

In the second semester of 2009 the third year Bachelor of Environmental Management and Planning students taking the Professional Practice course (SOCI 314) were set an assignment to write a short, topical article of local interest. This related directly to the content of the course SOCI 314, which provides a critical study of issues in the provision of professional services in environmental planning, design, social sciences, tourism, sport and recreation. As part of the assessment the articles were subject to the LPR review processes and those written by Felicity Boyd, Shaun Coffey, and Sean Garlick are included here.

SOOBs In Christchurch: Go Or Whoa?

Felicity Boyd

Introduction

Small owner-operated brothels (SOOBs) are a reality for any city in New Zealand. They are defined by the Prostitution Reform Act 2003 (PRA) as places where not more than four sex workers work and where each sex worker retains control over their own earnings (PRA, 2003). Gathering statistics on these establishments is nearly impossible due to their discreet nature. Many clients prefer the inconspicuous environment of a SOOB over the notorious, well-advertised brothels in the city centre. SOOBs have long been a controversial planning issue for the Christchurch City Council (CCC), but perhaps the period 2003-2009 has proved to be the most contentious.

Christchurch city brothels (location and signage) bylaw 2004: a timeline

The PRA came into effect in New Zealand on 28 June 2003 (Knight, 2005). As a result of this legislation, territorial authorities were given certain regulatory powers regarding the location and signage of brothels within their district. Councils all across New Zealand began the process of drafting bylaws, and CCC was no different. A PRA Subcommittee, made up of Councillors Helen Broughton, Alister James, Lesley Keast, Ingrid Stonhill and Sue Wells, was formed and on 19 December 2003 recommended that CCC introduce a bylaw limiting the location of brothels to an area within the central city (see Figure 1) and restricting signage advertising commercial sexual services (Mitchell, 2003; The Press, 2003). This bylaw effectively gave Christchurch's SOOBs two choices: move their operations to the city centre (where rents are considerably higher than the suburbs) or shut down their operations altogether.

The Council received 1500 submissions during the public consultation period, and heard 52 submitters over the three days 1-3 December 2003 (PRA Subcommittee, 2004). Of the submitters, 61% felt that brothels should only be allowed within the Central Business District (CBD), while another 17% felt brothels should be allowed in other industrial or commercial zones (PRA Subcommittee, 2004). Overall, submitters were strongly opposed to brothels being located in residential areas, particularly when situated near schools, places of worship, or any places where children may be exposed to brothels (PRA Subcommittee, 2004). Relating to the signage portion of the bylaw, 71% of submitters felt that signage and advertising outside a brothel in the CBD should be very discreet with no explicit pictures or words, and no neon or flashing lights, while 25% felt there should be no signage at all (PRA Subcommittee, 2004). Suburban brothels, however, it was felt should have no signage (PRA Subcommittee, 2004). One notable opponent to the bylaw was Anna Reed, regional coordinator for the New Zealand Prostitutes Collective (NZPC), who claimed the bylaw would drive the sex industry in Christchurch under-

ground, putting sex workers in danger as their ability to work from home was severely compromised (Crean, 2004). The submissions received by the Council were clearly reflected in subsequent amendments to the draft bylaw. Members of the public were largely in support of the provisions of the bylaw, which was then approved by CCC at a special meeting on 19 December 2003 (PRA Subcommittee, 2004).

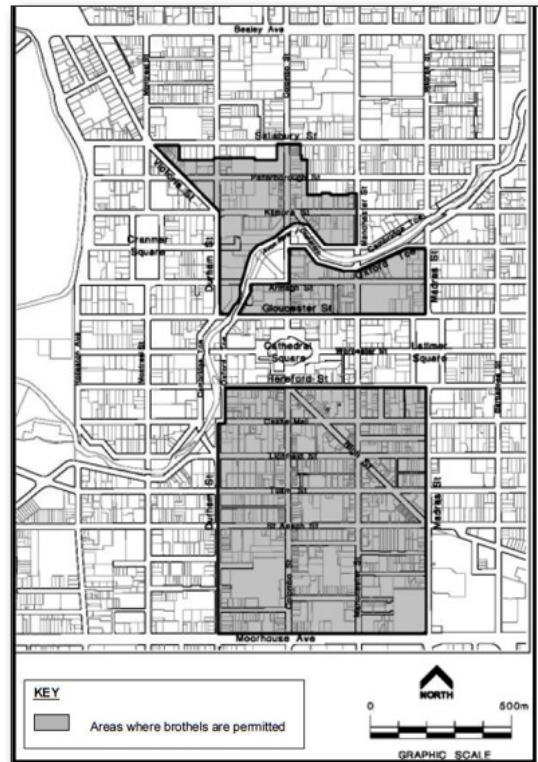


Figure 1. Brothel permitted areas under CCC Prostitution Bylaw 2004 (in 2005 these area controls were overturned) (<http://resources.ccc.govt.nz/files/ChChCityBrothelsLocationAndSignageBylaw2004-bylaws.pdf>)

On 7 July 2004, the Christchurch City Brothels (Location and Signage) Bylaw 2004 came into effect (Knight, 2005). From this date forward, brothels were only permitted to operate within a specified area of the city (Map 1), and a number of restrictions were placed on signage for commercial sexual services. It was pointed out in the months following the introduction of the bylaw that the CCC would find it highly difficult to police this bylaw, due to their lack of powers regarding entry or seizure – simple reports by neighbours of brothels alleged to be operating outside the zone would not be sufficient evidence of commercial sex services (New Zealand Herald, 2004).

The bylaw was quickly challenged by a key player in New Zealand's sex industry: Terry Brown and the Willowford Family Trust ("the Trust"), with which he is associated. Terry Brown currently operates a number of brothels within Christchurch and, in association with the Trust, planned to operate a brothel outside the zone identified in the bylaw (One News, 2005). Gerard McCoy QC, on behalf of the Trust and Terry Brown, argued that the bylaw was

both unreasonable and repugnant (One News, 2005; [Willowford Family Trust v Christchurch City Council 29/7/05, Panckhurst J, HC Christchurch CIV-2004-409-2299](#)). On 29 July 2005 Judge Panckhurst ruled in favour of Terry Brown and the Trust, quashing the location provisions of the bylaw on the grounds that they effectively denied the existence of SOOBs, which was contrary to the intentions of the PRA (New Zealand Herald, 2005, [Willowford Family Trust v Christchurch City Council 29/7/05, Panckhurst J, HC Christchurch CIV-2004-409-2299](#)). The signage and advertising provisions of the bylaw were deemed acceptable, and so this portion of the bylaw remained intact ([Willowford Family Trust v Christchurch City Council 29/7/05, Panckhurst J, HC Christchurch CIV-2004-409-2299](#)). CCC initially appealed the decision, however after a similar bylaw in Auckland was also quashed by the High Court, CCC made the decision not to pursue the matter any further, accepting the Court's decision (Green Party, 2006). Consequently, the CCC Bylaw no longer contains provisions controlling the location of SOOBs, just the signage.

The Hamilton City Council prostitution bylaw 2004

After the PRA was passed, it soon became clear that there was considerable ambiguity in the terms of the legislation. The Judge in the Christchurch case interpreted the PRA as stating that SOOBs are a constituent component of prostitution business – therefore, CCC's bylaw was prohibitive rather than regulative (Maxim Institute, 2006). However, the Judge in a Hamilton case interpreted this section of the PRA differently. In her opinion, the PRA did not recognise SOOBs as constituent parts of prostitution and therefore SOOBs were to be subject to the provisions of the Hamilton bylaw ([Conley v Hamilton City Council 19/7/06, Ellen France J, HC Hamilton CIV-2005-419-1689](#); Maxim Institute, 2006).

In terms of provisions, the Hamilton bylaw and the Christchurch bylaw were very similar. Both aimed to restrict the locations of brothels to specific areas of the city and tightly control the use of advertising and signage outside brothels. It must be noted that the area identified for the location of brothels in the Hamilton bylaw (see figure 2) is significantly larger than that identified in the Christchurch bylaw. While CCC attempted to limit brothels to two small areas of the CBD, the Hamilton City Council identified a number of areas around the city where brothels would be permitted, including, but not restricted to, an area of the CBD. It is perhaps this difference between the two bylaws that led to the seemingly contradictory decisions made in the High Court. The areas identified by CCC were overly restrictive due to the size, the high cost of property and the number of permanent establishments (such as the Christchurch Town Hall) within the areas. Conversely, the area chosen by the Hamilton City Council made it possible for brothels to continue to operate within the city limits without facing significant difficulty or being solely restricted to the CBD.

The case of the Hamilton bylaw sends an important message to other councils around the country. Clearly decisions relating to prostitution bylaws are highly dependent on the individual circumstances of each case. It is difficult to predict how bylaws will be treated in the High Court in the future as the context of each case will be critical.

The bylaw today

As per the Local Government Act 2002 (LGA) all bylaws must be reviewed within five years of their commencement date (LGA, 2002). At the end of 2008 the CCC Brothels Location and Signage

Bylaw Subcommittee (BLSBS) was formed to manage this review. A series of meetings concluded that CCC was only permitted to regulate certain signage under the PRA in certain situations (BLSBS, 2009). It was noted that while SOOBs generally operated in areas where signage advertising sexual services would be deemed incompatible with the character of the area, there had been no indication that SOOBs desired to have such signage (BLSBS, 2009). CCC proposed to revoke the current bylaw, and opened the proposal for submissions between 30 July and 4 September 2009.

Between 5 – 9 October 2009, public hearings were held where written submissions were considered and oral submissions heard by a panel of Councillors (CCC, 2009a). The outcome of these hearings and the proposal of the panel were reported back to the Council for its decision at the CCC meeting of 10 December 2009. The current bylaw only regulates signage for commercial sex services which is not often used by SOOBs. The proposed revocation of the bylaw would result in signage being regulated by pre-existing instruments, such as the Resource Management Act 1991 (RMA) and the city plan.

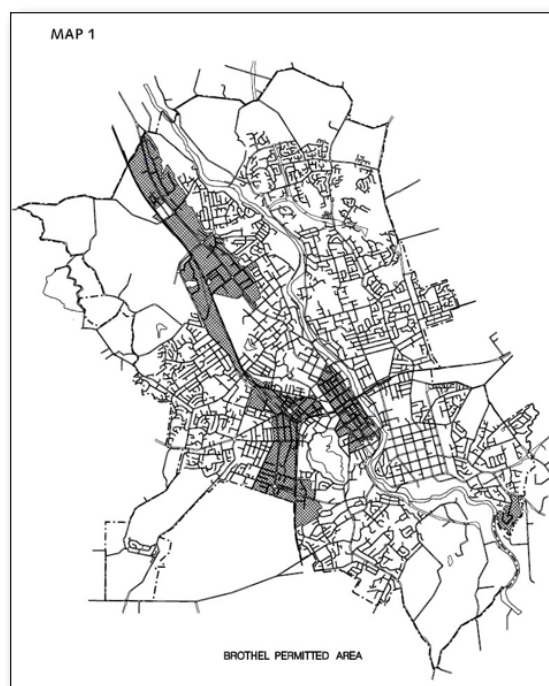


Figure 2. Brothel permitted areas under Hamilton City Council Prostitution Bylaw 2009 (<http://hamilton.co.nz/file/fileid/15638>)

The hearing committee unanimously supported revoking the current bylaw and allowing any signage concerns to be dealt with via the RMA and other means (CCC, 2009b). At the Council meeting on 10 December 2009, it was decided by Councillors that CCC staff would be asked to develop a revised bylaw regarding the advertisement of commercial sex services before the current bylaw lapsed on 7 July 2011 (CCC, 2009b). The current bylaw will be revoked on 6 July 2011 (CCC, 2009b). This decision was somewhat contrary to the recommendation of the hearing committee due to the nature of the submissions received on the revocation (CCC, 2009c). The submissions by members of the public were strongly against revoking the bylaw (CCC, 2009c). The Council's decision regarding the location of brothels was much clearer. As is currently the case, CCC will not control the location of brothels, despite the support through submissions for some kind of control (CCC, 2009c).

In reaching these decisions, the Council utilised a table prepared

by Terence Moody which compiled information regarding other council SOOB bylaws throughout the country (Moody, 2009). Moody's report can be found as an attached document to the agenda for the Council meeting, pages 139-143.

A planning perspective

The RMA established effects-based planning in New Zealand nearly two decades ago now. It is under this legislation that regional and district plans are developed. If an activity is legal, planners must only be concerned with the environmental effects of the activity. While prostitution, and therefore brothels, are now legal in New Zealand, the moral debates continue to rage. It is often difficult for territorial authorities to regulate these activities due to the highly political nature of the issue.

Based on RMA criteria, SOOBs have insignificant to less than minor effects on the environment. While not explicitly stated, SOOBs in Christchurch are categorised as "Other Activities" in the district plan in residential areas. "Other Activities" are any non-residential activities in living zones which are not specifically provided for, and covers a wide range of activities such as at-home hairdressing or beauty therapy. As long as SOOBs adhere to the rules in the plan, they are a permitted activity in Living Zones. While many Christchurch residents find the idea of SOOBs in suburban areas (particularly when close to churches and schools) highly offensive, the reality is that the biophysical environmental effects of SOOBs are less than minor. With regards to the physical environment, it cannot be concluded that there are any significant effects of SOOBs on the local environment. However, a recent decision makes it clear that councils need to consider section 15 of the PRA and whether a SOOB is offensive to the character of its neighbourhood (Mt Victoria Residents Association Inc v Wellington City Council [2009] NZRMA 257). Offensive SOOB signage may be dealt with in similar fashion to other offensive signs, but most SOOBs value discretion and choose not to advertise through visual media such as signage.

In an economic sense, SOOBs can be seen to be positively contributing to the economy of the area by providing employment opportunities and a desired service within the community. Most members of the public are primarily concerned with the social and cultural effects of SOOBs in residential areas; prostitution is often regarded as an anti-social behaviour due to the long-standing moral issues present in this line of work. The act of prostitution is also contrary to the beliefs of a number of popular religions within New Zealand, particularly Christianity. Brothels are repeatedly labelled immoral or corrupt, hence the public's insistence that these activities are kept well separated from sensitive areas such as schools and places of worship. These concerns are often unjustified, as many SOOBs are run in a very discreet, quiet manner due to the wishes of their clients. In some cases, it is impossible to judge whether or not a SOOB is operating from certain premises.

It follows that policing rules on SOOBs can be nigh impossible. The most pertinent rules relating to SOOBs are scale, site size, hours of operation and traffic generation. Clearly the hours of operation restriction is going to be of most concern to SOOBs, as prostitution is not generally considered a day-time activity. How would a council realistically police this restriction? SOOBs, under the PRA, are not required to hold an operator certificate, meaning there is no central register of these establishments (PRA, 2003). A council would first have the problem of identifying whether a property was actually a SOOB. Without powers of entry and search, it is highly doubtful that enough evidence could be gath-

ered in order to prove a rule was being broken. As has been noted, by nature SOOBs are generally quiet and discreet. Most do not use any kind of signage, relying on social networks and advertisements in the classified section of the local newspaper. Moreover, it appears that the PRA does not provide for consideration of whether an activity is moral (see Cheyne (2009) for a discussion of this).

The future of SOOBs

It will be interesting to see how CCC manages this situation in the coming months; however, for SOOBs it is likely to be 'business as usual'.

When considering the planning issues involved in this matter, the 'solutions' seem fairly straight forward. Brothels are legal, and have little effect on their surrounding environment; therefore there is no need to regulate them further. However, prostitution has proved to be a hotly debated moral issue among residents, assuring that any decisions regarding brothels will not be without scrutiny.

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