

Proposed Revocation of the  
**Christchurch City Brothels**  
(LOCATION AND SIGNAGE) Bylaw 2004



Protecting, promoting  
and maintaining public  
health and safety



# SUMMARY OF INFORMATION OF PROPOSAL FOR THE REVOCATION OF THE CHRISTCHURCH CITY BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

This summary is made pursuant to section 89 of the Local Government Act 2002

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## *Nature of and reasons for proposal*

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The Christchurch City Council is undertaking consultation on the proposed revocation of the Christchurch City Council Brothels (Location and Signage) Bylaw 2004. This bylaw covers the location and conditions for signage related to brothels and commercial sexual services, although the location requirements were quashed by the High Court in 2005.

The 2004 bylaw must be reviewed by 6 July 2009. It has been reviewed in accordance with section 155 of the Local Government Act 2002, which requires the Council to identify any perceived problems and, if such perceived problems exist, to decide whether a bylaw is the most appropriate way to address those problems.

The Council proposes revoking the bylaw on the grounds that an examination under section 155 of the Local Government Act 2002 indicated that any perceived problems in regard to the location of brothels or signs advertising commercial sexual services could be controlled more appropriately by other means and therefore a bylaw was not the most appropriate way to address any perceived problems.

The Statement of Proposal and this Summary of Information are available at all Council Service Centres, Council libraries and on the Councils website: [www.ccc.govt.nz](http://www.ccc.govt.nz).

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## *Section 155 determination - location of brothels*

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On the basis of over four years' experience with the current bylaw, and over three years since the location requirements of the bylaw were quashed by the High Court, there have been limited problems with the location of brothels. The current bylaw applies only to the Christchurch City area pre-amalgamation with Banks Peninsula. The former Banks Peninsula District Council did not have a similar bylaw controlling location and signage, and no issues have been raised regarding the location of brothels in that area.

The analysis undertaken under section 155 of the LGA02 has revealed there is no significant evidence of nuisance problems caused by the location of brothels, and if any issues arose, they could be controlled under the current provisions of the City or District Plan as appropriate.

The Council has therefore concluded that there is no need for a bylaw that addresses the location of brothels.

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## *Section 155 determination - Signage advertising commercial sexual services in, or visible from, public places*

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Section 12 of the Prostitution Reform Act 2003 allows the Council to make bylaws prohibiting or regulating signage in, or visible from, a public place, that advertises commercial sexual services. The Council has to be satisfied that a bylaw is the most appropriate way to address the problem of signage advertising commercial sexual services, and, also has to be satisfied that the signage is likely to cause nuisance or serious offence to ordinary members of the public using the area, or that such signage is incompatible with the existing character or use of the area.

The need to be satisfied as to such matters arises from the potential offensiveness of such signs. The Council has received advice that the offensiveness of a sign must be assessed in the context in which it is found, and the offensiveness of a sign would also be a determinative issue in the enforcement of any bylaw made under section 12. The Council considered whether it could draft a bylaw which would address the issues and regulate signs appropriately but has determined that a bylaw is not the most appropriate way to address the possible problem of signs advertising commercial sexual services.

The Council considers that other controls, in particular the ability to use the enforcement order or abatement notice provisions of the Resource Management Act 1991, or to make complaints to the Advertising Standards Authority, or the Police, under the Films Videos and Publications Classification Act 2003 will provide sufficient controls over signs advertising commercial sexual services.

Before making a decision the Council considered four options under which it might control signage advertising commercial sexual services. The first three options were for bylaws in various forms made under the Prostitution Reform Act 2003, and the fourth option recommended that no bylaw be adopted and that the Council rely on other existing regulatory means to control offensive signage. These other means provide for easier and more effective enforcement and remove the difficulties with drafting an appropriate form of bylaw that would withstand legal challenge. The Council adopted the fourth option as its preferred option.

### **Submissions on this proposal can be made either:**

- through the Have Your Say website: [www.ccc.govt.nz/HaveYourSay/](http://www.ccc.govt.nz/HaveYourSay/)
- via email to: [BrothelsBylaw@ccc.govt.nz](mailto:BrothelsBylaw@ccc.govt.nz)
- in writing to:

Freepost 178  
Proposed Revocation of Brothels Bylaw 2004  
Christchurch City Council  
PO Box 237  
Christchurch 8140

- hand delivered to the Council's Civic Offices at 163 Tuam Street.

Submissions on this proposal may be made to the Council from 29 July 2009 to 4 September 2009

Dated at Christchurch this 23 July 2009.

Christchurch City Council

# STATEMENT OF PROPOSAL FOR THE REVOCATION OF THE CHRISTCHURCH CITY COUNCIL BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

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

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## *Nature of Proposal*

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The purpose of the proposal is to revoke the Christchurch City Council Brothels (Location and Signage) Bylaw 2004 on the grounds that an examination under section 155 of the Local Government Act 2002 (LGA02) indicated that any perceived problems in regard to the location of brothels or signs advertising commercial sexual services could be controlled more appropriately by other means and therefore a bylaw was not the most appropriate way to address any perceived problems.

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## *Reasons for this proposal*

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Section 158 of the Local Government Act 2002 requires the Christchurch City Council Brothels (Location and Signage) Bylaw 2004 to be reviewed by 6 July 2009 which is five years since it was made.

In order to create, amend or revoke a bylaw, the Council must use the Special Consultative Procedure. This is set down in the LGA02 (s83 and s156). In undertaking the review the provisions of section 155 have been considered to determine whether a bylaw is the most appropriate way of dealing with the perceived problems.

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## *Report on s155 determinations (required by section 86 LGA02)*

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### **The review of the existing bylaw**

The Prostitution Reform Act 2003 (the Act) provides for territorial authorities to make bylaws regulating the location of brothels and prohibiting or regulating signage advertising commercial sexual services. The Council decided to introduce a bylaw covering both of the above issues in 2004.

The bylaw restricted brothels largely to an area within the Central Business District of the City and only permitted signs advertising commercial sexual services on those brothels within that area. The 2004 bylaw applies only to the Christchurch City area pre-amalgamation with Banks Peninsula.

A judicial review in 2005 determined that the location provisions within the bylaw were unreasonable, on the grounds that no provision was made for small owner operated brothels to operate outside that area, and those provisions were quashed. The provisions regarding signage were not appealed, hence they remain in force. The current bylaw is required to be reviewed by July 2009.

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## *Location of brothels*

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On the basis of over four years' experience with the bylaw, and over three years since the location requirements were quashed, there have been limited problems with either locations of brothels or with signage. Any problems regarding location have been able to be dealt with under provisions of the City Plan. The current bylaw only covers the former Christchurch City Council area, having been made prior to the amalgamation with Banks Peninsula District Council. Banks Peninsula District Council did not have a similar bylaw controlling location and signage. Nor have any issues been raised regarding the location of brothels in that area.

Brothels can be located in living or business zones subject to them meeting the relevant rules or obtaining resource consent. In considering a resource consent application for a business of prostitution or brothel the Council can consider whether the "business of prostitution 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 is incompatible with the existing character or use of the area in which the land is situated."

There has been little information, either prior or subsequent to the Act, that the location of premises operating as brothels have been responsible for causing nuisance or serious offence to members of the public or are incompatible with an area in which they are located. Some issues that have been the cause of complaint relate more to the inappropriate use of premises under the City Plan and in a number of instances moral reactions to commercial sexual services occurring in the City.

Prostitution and the operation of brothels are legal activities. It is generally considered that restrictions should not be placed on legal activities without evidence of proven nuisance affecting a wide proportion of the public. Section 155 of the LGA02 requires the Council to consider whether there are problems, and if so, whether a bylaw is the most appropriate tool to deal with any problems. The analysis undertaken has revealed there is no significant evidence for nuisance problems caused by the location of brothels in Christchurch City, and if any issues arose, they could be controlled under the current provisions of the City or District Plan as appropriate.

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## *Signage advertising commercial sexual services in, or visible from, public places*

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Section 12 of the Act permits territorial authorities to make bylaws prohibiting or regulating signage in, or visible from, a public place, that advertises commercial sexual services. The Council has to be satisfied that the proposed bylaw is the most appropriate way to address the problem of signage advertising commercial sexual services, and, under section 12 of the Act, also has to be satisfied that the bylaw is necessary to prevent the public display of signage that is likely to cause nuisance or serious offence to ordinary members of the public using the area, or that such signage is incompatible with the existing character or use of the area.

The need to be satisfied as to such matters arises from the potential offensiveness of such signs. The offensiveness of a sign must be assessed in the context in which it is found, and the offensiveness of a sign would also be a determinative issue in the enforcement of any bylaw made under section 12 of the Act. The Council has determined that a bylaw is not the most appropriate way to address the possible problem of signs advertising commercial sexual services.

The Council considers that other controls, in particular the ability to take enforcement action in respect of any such signs under the enforcement order or abatement notice provisions of the Resource Management Act 1991 (RMA91), or to make complaints to the Advertising Standards Authority, or the Police, under the Films Videos and Publications Classification Act 2003 will provide sufficient and more appropriate controls in respect of signs advertising commercial sexual services.

# STATEMENT OF PROPOSAL FOR THE REVOCATION OF THE CHRISTCHURCH CITY COUNCIL BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

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

## Options considered

Before reaching the view that other methods more appropriately addressed the problem of signs advertising commercial sexual services the following options were considered:

### (1) Bylaw - Prohibition of all signage advertising commercial sexual services and that is offensive.

This option avoids the need to distinguish different parts of the city for this purpose, but other regulatory means can already be used to enforce offensive signs, and enforcement of a bylaw on this basis is difficult because of the need to determine that (a) commercial sexual services are being offered and (b) signage is offensive, in the specific context of the sign. There is also a lack of certainty as to how both (a) and (b) are interpreted by those who wish to use such signs and the enforcement officers. There is a risk that the bylaw making powers do not provide for the Council to make a bylaw to cover the whole city. There is considered to be risks for the Council in adopting a bylaw of this nature in relation to individual cases where enforcement action is taken being challenged in court, and a possible challenge to the bylaw via judicial review.

### (2) Bylaw - Prohibit specific signage content because it is offensive i.e. specify in the bylaw what content on signs advertising commercial sexual services is considered to be offensive.

Option 2 would be simple to understand and would remove the need to consider signs on a case by case basis, but the Council still has to first determine the content that is deemed offensive, without considering context – which may not be appropriate legally given the need to consider context in offensiveness “tests” for other statutes. There is also likely to be difficulty in determining all content that will be offensive in all contexts (particularly graphic images). Again there is some uncertainty over Council’s ability to make a bylaw covering the whole city, and the risks are similar as option 1 in that the bylaw could be challenged over the content selected by Council for prohibition, and that individual cases where enforcement action has been taken could be challenged.

### (3) Bylaw - Regulation (rather than prohibition) of signage in different areas of the city.

This option takes in to account context (to some degree) in determining whether signage advertising commercial sexual services is offensive and would be relatively simple to understand, but there is difficulty in determining a justifiable basis for which areas to regulate, as well as a potential to catch existing signage that does not appear to be causing offence or any significant problems. A bylaw like this has the risk of being challenged on both the form of the bylaw and the areas selected for inclusion in the bylaw.

### (4) No bylaw – rely on the ability to enforce offensive material through other means

Option 4, in not requiring a bylaw to be drafted, means there is no risk of challenge to a bylaw (only individual enforcement decisions in any instance, which is currently the case). This option is easily understood and applied as there is case law guidance (for the RMA91 in particular). There is no need for the enforcement officers to determine whether the sign is one that advertises commercial sexual services, they simply have to determine whether it is offensive. Enforcement through these other means is also easier and more effective for the Council than enforcing a bylaw, particularly the RMA91 where the standard of proof is easier for the Council. It is also easier for members of the public to initiate action themselves which results in a lower expectation of Council taking enforcement action. The disadvantages of this option are that the Council will not be controlling signage that may be advertising commercial sexual services that is not considered offensive under other regulations/ standards, and there is still some lack of clarity so there is a need to rely on the interpretation of Acts and case law. This situation already exists.

The Council has adopted option (4) as its preferred option on the basis that any perceived problems in regard to signs advertising commercial sexual services can be controlled under other means, and because there would be difficulties in drafting an appropriate form of bylaw, a bylaw is not considered to be the most appropriate way to address any perceived problems.

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## Submissions

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The Council at its meeting on the 23 July 2009 resolved that this Statement of Proposal for the Revocation of the Christchurch City Brothels (Location and Signage) Bylaw 2004 should be adopted for consultation.

Submissions on this proposal can be made either:

- through the Have Your Say website:  
[www.ccc.govt.nz/HaveYourSay/](http://www.ccc.govt.nz/HaveYourSay/)
- via email to: [BrothelsBylaw@ccc.govt.nz](mailto:BrothelsBylaw@ccc.govt.nz)
- in writing to:

Freepost 178  
Proposed Revocation of Brothels Bylaw 2004  
Christchurch City Council  
PO Box 237  
Christchurch 8140

- hand delivered to the Council’s Civic Offices at  
163 Tuam Street.

Submissions on this proposal may be made to the Council from 29 July 2009 to 4 September 2009

Dated at Christchurch this 23 July 2009.

Christchurch City Council

<sup>1</sup> Section 15 of the Prostitution Reform Act 2003

<sup>2</sup> Review of the Christchurch City Brothels (Location and Signage) Bylaw 2004, Report of the Regulatory and Planning Committee to the Council meeting of 27 November 2008



**BYLAW  
REVIEWS**

Protecting, promoting  
and maintaining public  
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