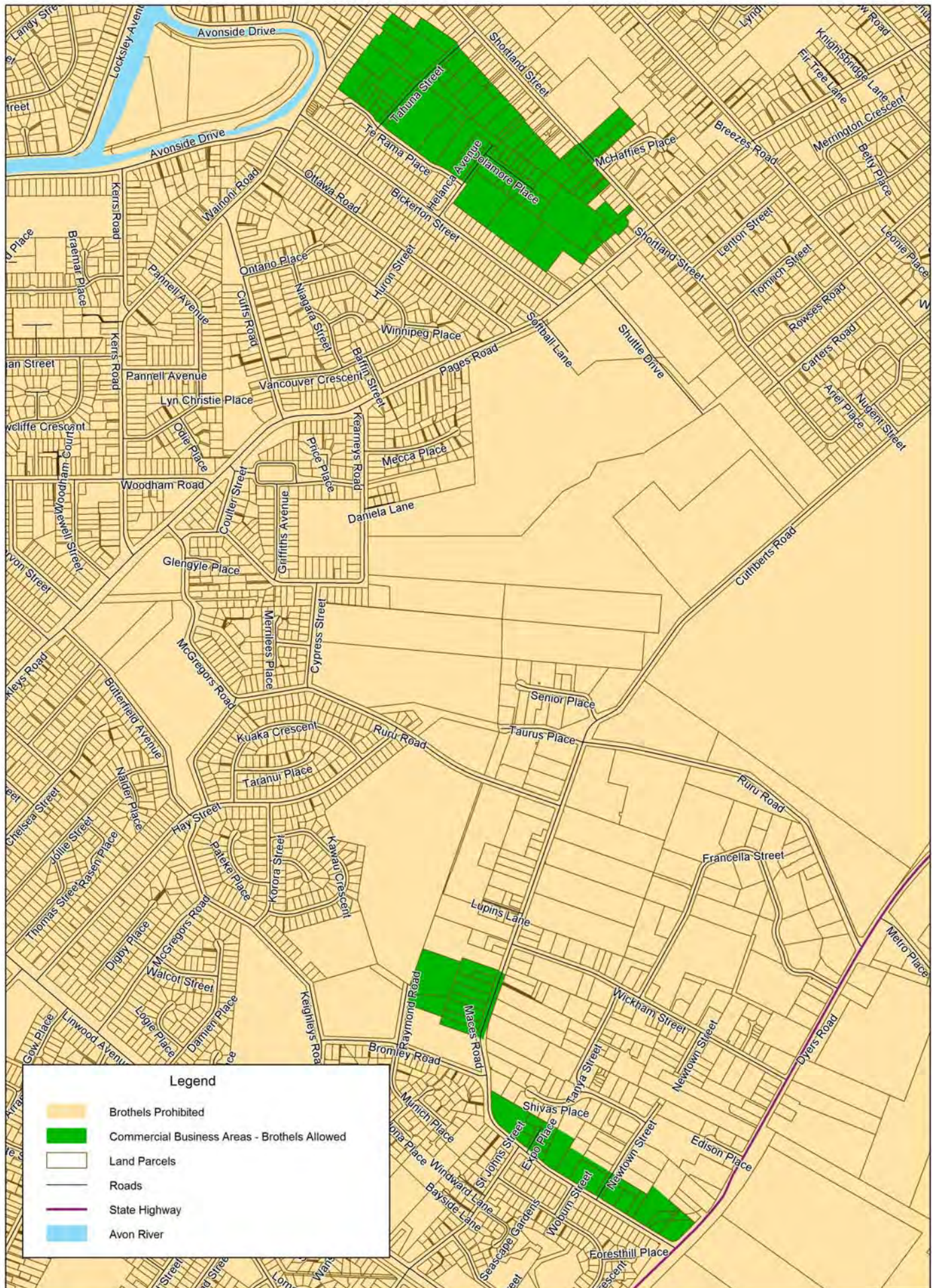
67. It is proposed that the bylaw require that all brothels, other than existing known operator-run brothels and SOOBs, be located within certain areas based on the commercial business zones of the Draft Central City Plan, the City Plan and the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan (see **Attachment 1**). The bylaw will also provide that operator-run brothels within these areas cannot be located in any building that is on a property that shares a boundary with a school, or is immediately adjacent to any important space area (as marked on the Central City map in **Attachment 1**).
68. The preferred option for addressing the perceived problem with signage advertising commercial sexual services is for the bylaw to prohibit signage outside the areas mapped in Attachment 1 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
 - not be illuminated by any flashing light.



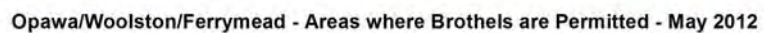
Areas where Brothels are Permitted - April 2012



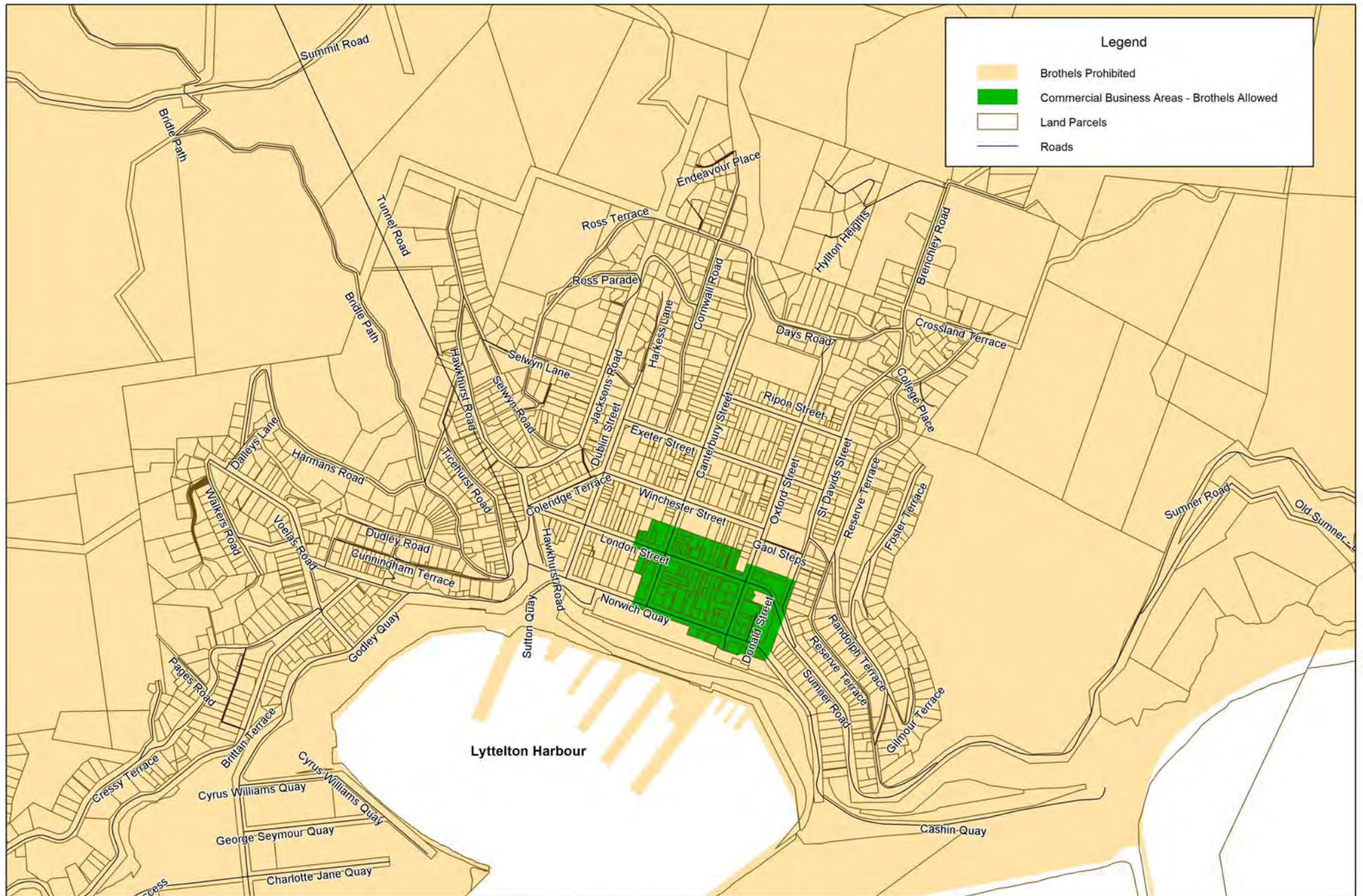
Central City - Areas where Brothels are Permitted - May 2012



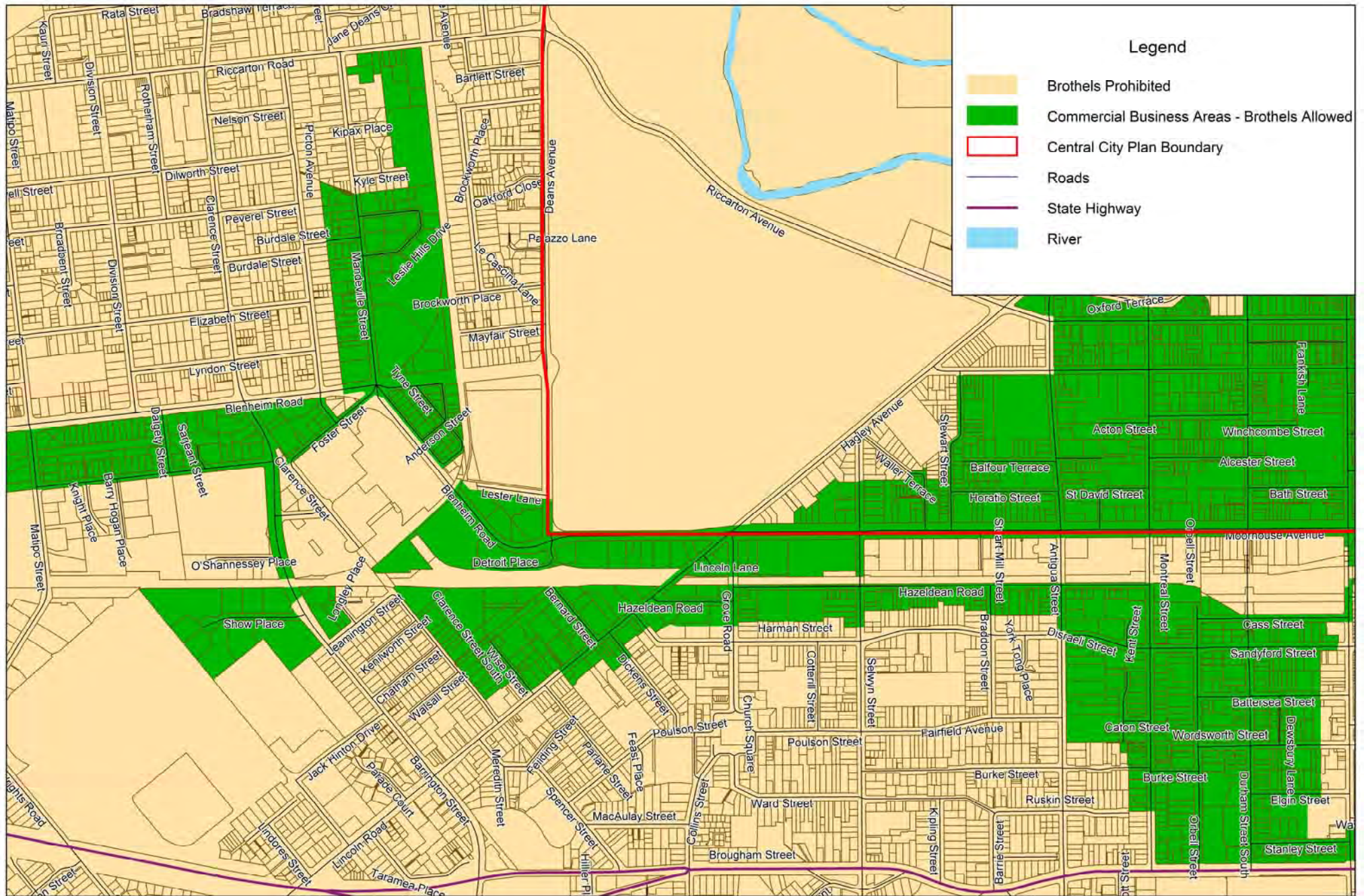
Bromley/Wainoni - Areas where Brothels are Permitted - May 2012



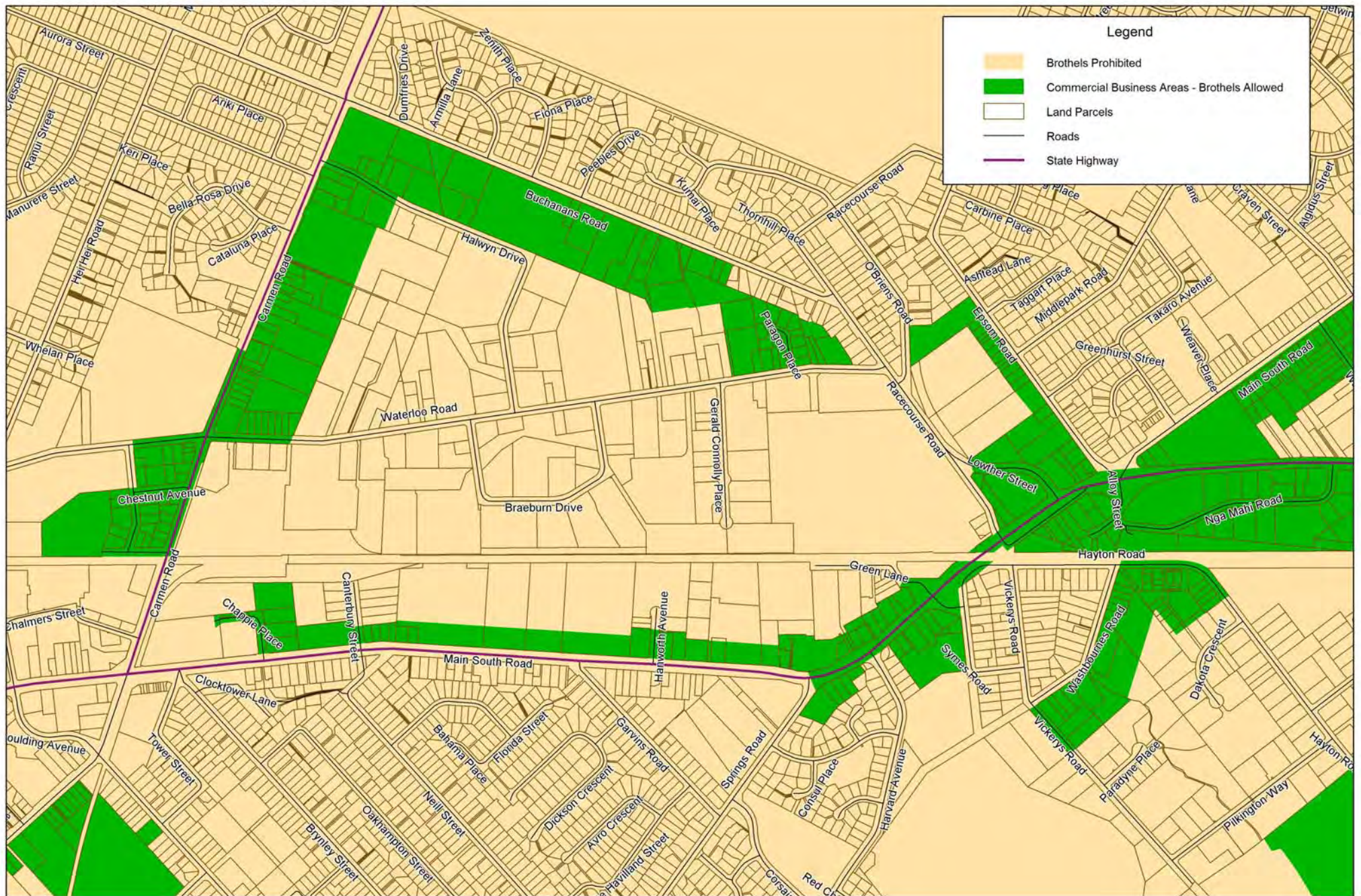
Opawa/Woolston/Ferrymead - Areas where Brothels are Permitted - May 2012



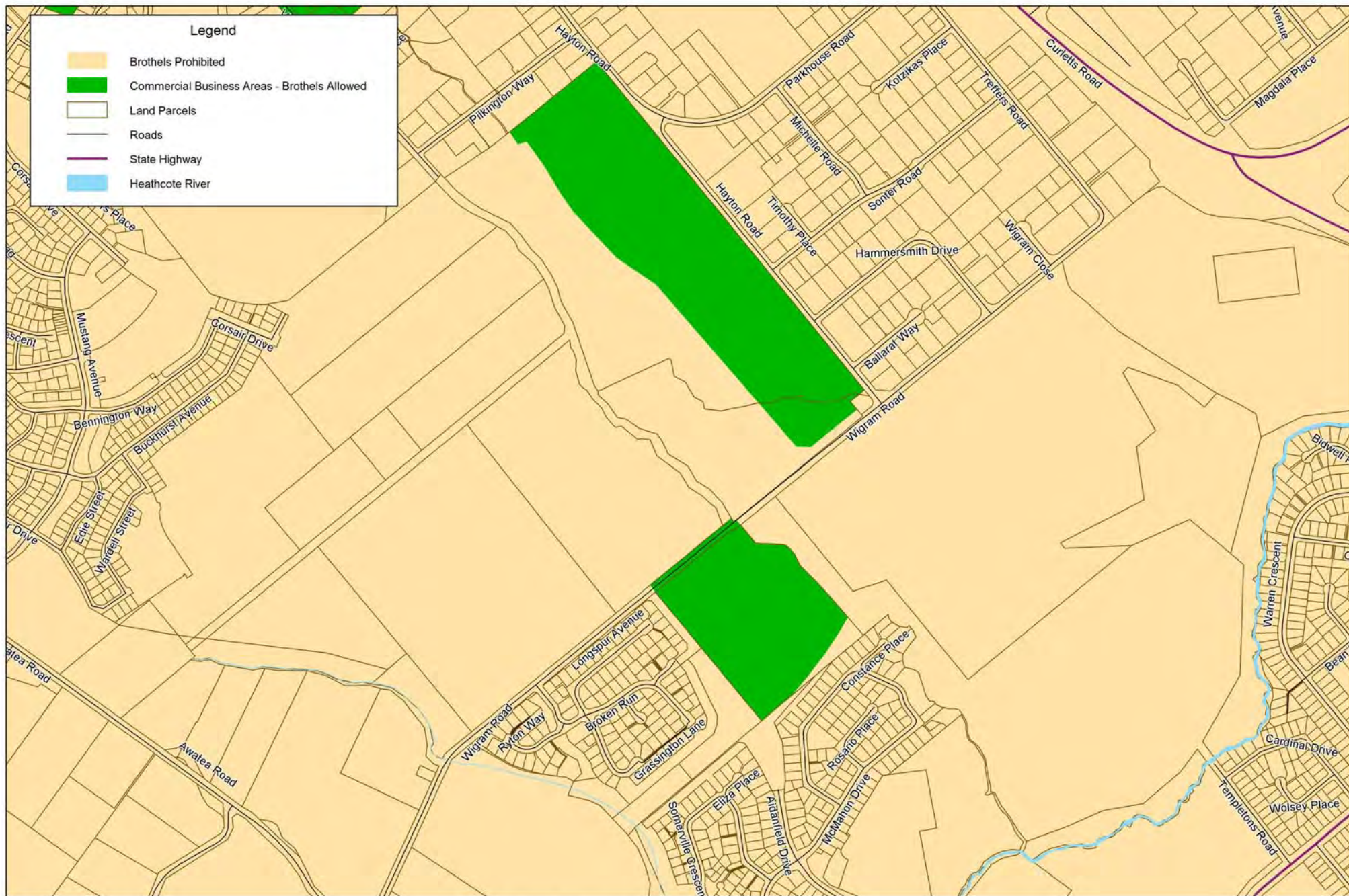
Lyttelton - Areas where Brothels are Permitted - May 2012



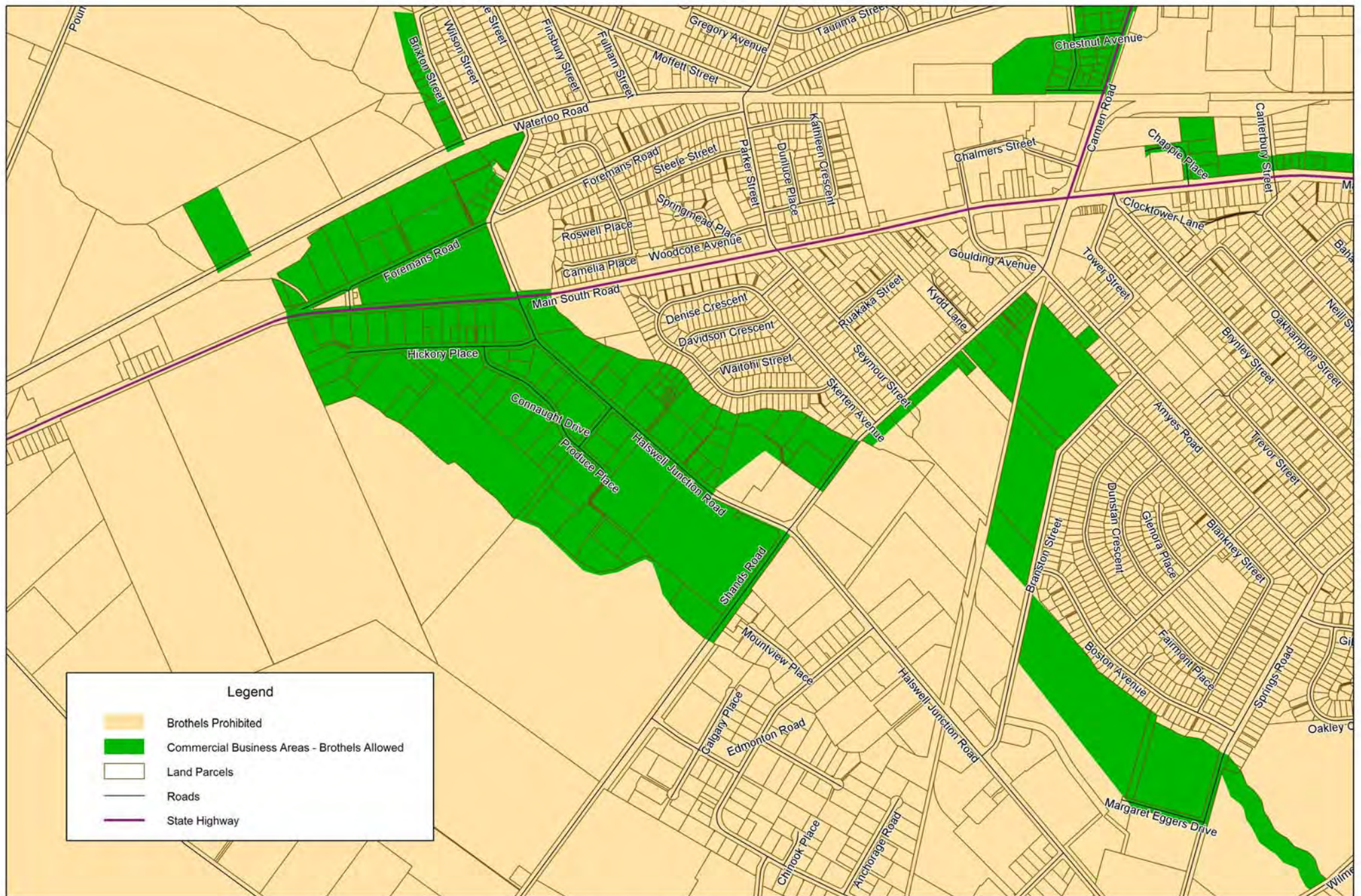
Riccarton/Addington - Areas where Brothels are Permitted - May 2012



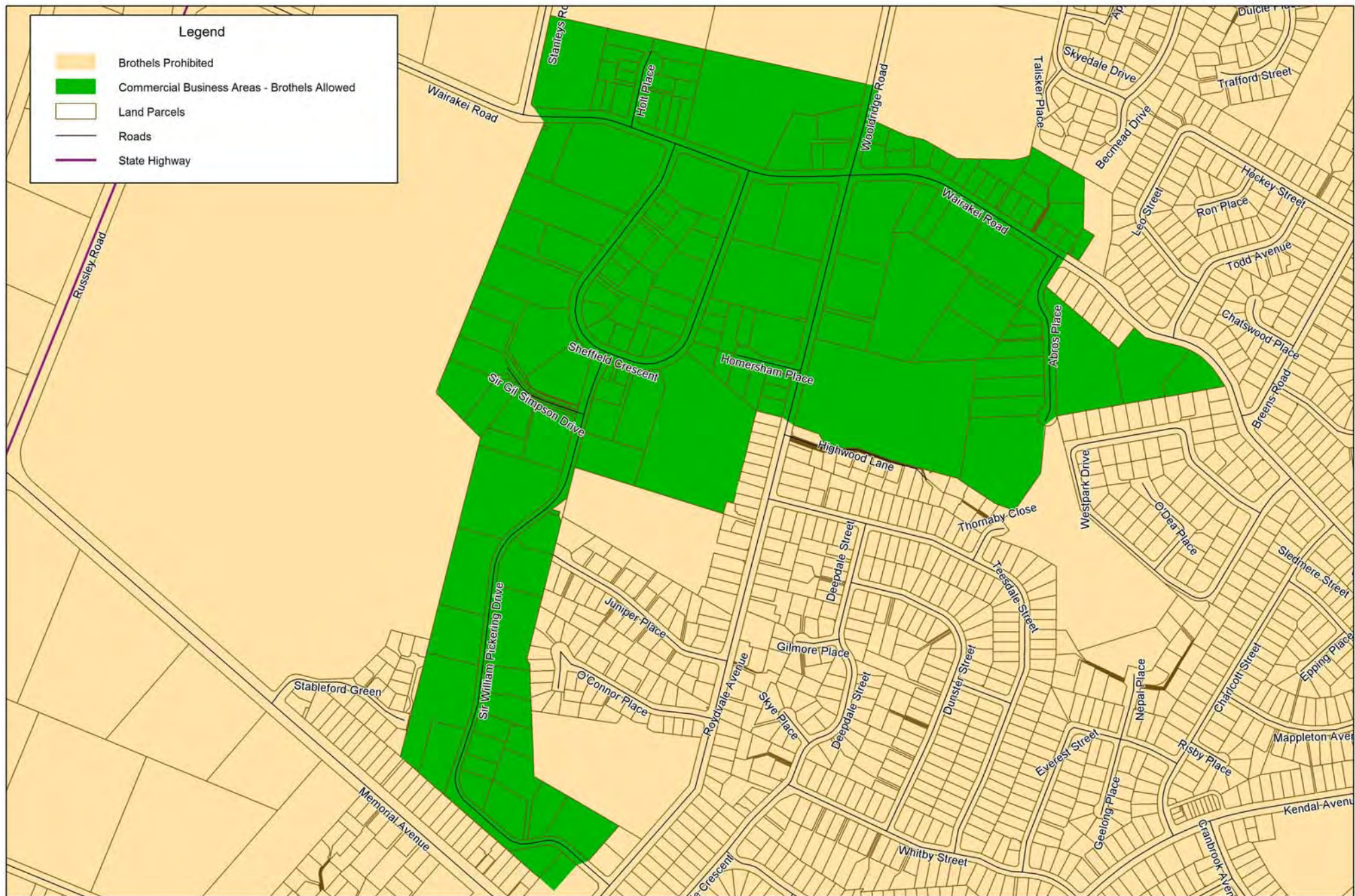
Hornby - Areas where Brothels are Permitted - May 2012



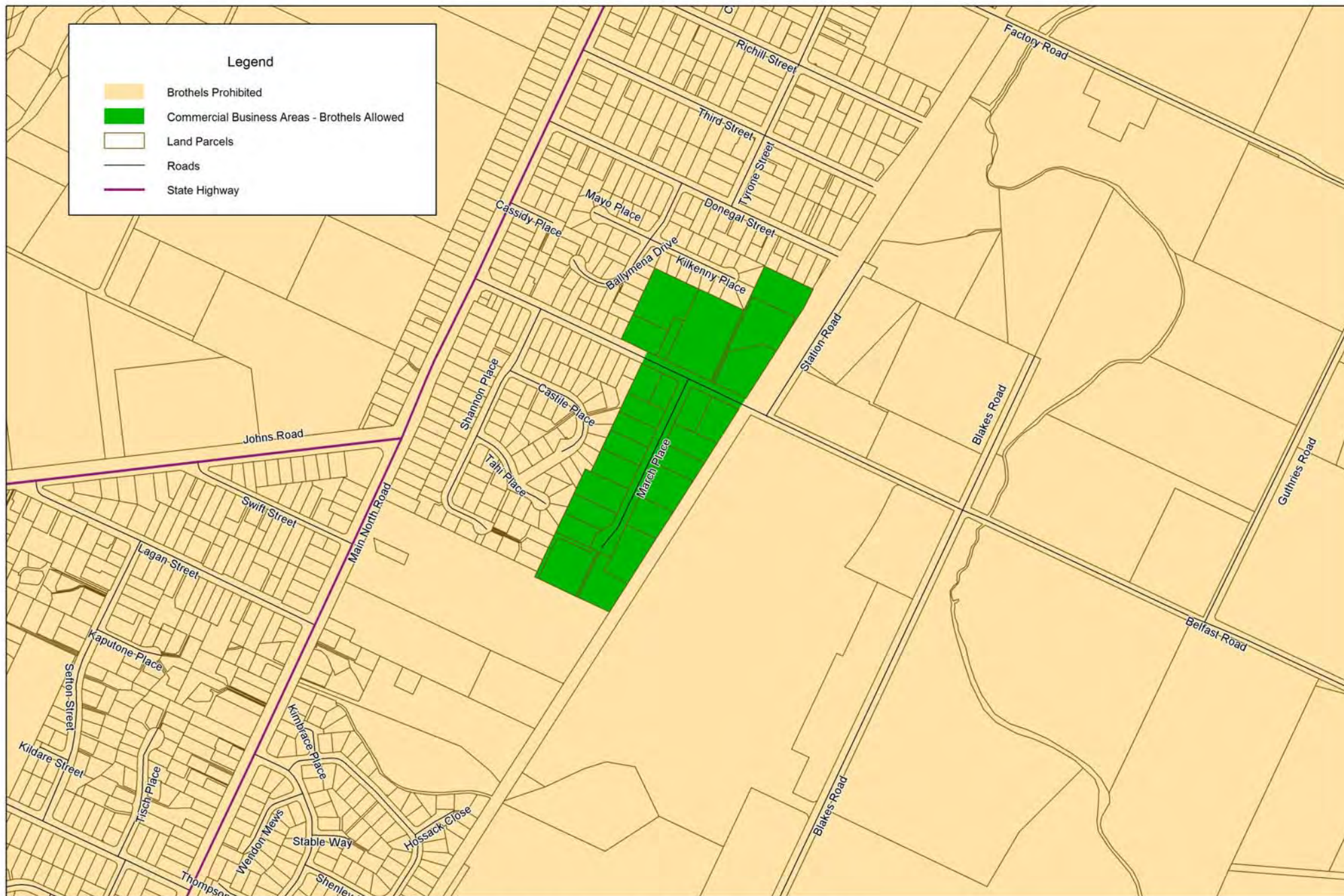
Wigram- Areas where Brothels are Permitted - May 2012



Hornby South - Areas where Brothels are Permitted - May 2012



Burnside - Areas where Brothels are Permitted - May 2012



Belfast - Areas where Brothels are Permitted - May 2012

STATEMENT OF PROPOSAL FOR THE CHRISTCHURCH CITY COUNCIL BROTHELS (LOCATION AND COMMERCIAL SEXUAL SERVICES SIGNAGE) BYLAW 2012

This statement is made for the purposes of sections 83 and 86 of the Local Government Act 2002.

Nature of Proposal

This proposal concerns the Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012. The Council intends to make this bylaw following the consideration of submissions received under this special consultative procedure.

The Council will make this bylaw under sections 12 and 14 of the Prostitution Reform Act 2003. For the purposes of this document, "brothel" refers to small owner-operated brothels (SOOBs)¹ and operator-run brothels². The bylaw will restrict the location of operator-run brothels, to certain parts of the district (non-residential zones) without providing any restriction on the location of small owner-operated brothels. The parts of the district where operator-run brothels are permitted are shown on maps in Schedule 1 of the proposed bylaw. The bylaw will also prohibit operator-run brothels in buildings immediately adjacent to important open space areas in the Central City map in Schedule 1 and in buildings located on a property that shares a boundary with a school. The bylaw will also provide for specified existing operator-run brothels to remain in their current locations by listing them in Schedule 2.

The bylaw will place controls over signs advertising commercial sexual services, by only permitting signs to be displayed in the areas shown on the maps in Schedule 1 of the proposed bylaw and placing limitations on the number, placement, content and illumination of signs.

The proposed bylaw replaces the Christchurch City Brothels (Location and Signage) Bylaw 2004 which expired on 6 July 2011.

Reasons for this proposal

The Council has determined there is evidence of a perceived problem regarding both the location of operator-run brothels, as well as signage advertising commercial sexual services and the most appropriate way to address this problem is to make this bylaw.

The Council has also determined the 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.

The earthquakes in Canterbury have severely damaged the Central City area where 12 of the 13 known operator-run brothels were located. These businesses may wish to relocate to other parts of the Council's district and the Council wants to be able to provide controls over their location and signage in a way that will be compatible with the character and use of the district and limit the potential for nuisance and serious offence to ordinary members of the public.

Report on determinations under section 155 of the Local Government Act 2002

When making a new bylaw the provisions of section 155 must be considered in determining whether a bylaw is the most appropriate way of dealing with the perceived problem. The Council must also determine that the bylaw is in the most appropriate form.

The Council has determined that the signage provisions of this bylaw *may* give rise to implications for the right to freedom of expression under the New Zealand Bill of Rights Act 1990. However, a bylaw may be made under section 12 of the Prostitution Reform Act 2003 even if it is inconsistent with the New Zealand Bill of Rights Act 1990.

The location provisions of this bylaw are consistent with the New Zealand Bill of Rights Act 1990 (NZBROA).

¹ 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."

² Where the operator holds an operator certificate (under section 34 (1) of the PRA) issued by the Registrar of the District Court in Auckland

The 2004 Bylaw

The Council made a bylaw in 2004 that regulated the location of brothels and prohibited and regulated signage advertising commercial sexual services. The bylaw restricted both operator-run brothels and small owner-operated brothels to an area within the central business district of the city, with three exceptions for existing businesses. It permitted signs advertising commercial sexual services, but only within that same area, and there were controls over the content and placement of the signs.

In 2005 the High Court determined that the location provisions within the bylaw were unreasonable and those provisions were quashed. The Court found that the determination of the Central City area was within the Council's power, but the Council's bylaw failed because it did not permit small owner-operated brothels in any other areas of the city. The practical effect of the bylaw was therefore to deny the existence of small owner-operated brothels.

The provisions of the 2004 Bylaw regarding signage were not appealed, and they remained in force until 7 July 2011 when the bylaw expired under the Local Government Act provisions.

The need to control the location of brothels, other than small owner-operated brothels

Without any location provisions operational in the bylaw the Council has relied on the City Plan to control the location of brothels, including small owner-operated brothels. There have been limited problems with the location of brothels since 2005.

Initial discussions held with the New Zealand Police and Community and Public Health representatives who operate as Brothel Inspectors under the PRA advised that they are unaware of any problems associated with the location of brothels, or any nuisances from such sources. These organisations advised that they do not consider there are issues with either the location of brothels or signage.

Pre-earthquakes there were 13 known operator-run brothels, of which 12 were located in the Central City area. This area and many brothels' premises, were severely damaged in the 22 February 2011 earthquake and/or in subsequent earthquakes. The local branch of the New Zealand Prostitutes Collective is unaware of any operator-run brothels seeking to relocate out of the Central City. Although it is likely that most of the businesses will choose to reopen in the Central City when it opens, it is possible that some may wish to relocate to other parts of the Council's district. Under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 they may not need a resource consent to do so, which means the Council cannot consider whether the location is compatible with an area or would cause nuisance or serious offence to members of the public in that area.

Under the City Plan rules, the following generally applies:

- In living zones there is limited scope for a brothel to be established as a permitted activity (other than small owner-operated brothels).
- 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.

Brothels have never been subject to bylaw regulation in Banks Peninsula. Under the Proposed Banks Peninsula District Plan, brothels are treated as a permitted activity 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.

The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 (and notifications issued by the Council under that Order) may enable some brothels to relocate without needing to obtain a resource consent, subject to standards under the Order. The Council has only received one application for a brothel to be relocated under the provisions of the Order. This application has been withdrawn.

The Council has investigated using the district plans to regulate brothels. However, district plans can only be used if there are actual or potential effects on the *environment* such as visual aspects, traffic, parking and noise. Adverse social effects as a result of people's attitudes can not be considered as an environmental effect. Furthermore, there would need to be evidence of adverse effects or a risk to the environment from brothel specific activities to consider changes to district plans.

The Council therefore wants to be able to provide, through a bylaw, some controls over the location of brothels, other than small owner-operated brothels, so that if any brothels whose premises were damaged and/or are in the CBD red zone want to relocate they can do so in suitable alternative areas.

The need to control signage advertising commercial sexual services

On the basis of seven years experience with the 2004 Bylaw, there have been few problems with signage. However, it is perceived that problems could arise if there was no bylaw control in relation to signage. Generally, there is a desire within the brothel business community for signage to be kept discreet, but it is possible that the current lack of any significant problems with signs advertising commercial sexual services is also due to the previous bylaw controls. The 2004 Bylaw prohibited signage in most of the district, except a Central City area. There was no bylaw made under the Prostitution Reform Act in the former Banks Peninsula District.

When the Council consulted on the revocation of the 2004 Bylaw in 2009 it proposed that there not be a new bylaw to take its place. The Council received many submissions arguing that other controls, such as those under the City or District Plan requirements, enforcement action through the Resource Management Act 1991, or action being taken through the Advertising Standards Authority, would not provide sufficient control in respect of signs advertising commercial sexual services. The Council agreed with those submissions and resolved that a bylaw should be made. The bylaw is considered necessary in order to prevent any signage being displayed that would cause a nuisance or serious offence to ordinary members of the public, or that would be incompatible with the existing character or use of certain areas in the Council's district.

Options Considered by the Council

Option 1- Do nothing Option

Under this option, the Council would do nothing and continue to allow the City Plan and District Plan rules to control the location of brothels. This option was discarded by the Council in September 2011 when it decided that a bylaw was necessary to control the location of brothels and to regulate signage advertising commercial sexual services.

Location

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. In deciding on the best option for a bylaw to control location and signs advertising commercial sexual services the Council considered the controls that other Councils used and also considered the following options for bylaws:

Option 2 – Use zones in the district plans as a basis to specify areas in which brothels are allowed

Option 2 would mean that the zones within the district plans could be applied to demarcate the location of brothels. For example, brothels may be prohibited in all residential zones and permitted in all or some business zones.

This option would allow the Council greater control over where brothels locate by clearly stating the areas where brothels would be restricted to. Using existing district plan zones has advantages in that there is an existing rationale for them (in the district plans), they are well established and understood by the public, and their broad characteristics are described in the district plans.

Option 3 - Allows brothels with specific mapped areas

Under Option 3, specific areas could be created specifically for the purpose of demarcating where brothels are prohibited and where they are permitted. These areas would not necessarily correspond with existing zones in the district plans.

This option would require the Council to identify specific areas where brothels would be allowed. Although there could be greater flexibility in where these areas could be located, the Council would need to ensure that there is a clear rationale behind how and why it chooses these specific areas over others. This option opens up the possibility of many debates about the specific boundaries of the specially created areas.

Option 4 - Require brothels be located a certain distance from some sites

Option 4 would require the Council to clearly identify “sensitive sites” (for example, schools and places of worship), identify how large a ‘brothel’s exclusion’ area would need to be around them (for example, 100 metres, 200 metres or more) and clarify exactly how the distance would be measured (for example, 100 metre radius from the front door, or the centre of the premise or the centre of the land parcel).

The Council would need to ensure that there is a clear rationale behind how and why it chooses these specific sensitive sites over others, as well as the size of the “brothels exclusion” distance and how the distance would be measured. Some of the facilities that could be identified as sensitive sites, such as community centres, places of worship and schools also have the potential to change location which would create uncertainty about where brothels can and cannot locate. Along with new ‘sensitive’ sites developing, this would mean a need to constantly keep the bylaw under review. Lastly, people going to sensitive sites may still need to pass by brothels.

Option 5 - Require that brothels not be located at ground level

Option 5 would mean that brothels would not be permitted to operate from the ground floor and instead must operate from the first floor or higher. This option could be used with any of the options discussed above.

The rationale would be to reduce the risk of brothels causing a nuisance or offense to ordinary members of the public. However, it is difficult to support as a valid option for Christchurch City, as there have been no complaints with regards to brothels operating from ground floor premises. This option may also have implications under the NZBORA as this restriction may discriminate against disabled workers and/or their clients, and may increase costs for businesses if they have to renovate or move to ensure all workers and clients are able to access the premise.

Discussion of options

Of the options presented above, using the district plans zones as a basis to create areas in which to permit the location of brothels, would best meet the Council’s objectives, through providing clear direction as to areas where brothels are allowed and where they are not. These zones are also subject to existing Plan Rules that control activities that are associated with what is allowed in each zone. District plan zones are well established and provide general guidance on what activities are appropriate for that zone. The district plan zones’ broad characteristics are also described in the district plans.

Previous consultation in 2004 has indicated strong community opposition to brothels being located in residential areas. The 2009 consultation on the revocation of signage controls also highlighted opposition from some sectors of the community to brothels being located in the suburbs near churches, schools and child care centres. Given previous community feedback, it is considered appropriate to keep brothels (with the exception of SOOBs) out of residential areas.

The retail and industrial business zones were investigated and discarded as areas to allow brothels to locate in as the activities currently located in these areas would not be compatible with brothel activities. The retail business zone includes small scale shopping “strips” along road frontages in local centres, shopping malls and supermarkets providing for the communities living in nearby residential zones. The industrial business zone includes heavier industrial businesses and large areas around the peripheral of the city, some in the more rural areas such as along Johns Road. These areas tend to be located in the more peripheral areas of the city, potentially raising issues of safety for sex workers and concerns about the security of other businesses that only operate during day-time hours.

There are several areas of commercial business zones located throughout the city. These include the areas consisting of large format retail centres, service and repairs businesses. Several sites, however, consist of a single large business such as supermarkets. Many of these are surrounded by residential areas and some are adjacent to large heavy industrial areas. These smaller areas have been discarded as areas to allow operator-run brothels to locate in.

The preferred option is set out in detail below.

Preferred Option

Outside the Central City

The Council proposes to permit operator-run brothels in the areas based on the larger commercial business zones of the City Plan and in the Lyttelton town centre of the Proposed Banks Peninsula District Plan. The commercial business zones in the City Plan include the inner city industrial areas, retail parks and the industrial buffer areas. Activities in these areas consist of large format retail, service and repairs businesses. There are several areas of commercial business zones located throughout the city. The commercial business zone in Lyttelton provides for a range of light service businesses including retailing, offices and community facilities. See maps in Schedule 1.

Within the Central City

Note: The Draft Central City Plan and its proposed zones have not been approved in their entirety by the Canterbury Earthquake Recovery Minister. The proposed zones and/or the activities proposed to be allowed in those zones may change once the future zoning for the Central City is determined. If this is the case it may be necessary for the Council to reconsider the areas within the Central City in which to permit the location of brothels.

The business zones in the Draft Central City Plan have been set aside for mainly retail and commercial activities, although compatible residential activities could also be located in these zones. Prior to the earthquakes the areas in the Central City comprised of retailing, offices and commercial services. Pre-earthquakes, most operator-run brothels were located in this area. The Draft Central City Plan proposes that these areas remain in primarily the same commercial use, although it is proposed that retail be consolidated in the core of the Central City area and there be a greater mix of office and retail businesses in the area surrounding the core. This area is also proposed to have some residential activities. The areas to the south west and south east of the Central City area are proposed to have an extensive mix of residential and business activities.

The Council proposes that operator-run brothels be allowed to locate in parts of the proposed commercial business zone of the Draft Central City Plan. The Council also proposes that areas and places of cultural or environmental sensitivity (for example, Cathedral Square, the Avon River, and Latimer Square), the Retail Priority Area of the Draft Central City Plan, be excluded as areas for operator-run brothels. Operator-run brothels will be prohibited from locating in buildings adjacent to an area marked as important open space on the Central City map in Schedule 1.

Areas adjacent to schools

The Council proposes that the bylaw prohibit operator-run brothels in buildings located on a property that shares a boundary with a school (where "school" means a Registered School as defined in the Education Act 1989 (being a primary, intermediate, composite, secondary or special school, and can be either a state school or a private school)).

Risks of defining specific areas for operator-run brothels to be located

There are risks associated with defining an area in which brothels are deemed to be suitably located. There is a risk of adverse reaction from affected residents and business owners. There is also a risk of creating red light districts if narrowly defined. It is also important to bear in mind the objectives of the Prostitution Reform Act, which include the promotion of worker health and safety. Restricting brothels to isolated business or industrial areas could undermine this.

Given the High Court decision in 2005, the Council also proposed making an exception for small owner-operated brothels. Small owner-operated brothels are already operating across the city without any obvious problems. There are risks in making them subject to the same restrictions as other brothels. This includes the risk of driving them underground and the risk of further judicial review.

If location provisions are introduced as proposed above, there are several options for addressing existing premises outside the zones allowed by the bylaw. The Council can choose to:

- exempt existing premises; or
- apply the location provisions to them, in which case they would be in breach of the bylaw when the bylaw comes into force; or
- exempt existing brothels for a set time (for example five years) for those businesses to relocate, after which they would be in breach of the bylaw.

The last two options are considered high risk as existing premises were originally exempt from the 2004 Bylaw. There have been no complaints about pre-earthquake operator-run brothels. Specifically, there have been no complaints about the remaining pre-earthquake brothel still operating at its original premise. Therefore, there is little reason to require existing premises to meet the proposed location requirements of the bylaw and it is reasonable to make an exception for existing operator-run brothels that are currently located out of the proposed areas. Existing operator-run brothels should be allowed to continue operating.

Signage

The Council had previously investigated and discarded an option to address complaints about offensive signage through existing mechanisms (such as the Resource Management Act 1991 and Advertising Standards). The Council did not accept that these avenues were adequate to address the perceived problem as these methods may not provide sufficient guidance to the community about what is and is not acceptable with respect to signage advertising commercial sexual services.

In September 2011, the Council determined 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.

The earthquakes have created complexity in identifying areas in which signage advertising commercial sexual services would not be out of character. The Central City Plan and rebuild will change the nature of that area, and the suburbs are also changing. It is considered unreasonable for the Council to completely prohibit signage in the district altogether; therefore, the Council proposes to regulate signage in areas where operator-run brothels are and prohibit signage in the rest of the district..

Under the proposed bylaw signage will be allowed in the areas of the commercial business zones the Council proposes to allow brothels to locate in and prohibited in the rest of the district. In order to reduce the risk of signage causing offence to ordinary members of the public, the Council also proposes 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; 2004 restrictions?
- not display any pictorial image;
- not exceed 0.3 square metres in surface area; and
- not be illuminated by any flashing light.

At the Council meeting on 24 May 2012 the Council adopted Option 2 for location (without any restrictions for small owner-operated brothels and with provision for existing premises) and to regulate signage in areas where brothels are allowed and prohibit signage in areas where brothels are not allowed. The Council also approved the proposed bylaw and consultation documents for the special consultative procedure.

The Proposed Bylaw

The proposed bylaw is similar in scope to the location and signage provisions in the 2004 Bylaw, except that there is no restriction on the location of small owner-operated brothels, and the areas where operator-run brothels and signs will be permitted has changed, because of the earthquake damage affecting the Central City area.

The reason the High Court quashed the location provisions in the 2004 Bylaw was the unreasonable restriction it placed on small owner-operated brothels. Such brothels are usually located in residential homes and there have been few complaints arising from the location and operation of small owner-operated brothels. Any complaints the Council has received have been able to be dealt with through City Plan and District Plan controls or other means.

The Council does not propose that the bylaw provide for any controls over the location of small owner-operated brothels, although the signage provisions proposed will apply to such brothels.

The bylaw will restrict the location of operator-run brothels to:

- Specific areas within the commercial business zones of the Draft Central City Plan, with the exception of areas and places of cultural or environmental sensitivity.
- Specific areas within the commercial business zones of the City Plan.
- The Lyttelton commercial business zone in the Proposed Banks Peninsula District Plan.

The bylaw will prohibit operator-run brothels in buildings immediately adjacent to important open space areas in Schedule 1 and in buildings located on a property that shares a boundary with a school. The bylaw will also provide for specified existing operator-run brothels to remain in their current locations by listing them in Schedule 2.

The proposed restrictions on the location of operator-run brothels, together with no restrictions on small owner-operated brothels, are considered reasonable.

It is proposed that signs advertising commercial sexual services will be prohibited in all areas in the district, except in the same areas in which operator-run brothels can be located. Signs allowed in those areas will be controlled so that any sign must be attached to the premises at which the commercial sexual services it advertises are provided. The number of the premises must be clearly displayed and only one sign per premise is allowed. Signs must not be offensive, display any pictorial image, exceed 0.3 square metres in surface area and must not be illuminated by any flashing light. These controls ensure that any signs remain small and discreet.

The Council is aware that even though the proposed bylaw will prohibit signage advertising commercial sexual services in a large part of the district, provisions exist in the Prostitution Reform Act 2003 that allow other means of advertising commercial sexual services. The prohibition on signs in the bylaw is therefore considered to be reasonable.

Submissions

Submissions on this proposal should be made either through the Have Your Say website <http://www.ccc.govt.nz/HaveYourSay/>, or in writing to "Submissions on the proposed Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012", Christchurch City Council, PO Box 237, Christchurch 8140.

Submissions on this proposal may be made to the Council between 11 June 2011 and 5pm on 10 July 2012.

CHRISTCHURCH CITY COUNCIL BROTHELS (LOCATION AND COMMERCIAL SEXUAL SERVICES SIGNAGE) BYLAW 2012

Pursuant to sections 12 and 14 of the Prostitution Reform Act 2003, and the Local Government Act 2002, the Christchurch City Council makes this bylaw.

1. SHORT TITLE AND COMMENCEMENT

- (1) This bylaw is the Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012.
- (2) This bylaw comes into force on xxxxx 2012.

2. INTERPRETATION

- (1) In this bylaw, unless the context otherwise requires, -

“Council” means the Christchurch City Council.

“District” has the same meaning as defined in section 5 of the Local Government Act 2002, and means the district of the Council.

“School” means a Registered School as defined in the Education Act 1989 (being a primary, intermediate, composite, secondary or special school, and can be either a state school or a private school) that is in or borders an area shown on the maps in Schedule 1 at the time this bylaw comes into force.

"Sign" means any sign that is in, or is visible from, a public place, and that advertises commercial sexual services.

- (2) The following definitions also apply in this bylaw and are the same as those in section 4 of the Prostitution Reform Act 2003:

“Brothel” means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

"Commercial sexual services" 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).

“Premises” includes a part of premises.

"Public place"

(a) means a place that is open to, or being used by, the public, whether admission is free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or eject a person from that place; and

(b) includes any aircraft, hovercraft, ship, ferry, or other vessel, train, or vehicle carrying or available to carry passengers for reward.

“Small owner-operated brothel” means 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.

3. OBJECT OF THE BYLAW

(1) The object of this bylaw is to:

- (a) restrict the location of brothels, other than small owner-operated brothels, to certain parts of the district; and
- (b) provide for specified existing brothels to remain in their current locations; and
- (c) control signage that advertises commercial sexual services, that is in, or is visible from, a public place, on the basis such signs are likely to cause a nuisance or serious offence to members of the public using parts of the district or they are incompatible with the existing character or use of parts of the district, by:
 - (i) prohibiting signs in certain parts of the Council’s district; and
 - (ii) regulating the display of signs in other parts of the district through the controls in this bylaw.

4. LOCATION OF BROTHELS

- (1) Subject to clause 4(2) and clause 5, no person may operate, or permit, or allow to be operated, a brothel:
 - (a) in any part of the district other than within an area shown on the maps in Schedule 1; and
 - (b) in any building immediately adjacent to an area marked as important open space on the Central City map in Schedule 1 ; and
 - (c) in any building that is located on a property that shares a boundary with a school.
- (2) Clause 4(1) does not apply to any small owner-operated brothel.

5. EXISTING BROTHELS

- (1) Any premises described in Schedule 2 is exempt from the location controls in clause 4.
- (2) The exemption in clause 5(1) does not apply if, after this bylaw comes into force, the use of the premises as a brothel changes in character or increases in scale or intensity.
- (3) Any premises described in Schedule 2, for the purposes of the signage controls in clauses 6(2) and 7, must be regarded as premises situated in an area of the district which is shown on a map in Schedule 1.
- (4) For the avoidance of doubt, the signage controls in clause 7 apply to all brothels from the date this bylaw comes into force.

6. PROHIBITION ON SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES

- (1) No person may display or permit or allow the display of a sign in any part of the district, other than within an area shown on a map in Schedule 1.
- (2) Even within an area shown on a map in Schedule 1, no person may display or permit or allow the display of a sign in any part of the district if the sign is visible from any point on a school boundary.

7. REGULATION OF SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES

- (1) A sign in any part of an area shown on a map in Schedule 1, that is not in a place subject to clause 6(2):
 - (a) must be attached to the premises at which the commercial sexual services it advertises are provided; and
 - (b) must clearly display the number of the premises to which the sign relates; and
 - (c) must not be offensive; and
 - (d) must not display any pictorial image; and
 - (e) must not exceed 0.3 square metres in surface area; and
 - (f) must not be illuminated by any flashing light.
- (2) No person may display, or allow the display, of more than one sign upon any premises at which commercial sexual services are provided, even if those premises have more than one street frontage.

8. OFFENCE AND PENALTY

Every person who breaches this bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$20,000, as set out in the Local Government Act 2002.

9. CHRISTCHURCH CITY COUNCIL GENERAL BYLAW

The provisions of the Christchurch City Council General Bylaw 2008 and any bylaw passed in amendment or substitution are implied into and form part of this bylaw.

The initial resolution to make this bylaw was passed by the Christchurch City Council at a Meeting of the Council held on xxxx 2012 and was confirmed following consideration of submissions received during the special consultative procedure, by a resolution of the Council at a subsequent meeting of the Council held on xxxx 2012.

Schedule 1

[Maps of areas where brothels can be located in accordance with clause 4(1)(a)]

Schedule 2

Brothels exempted from the location controls in clause 4, as provided for in clause 5

464 Worcester Street, Linwood, Christchurch (Lot 2 DP 12060)

SUMMARY OF INFORMATION FOR THE CHRISTCHURCH CITY COUNCIL BROTHELS (LOCATION AND COMMERCIAL SEXUAL SERVICES SIGNAGE) BYLAW 2012

The Christchurch City Council is undertaking consultation on the proposed Christchurch City Council Brothels (Location and Commercial Sexual Services Signage) Bylaw 2012. This bylaw replaces the Christchurch City Brothels (Location and Signage) Bylaw 2004 which expired on 6 July 2011. The Statement of Proposal and this Summary of Information are available at all open Council service centres, Council libraries and on the Council's website.

Reasons for this proposal

The Council has determined there is evidence of a perceived problem regarding both the location of brothels, as well as signage advertising commercial sexual services and the most appropriate way to address this problem is to make a bylaw. For the purposes of this document, "brothel" refers to small owner-operated brothels (SOOBs)¹ and operator-run brothels².

The Council has also determined the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to 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.

The earthquakes in Canterbury have severely damaged the Central City area where 12 of the 13 known operator-run brothels were located. These businesses may wish to relocate to other parts of the Council's district and the Council wants to be able to provide controls over their location and signage needs in a way that will be compatible with the character and use of the district and to limit the potential for nuisance and serious offence to members of the public.

Report on s155 determinations

When making a new bylaw the provisions of section 155 of the Local Government Act 2002 must be considered and determined by the Council: is a bylaw the most appropriate way of dealing with the perceived problem, is the bylaw in the most appropriate form and does it give rise to any implications under the New Zealand Bill of Rights Act 1990.

On the basis of the last seven years with the 2004 Brothels Bylaw in operation, there have been few problems with the location of brothels or signage advertising commercial sexual services, however, it is perceived that problems could arise if there are no bylaw controls, particularly as the earthquakes may have affected where some brothels are located or will, in future, locate.

When the Council consulted on the revocation of the 2004 Bylaw in 2009 it proposed that there was no need for a new bylaw to take its place. The Council received many submissions arguing that other regulatory means would not provide sufficient control in respect of signs in the absence of a bylaw. The Council agreed with those submissions and resolved that a bylaw should be made.

The Council did not originally intend to introduce new regulations on the location of brothels in the bylaw, as there were other controls that it considered allowed sufficient control of this activity. However, most operator-run brothels were located in the Central City area, and this area and many brothels' premises, were severely damaged or inaccessible as a result of the recent earthquakes. Although it is likely that most of the businesses will choose to reopen in the Central City when it opens, it is possible that some may wish to relocate to other parts of the Council's district. Under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 they may not need a resource consent to do so, which means the Council cannot consider whether the location is compatible with an area or would cause nuisance or serious offence to members of the public in that area.

The Council has determined therefore that a bylaw is the most appropriate way to deal with the location of brothels, other than small-owner operated brothels (SOOBs), the location of which will not be restricted by the bylaw, and with signage advertising commercial sexual services. The proposed bylaw is in the most

¹ 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."

² Where the operator holds an operator certificate (under section 34 (1) of the PRA) issued by the Registrar of the District Court in Auckland

appropriate form and the bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990. (The signage provisions may give rise to implications for the right to freedom of expression but under section 12 of the Prostitution Reform Act 2003 the bylaw can be made even if it is inconsistent with the New Zealand Bill of Rights Act 1990).

The Options

The Council considered various options for both the location of brothels and signage, including using district plan provisions to regulate and control location and signage. The options for developing a bylaw for location include: specifying district plan zones in which brothels are allowed, allowing brothels within a specific mapped area, requiring brothels be located a certain distance from some sites (for example, schools and churches) and/or requiring that brothels not be located at ground level.

In respect of signage the options for a bylaw are to prohibit signage in areas where brothels are not allowed and regulate signage in the areas where brothels are allowed. Additional regulations would be placed on the size, location, content and illumination of the sign.

The Council decided a bylaw should be developed covering both location and signage, setting out areas in which operator-run brothels can be located with no restrictions on small owner-operated brothels, and with signage advertising commercial sexual services to be prohibited except in the same areas in which operator-run brothels could be located (with regulation as to the nature of the signs in those areas).

The Proposed Bylaw

The proposed bylaw is similar in scope to the location and signage provisions in the 2004 Bylaw, except that there is no restriction on the location of small owner-operated brothels, and the areas where operator-run brothels and signs will be permitted have changed, because of the earthquakes affecting the Central City area.

The bylaw will restrict the location of operator-run brothels to:

- Specific areas based on the commercial business zone in the Draft Central City Plan, with the exception of areas and places of cultural or environmental sensitivity;
- Specific areas based on the commercial business zones of the City Plan; and
- The Lyttelton commercial business zone in the Proposed Banks Peninsula District Plan (see Attachment 1).

Operator-run brothels are not permitted on a property that shares a boundary with a school or immediately adjacent to any important open space area in the Central City, as shown on the Central City map in Schedule 1 of the proposed bylaw. The existing brothel at 464 Worcester St, Linwood is exempt from the location provisions in the proposed bylaw.

Signs advertising commercial sexual services will be prohibited in residential areas and other parts of the district, but will be allowed in the same areas in which operator-run brothels can be located. Signs allowed in those areas will be controlled so that any sign must be attached to the premises at which the commercial sexual services it advertises are provided. The street number of the premises must be clearly displayed and only one sign per premise is allowed. Signs must not be offensive, display any pictorial image, exceed 0.3 square metres in surface area or be illuminated by any flashing light. These controls ensure that any signs that are erected in the permitted area remain small and discreet.

Submissions

Submissions on this proposal should be made either:

Through the Have Your Say website: <http://www.ccc.govt.nz/HaveYourSay/>,
In email to: BrothelsBylaw@ccc.govt.nz
or in writing to: Submissions on the proposed Council Brothels Bylaw 2012
Christchurch City Council
PO Box 73013
Christchurch 8154

Submissions on this proposal may be made to the Council between 11 June 2012 and 5pm on 10 July 2012.