

CHRISTCHURCH CITY COUNCIL AGENDA

THURSDAY 24 MAY 2012

9.30AM

**COUNCIL CHAMBER, CIVIC OFFICES,
53 HEREFORD STREET**

CHRISTCHURCH CITY COUNCIL

Thursday 24 May 2012 at 9.30am
in the Council Chamber, Civic Offices, 53 Hereford Street

Council: The Mayor, Bob Parker (Chairperson).
Councillors Peter Beck, Helen Broughton, Sally Buck, Ngaire Button, Tim Carter, Jimmy Chen,
Barry Corbett, Jamie Gough, Yani Johanson, Aaron Keown, Glenn Livingstone, Claudia Reid and
Sue Wells.

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5.	ROADS OF NATIONAL SIGNIFICANCE	
6.	BROTHELS LOCATION AND SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES BYLAW	
7.	REPORT OF THE REGULATORY AND PLANNING COMMITTEE: MEETING OF 2 MAY 2012	
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- 1. APOLOGIES**
- 2. DEPUTATIONS BY APPOINTMENT**
- 3. CONFIRMATION OF MINUTES: COUNCIL MEETINGS OF 26 APRIL 2012 AND 10 MAY 2012**

Attached.

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4. CHAIRPERSON'S REPORT FROM A MEETING OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD: MEETING OF 16 MAY 2012

Attached.

5. **ROADS OF NATIONAL SIGNIFICANCE THE COUNCIL POSITION ON REVISED WESTERN CORRIDOR PROPOSAL**

General Manager responsible:	General Manager Strategy and Planning, DDI 941 8281
Officers responsible:	General Manager Strategy and Planning
Author:	Mike Theelen, General Manager Strategy and Planning

PURPOSE OF REPORT

1. The purpose of this report is to consider a range of changes proposed by New Zealand Transport Authority (NZTA) to the Western Corridor Road of National Significance (RON), (particularly the section between Sawyers Arms Road and Yaldhurst Road). These changes were outlined to the Council in a bus tour conducted by NZTA staff on 20 April 2012. This field trip included Councillors, Community Board members and technical staff from both the Council and NZTA.
2. This report does not address all the resolutions passed by the Council in November 2011 in respect of the government's wider RON programme in Christchurch. These continue to be worked through by staff through a variety of forums, and will be reported back to the Council as appropriate.
3. The position now put forward by NZTA in respect of the Western Corridor RON is summarised in **Attachment 1**.

EXECUTIVE SUMMARY

Council concerns with the Western Corridor RON

4. At its November 2011 meeting the Council expressed its concerns with the Western RON as proposed by NZTA. These are outlined in the resolutions passed and attached as **Attachment 2**.

In summary the main concerns expressed, by the Council, the Board, and a variety of other parties can be listed as follows.

- Conversion of Russley Road, incrementally, to a motorway, severing the airport and McLeans Island area from the city.
 - The loss of access from the city particularly the Wairakei business park, to the airport business area.
 - The shifting of current Russley Road traffic on to local roads, notably Roydvale, Woolridge Road.
 - Loss of safe cycle access from the Harewood area to the McLeans Island Cycleway.
 - Loss of access to the business area surrounding the airport (notably Dakota Park).
 - The apparent rejection by NZTA of any provision for a Western Airport bypass to accommodate traffic seeking to connect between the northern and southern State Highway approach to the city.
 - The proposed design modifications to the iconic bridge structure proposed for the Memorial/Russley intersection.
5. Each of the matters were canvassed by NZTA staff during the bus trip, and a range of modifications and improvements were listed by NZTA staff. These are addressed in detail below. In a number of instances the commitments raised remain early proposals, which have not been fully tested, or costed, and there remains work to be done by both the Council and NZTA staff to ensure that suitable solutions are reached. However the direction of the commitments given suggest that a suitable outcome can be achieved and if this is not so it will be open for the Council to again raise its concern with NZTA.

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Summary of Proposed Changes

6. The key changes proposed are canvassed in Mr Harland's letter to the Chief Executive, (**Attachment 1**). They are further examined below.

7. Speed

It has been confirmed that the speed limit will be reduced from 100 kilometres per hour, to 80 kilometres per hour from the Groynes to Avonhead Road, recognising the local nature of the road. This will effectively retain the existing speed restrictions.

8. Western Airport Bypass

NZTA have not committed to a new State Highway/Western Airport Bypass. They have however now acknowledged the possibility of such a route in the future, and proposed (along with CIAL and the Council) a series of roading improvements to enable bypass traffic to more easily use the route. The key changes proposed are improvements for the Barters Road/Pound Rd/State Highway 1 intersection near Templeton, and improved connection back to State Highway 1 via McLeans Island Road and Broughs Road, near Sawyers Arms Road. Separately CIAL are also to pursue the realignment of part of Pound Road.

9. These changes are designed to improve flow, and driver choice, and continue to allow a long term Western Airport bypass to be considered as a longer term solution to traffic circulating on the Western side of the city.

10. Wairakei Road (and Avonhead Road) Severances

A key element in the NZTA design is the building of the intersection at Memorial Russley. The proposed solution requires the closure of both Avonhead Road and Wairakei Road at Russley Road, due to the bridge approach slopes. One of the Council's and the Community Board key concerns was the effect of this on severing access for the Wairakei business park from the airport, and the consequential re-routing of traffic on to local roads. In response NZTA have proposed a modification to their design to allow a slip lane of traffic alongside the State Highway that effectively connects southbound traffic from Wairakei Road to the State highway and to the airport, via the Memorial Avenue intersection.

11. Northbound traffic would access the business park entry via Roydvale Road, or by a slightly circuitous route utilising the enhanced roundabout at Harewood Road, and coming back south along the State Highway. In addition NZTA have committed to a number of local road improvements, where changes in traffic behaviour and demand have been modelled. (Notably Woolridge Road/Harewood Road). While this outcome remains a compromise for local vehicular uses, the changes do improve access between Wairakei to the airport over that initially proposed by NZTA.

12. Access to Dakota Park

This issue has been one raised by CIAL for some time, and parallels the issues faced by the city at Wairakei Road. With the proposed closure of Avonhead Road, the airport was keen to retain access to its developing Dakota Park, and to reduce the concentration of access at Memorial Drive. The proposed solution is a north and south interchange for Dakota Park, the final design of which has yet to be agreed. One of the key elements the Council will wish to see captured in any final solution is a dedicated cycle access across the road, particularly a strong connection from Dakota Park to the Avonhead area. This provides a good opportunity to provide complementary cycle access for workers at the airport, the crossing of the state highway is the most significant barrier to achieving this.

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13. Cycle Access

In addition to the opportunity for improved cycle access at Dakota Park, the Council and the Community Board were justifiably concerned with the lack of attention to cycle access across the State Highway and in particular to the McLeans Island cycleway. This route is a significant recreational route, and with increasing employment on the Western side of the State Highway the ability for workers to cross the route safely is of significant importance. In response to these concerns NZTA have identified the possibility of constructing a grade separated cycle connection in the vicinity of the Harewood Road roundabout that would connect equally from the city side to the current cycle track. This is a significant step forward. While the detail of this still needs to be worked through, changes with secondary connections into the employment areas to the north of McLeans Island Road, this initiative is a significant step forward in improving access and safety.

14. Memorial Avenue Bridge

This bridge is a key element in addressing growing traffic congestion on Russley Road. Work was commenced between NZTA, the Council, and CIAL to consider a structure that would not only be functional, but which would present an iconic entrance point to the city from the airport gateway. In November NZTA announced it would meet the full cost of the preferred bridge design, but would value engineer it, to reduce the cost. The city was rightly concerned that in doing so NZTA would undermine the iconic nature of the design. During the trip NZTA staff outlined their proposal to add a centre pier to the bridge, to reduce the structural reliance on the arches that were a key feature of the bridge. They estimated the cost saving to be in the order of \$7 million. Once again this is a position which the Councillors indicated a willingness to accept. However it is important that the detailed designs reflect Mr Harland's assurances that the iconic look and feel of the bridge will not be compromised, and this should be addressed through ongoing dialogue with the Council.

SUMMARY

15. There has been a large measure of concern by the Council and Community Boards, and CIAL and others over the manner in which NZTA have endeavoured to deliver the government's RONs programme on the Western side of Christchurch city. Following the Council's strong stance in November 2011, NZTA staff have worked to propose a suite of changes to address, as best they can, these issues. The proposal outlined on the 20 April bus trip were welcomed by the Council as a commitment by NZTA to address the Council's concerns. It is accepted that the proposals were broad and that the detail of these had in many instances, still to be worked through. There does need to be a commitment by NZTA to continue to work with the Council, the Community Board, CIAL and other affected parties, in good faith, to deliver on the compromises offered.

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RECOMMENDATION

It is recommended that the Council:

- (a) Confirm its acceptance of the proposed changes to the Western Corridor Roads of National Significance presented to them by New Zealand Transport Authority at its 20 April road trip, the confirmation letter received from Mr Jim Harland, the Regional Director, and as outlined in this report.
- (b) Confirm that on the basis of the proposal outlined, it affirms its support for the Western Corridor Roads of National Significance project by New Zealand Transport Authority.
- (c) Confirm its expectation that New Zealand Transport Authority and the Council staff will work closely and collaboratively on the detail of the changes proposed to ensure that final designs and solutions achieve the outcomes committed to by New Zealand Transport Authority.
- (d) Affirm that it reserves the right to withdraw its support for the Western Corridor Roads of National Significance programme, if New Zealand Transport Authority is unable to demonstrate that it can and will give effect to the commitments made at the 20 April bus trip, in a timely and appropriate manner.
- (e) Thanks New Zealand Transport Authority, for its willingness to consider modifications to its design proposal for the Western Corridor Roads of National Significance.
- (f) Confirms that in the light of the changes proposed it does not seek a meeting with the Minister of Transport on this issue, but confirms its desire to ensure that New Zealand Transport Authority, its Board, and Minister continue to dialogue regularly and in good faith with the Council on transport issues as they affect the future of the city.

6. BROTHELS LOCATION AND SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES BYLAW

General Manager responsible:	General Manager Strategy and Planning, DDI 941- 8281
Officer responsible:	Programme Manager Strong Communities
Author:	Mel Renganathan, Policy Analyst

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

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

6 Cont'd

- (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.

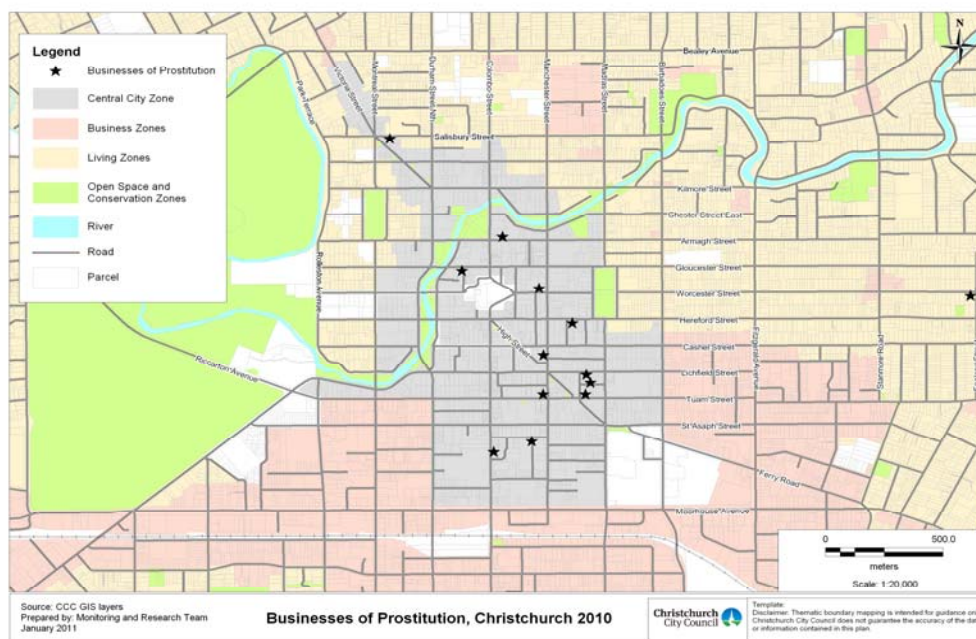
⁵ At least one worker must live on-site, only one person may be employed who lives elsewhere, the floor area is restricted to 40m² and the business must be closed by 11pm. There are also limits on visitor numbers and at least four parking spaces must be provided on-site.

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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 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.

6 Cont'd

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.

COUNCIL 24. 5. 2012

7. REPORT OF THE REGULATORY AND PLANNING COMMITTEE: MEETING OF 2 MAY 2012

Attached.

COUNCIL 24. 5. 2012

8. REPORT OF THE HERITAGE AND ARTS COMMITTEE: MEETING OF 4 MAY 2012

Attached.

COUNCIL 24. 5. 2012

**9. REPORT OF THE HOUSING AND COMMUNITY FACILITIES COMMITTEE:
MEETING OF 11 MAY 2012**

Attached.

10. NOTICES OF MOTION

11. RESOLUTION TO EXCLUDE THE PUBLIC

Attached.