

File No: 01-63-099-18 and
01-15-227



STRATEGY, POLICY & FINANCE COMMITTEE HEARING
Review of Prostitution Bylaw

to be held on 14 February 2019 at 1pm
in the Council Chamber, Rotorua Lakes Council

Chairperson: Cr Raukawa-Tait

Members: Cr Hunt (Deputy Chair) Mayor Chadwick Cr Bentley
Cr Donaldson Cr Gould Cr Kent
Cr Maxwell Cr Sturt Cr Tapsell
E Berryman-Kamp G Mohi P Thomass
S Trumper

Quorum: 8

AGENDA

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1. NGĀ WHAKAPAAHA APOLOGIES	
2. WHAKAPUAKITANGA WHAIPĀNGA DECLARATIONS OF INTEREST	
3. PŪRONGO KAIMAHI STAFF REPORTS	
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4. HEARING OF SUBMITTERS (refer timetable below)	

TIMETABLE:

Appearance of submitters:

Time	Submitter	Sub No.	Page No.
1pm	Dame Catherine Healy and Bridie Sweetman NZ Prostitutes Collective	3	8
1.10pm	Nicole Winters	1	7

STRATEGY, POLICY AND FINANCE COMMITTEE DELEGATIONS

Type of Committee	Committee
Subordinate to	Council
Subordinate Committees	
Legislative Basis	Schedule 7, clause 30 (1) (a), Local Government Act 2002.
Purpose	The purpose of the Strategy, Policy and Finance Committee is to have oversight and make recommendations to the Council on the adoption and development of all Council’s strategic, policy, planning and regulatory frameworks.
Reference	01-15-227
Membership	<p>Councillor Raukawa-Tait (Chair) Councillor Hunt (Deputy Chair)</p> <p>The Mayor and all councillors 2 Te Tatau o Te Arawa members 1 Lakes Community Board member 1 Rural Community Board member</p> <p>Full voting rights for all members</p>
Quorum	8
Meeting frequency	Monthly
Delegations	<p>The Committee’s function is recommendatory only.¹ It is authorised to take actions precedent to the exercise by the Council of its statutory responsibilities, duties and powers, by:</p> <ul style="list-style-type: none"> • Receiving, considering, hearing submissions and making recommendations on draft plans (except the District Plan), strategies and policies (such as the Long-term Plan, Annual Plan; funding and financial policies; reserves management plans and asset management plans); • Considering and making recommendations on the development of the Council’s rating policy; financial strategy and budgets; • Considering and making recommendations on the development of Council bylaws, including hearing submissions in relation to making, amending and revoking bylaws; • Considering and making recommendations on Council’s strategic direction to ensure efficient and effective delivery of Council’s objectives and District Vision; • Receiving and considering reports from working/strategy groups;

¹ Council is authorised to delegate anything precedent to the exercise of Council’s powers, duties and functions - Schedule 7, clause 32, Local Government Act 2002

	<ul style="list-style-type: none"> • Considering and making recommendations on the development of guidelines for decision making to assist Council in achieving its strategic outcomes; • Considering and making recommendations on the establishment of levels of service across Council services to ensure alignment with strategic goals and priorities; • Considering and making recommendations on the development of Treasury and funding functions; • Considering and making recommendations on proposals for the establishment of Council controlled organisations (including the appointment and remuneration of Directors, formation of constitutions and shareholder agreements); • Considering and making recommendations on proposals for the sale and purchase of land; • Considering and making recommendations on issues relating to Council leases; • Considering and making recommendations on draft Council submissions/responses in relation to: <ul style="list-style-type: none"> ○ Central government policies, plans and proposed legislative reform; ○ Proposals by other organisations/authorities (Local and Regional). • Performing such other functions as the Council may direct from time to time.²
<p>Relevant Statutes</p>	<p>All the duties and responsibilities listed above must be carried out in accordance with the relevant legislation.</p>
<p>Limits to Delegations</p>	<p>The Committee does not have the delegated authority to make decisions for and on behalf of the Council. All matters requiring a decision of Council must be referred, by way of recommendation, to the Council for final consideration and determination.</p> <p>In the event that the Council resolves not to approve or adopt a Committee recommendation, the item shall be returned to the Committee via the Chief Executive for review and subsequent referral to the Council for further consideration and determination.</p>

² A committee is subject in all things to the control of the local authority, and must carry out all general and special directions of the Council given in relation to the committee - see Schedule 7, clause 30(3), Local Government Act 2002.

ROTORUA LAKES COUNCIL

Mayor
Chairperson and members
STRATEGY, POLICY & FINANCE COMMITTEE

HEARING ON PROSTITUTION BYLAW REVIEW

Report prepared by: Rosemary Viskovic, Strategy Development Manager - Sustainability and Social Development

Report reviewed by: Jean-Paul Gaston, Group Manager Strategy

Report approved by: Geoff Williams, Chief Executive

1. PURPOSE

The purpose of this report is to hear verbal submissions to the Review of Council's Prostitution Bylaw.

2. RECOMMENDATION 1:

That the report titled "Hearing on Prostitution Bylaw review" be received.

3. BACKGROUND

At its meeting on 8 November 2018 the Strategy, Policy & Finance Committee resolved to put out for public consultation a draft Prostitution Bylaw, following the requirements of the Local Government Act 2002. The only proposed change to the Prostitution Bylaw 2009 was the correction of a spelling error.

The committee sought feedback on this proposed Bylaw amendment through:

- advertisement in the local media informing the public of the review of the Bylaw, where to get more information, and inviting submissions
- notice of the consultation was circulated through Council's regular e-panui sent to 673 recipients
- a direct letter to stakeholders including the Police, NZ Prostitute's Collective, Toi te Ora Public Health, Lakes District Health Board Sexual Health Services and local brothel businesses.

Copies of consultation documentation were advertised as being available at the Council office, and online.

Submissions received

A total of three submissions were received. Two submitters wish to be heard.

Hearing

The Strategy, Policy and Finance Committee must now hear those submissions before calling for a staff report and subsequent deliberations in accordance with the process for adopting a replacement bylaw under the Local Government Act.

4. ATTACHMENTS

Attachment 1 – Submissions to the draft Prostitution Bylaw

Sub No.	To be heard	Submitter Name / Company
1	Y	Nicole Winters
Submission / Comments I wonder if small owner occupied brothels might be allowed outside the CBD. Increased discretion and lower rent might help the providers. Thank you for your continued attention to this matter. The signage rules are great, in my opinion. With the Internet, customers do not need signs outside and they cheapen the look of the building. This online form asks if I would like to speak to the issue at a council meeting. Honestly, I have no preference. But my guess is that anti-prostitution groups will talk so I am happy to bring a different voice in support of safe sex work to the meeting.		
Sub No.	To be heard	Submitter Name / Company
2	N	Christa Marlongenson
Submission / Comments Can the new version clarify advertising, please? Can we send mailers to potential clients? Can we send discreet emails? What exactly is solicitation? Sex workers want to follow the rules but we also want to make a living. Understanding the rules of where we can publish advertisements would help.		

Sub No.	To be heard	Submitter Name / Company						
3	Y	Dame Catherine Healy and Bridie Sweetman, NZ Prostitutes Collective						
<p>Submission / Comments</p> <p>20 December 2018</p> <p>The New Zealand Prostitutes' Collective (NZPC) is a community-based organisation which has contracted to the Ministry of Health since 1988 to provide sexual and reproductive health-focussed services to sex workers throughout New Zealand. In this context we have thousands of contacts with sex workers either through our community centres or through our outreach programmes. NZPC operate on a model of 'best practice' approach to population health as endorsed by the United Nations and World Health Organisations. NZPC has a responsibility to address any regulations that may negatively impact on sex workers and undermine their rights, safety, health and well-being.</p> <p>There are two aspects of the Bylaw which are of concern to NZPC. The first is clause 2.1 which provides that: "No person may establish or operate a brothel anywhere in the district outside the permitted area of the Rotorua CBD as defined in the map comprising Appendix 1 of this Bylaw".</p> <p>The defined area is very narrow and not practical for most sex workers to operate from because the cost of operations in this area limits sex work opportunities to larger managed brothels. Many sex workers are unable to work for larger managed brothels as it is difficult for them to get hired: for example for example those who are older, male, gender diverse and/or transgender, or those who are limited to certain hours by virtue of other commitments such as study or other work.</p> <p>It is important that these sex workers, as well as others, have the option to work independently and have access to such venues to work from, including home-based options. Most independent sex workers can only afford to work from home-based settings which are outside the narrowly defined area. This can lead to displacement of sex workers and/or force them to work in contravention of the by-law. It also opens up potential for exploitation.</p> <p>This provision reads very similarly to clause 6 of the Christchurch City Brothels (Location and Signage) Bylaw 2004, which also limited brothels to a defined area in the central business district. The Christchurch bylaw was challenged in the High Courtⁱ on the basis that it was invalid for unreasonableness, repugnancy and for effecting a prohibition. The High Court found that the bylaw was invalid because it effectively denied "the existence of SOOBs in the city of Christchurch"ⁱⁱ. Clause 6 was therefore quashed.</p> <p>The Court of Appeal in <i>Conley</i>^v considered a restrictive bylaw clause which limited brothels to one of three permitted zones in the city of Hamilton. There were over 2,596 occupational units available for use as a brothel within those three zones. The zones were very diverse and traversed commercial, industrial and residential uses. The bylaw was upheld in <i>Conley</i> because it did not have the effect of "denying the existence of SOOBs in the city". There were plenty of locations available for SOOBs. The <i>Conley</i> case can therefore be distinguished from the case at hand.</p> <table border="0" data-bbox="156 1682 1292 1868"> <tr> <td>National Office Wellington PO Box 11 412 Manners St Wellington Ph: [04] 382 8791 pcdp@globe.net.nz</td> <td>Auckland PO Box 68 509 Newtown Auckland Ph: [09] 366 6106</td> <td>Tauranga PO Box 9001 Greerton Tauranga Ph: [07] 571 0640</td> <td>Taranaki PO Box 4287 New Plymouth Ph: [06] 758 6228</td> <td>Christchurch PO Box 13561 Christchurch Ph: [03] 365 2595</td> <td>Dunedin PO Box 5636 Dunedin Ph: [03] 477 6988</td> </tr> </table> <p style="text-align: center;">nzpc.org.nz</p>			National Office Wellington PO Box 11 412 Manners St Wellington Ph: [04] 382 8791 pcdp@globe.net.nz	Auckland PO Box 68 509 Newtown Auckland Ph: [09] 366 6106	Tauranga PO Box 9001 Greerton Tauranga Ph: [07] 571 0640	Taranaki PO Box 4287 New Plymouth Ph: [06] 758 6228	Christchurch PO Box 13561 Christchurch Ph: [03] 365 2595	Dunedin PO Box 5636 Dunedin Ph: [03] 477 6988
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Given the similarities between clause 6 of the Christchurch 2004 Bylaw and clause 2.1 of the Rotorua 2009 Bylaw, clause 2.1 of the Rotorua Bylaw is invalid. The area where brothels are permitted is narrow, like the Christchurch case, rather than broad, like the Hamilton case. NZPC suggests amending the bylaw to permit SOOBs to operate from other parts of the city, in accordance with the two above-mentioned High Court decisions.

The second aspect of the Bylaw which NZPC are concerned about is clause 4.1 which provides that: "No person may in any public place invite or request any person to enter a brothel or other commercial sex premises or engage in prostitution". This provision is almost exactly the same as the former section of the Summary Offences Act 1981 which made soliciting for prostitution an offence. One of the purposes of the Prostitution Reform Act 2003 was to decriminalise prostitution. Clause 4.1 of the Rotorua Bylaw is inconsistent with the Prostitution Reform Act 2003, and therefore is also invalid. It is also probably unnecessary, as Rotorua does not have a known street-based sex work scene.

One of the purposes of the Prostitution Reform Act 2003 was to give sex workers the option to work from a variety of environments: large managed brothels, SOOBs, independently, or meet their clients through street-based sex work. Sex workers may be precluded from working indoors for a number of reasons including rent or letting fees, onerous working hours and access to technology to advertise online or through the newspaper. There are options to address any concerns such as noise or disorderly behaviour through the Summary Offences Act 1981.

Overseas attempts to eliminate street-based sex work have instead resulted in displacement, where street-based sex workers go 'underground' to more dangerous locations and are exposed to increased vulnerability. They also have reduced access to health and support services.

Attempts have been made in Auckland (Manukau) and Christchurch to limit street-based sex work activities by way of regulatory enforcement and these were rejected on legal grounds. In the case of Manukau, parliament rejected these attempts at a legislative level. These communities have managed to resolve community tensions associated with street-based sex work by way of collaboration between all interested parties.

The conundrum of street-based sex work is usefully outlined by Associate Professor Gillian Abel and Lisa Fitzgerald in *The Street's got its advantages: Movement between sectors of the sex industry in a decriminalised environment*¹.

NZPC looks forward to answering any questions which the Rotorua Lakes Council may have during the upcoming consultation process.



Dame Catherine Healy



Miss Bridie Sweetman

¹ "No person may operate, or permit or suffer to be operated, a brothel in any part of the City other than within an area delineated on the map contained in the First Schedule."

² In *Willowford Family Trust v Christchurch City Council* CIV-2004-409-002299.

³ At [94].

⁴ *Conley v Hamilton City Council* [2007] NZCA 543.

⁵ Abel, G. and Fitzgerald, L. (2012) 'The Street's got its advantages': movement between sectors of the sex industry in a decriminalized environment *Health, Risk and Society* 14(1): 7-23.