

Controlling the Location of Brothels in Auckland City

1. Introduction

For many years, Auckland City Council has received complaints about the location of the sex industry in the city. Major concerns have been about the location of massage parlours near schools, offensive signage associated with sex premises in the city, and the location of sex shops and massage parlours in suburban retail areas. A recent complaint about a massage parlour opening next door to a social service facility for the treatment of young sex offenders highlights the compatibility issues of locating brothels in the city.

In 2003, Parliament passed the Prostitution Reform Act, which decriminalises prostitution and allows territorial authorities to make bylaws and/or use its district plans to control the location of brothels in its district. It is understood that this power does not permit councils to prohibit brothels from its district. Rather, the powers are there to establish controls in order to set requirements on locations.

2. Previous Reports on the Location of Brothels in the City

In 1997, two reports were made to council on the sex industry in Auckland City:

- District Plan Section 32 report on the location of massage parlours and other related concerns.
- Report on Interview Survey of real estate persons, and businesses at locations close to commercial sex premises.

These reports followed an earlier report on the Social Impact of the Sex industry in Auckland (1996). Due to limitations on council's powers at the time, the report recommended a change to the Isthmus District Plan to restrict massage parlours within 250 metres of schools, residential areas, and park and reserves. At the time, the Central Area District Plan was being prepared and the report recommended controls in that area relating to street frontages, signs and distance controls.

The section 32 Report stated that the resource management issue is defined as:

Activities of the sex industry are having adverse effects on the amenity of the local area in which the industry is located. This is manifest in complaints about the sex industry locating near schools and residential areas, the visual impact of sex signs and displays, and the adverse effect on other businesses operating near groupings of sex shops and massage parlours.

The section 32 Report recommended changes to the district plan to prevent sex shops and massage parlours opening near schools, residential areas and other sensitive areas. It also suggested controls on signage and displays.

The interview report stated that persons interviewed did not favour restricting the sex industry to the Central Area only. However, they did not wish to see clusters of sex shops/massage parlours opening in suburban areas. Those interviewed were strongly of the view that sex premises should be kept away from sensitive areas. Most favoured the view that sex premises should not occupy street-level space.

It was noted at the time of the council hearings for a change to the district plans that submitters often recommended that council should follow the advice in the section 32 Report.

3. Location Issues Relating to Brothels

In the preparation of this 2003 report, the following persons have been interviewed:

Representatives of Business Associations (Karangahape Road, Onehunga, Panmure, Newmarket, Otahuhu), NZ Prostitutes Collective (NZPC), Owners of Brothels, NZ Police, Newton Central Primary School, Auckland Girls Grammar School, Focus Group of local citizens.

Issues covered in the interviews included such matters as the options for regulating the location of brothels, issues relating to distances between brothels and sensitive sites such as residential zones and schools, home occupations, and questions of appropriate signage.

a) Distribution of Brothels in Auckland City

There are 41 licensed massage parlours (now referred to as brothels in the PR Act) in Auckland City licensed by the District Court. Of these, 23 are in the Central Area, nine in the city fringe, and nine in suburban areas. These licensed parlours have been mapped and are shown as an attachment to this report. However, there are many other brothels operating in the City. One group of unlicensed brothels are the massage parlours that have been operating under fronts such as holistic health, hairdressers, and Chinese/Asian massage (source: interviewees). It is estimated that there may be 30 of these in the City. In addition, the number of small owner-operators in residential areas and inner-city apartments is extensive, probably around 150 (source: NZPC and other interviewees).

Under the PR Act, brothel operators must obtain a certificate from the District Court subject to various provisions e.g. criminal record of the applicant. Small owner-operator brothels of no more than four people are exempt from this provision.

b) Concentration or Dispersion of Brothels

Over the past few years, the sex industry has been moving into suburban districts. This has been due to two key factors. The first is the changing character of Central Area precincts such as Karangahape Road which is undergoing redevelopment around the traditional sex premises area. There has also been a move by sex workers (sometimes in small groups) to set up their own brothels in residential houses in order to control their own businesses. Also Panmure has become a mini-centre for both

licensed and unlicensed massage parlours. This may be due to the level of rents in Panmure and the changing nature of Panmure as an entertainments centre with more bars and gambling machine outlets. Panmure has three licensed brothels but it is suggested that there may be as many as six other unlicensed ones. Clearly this is of major concern to the Panmure business people and the local community.

Of those interviewed there was no support for restricting brothels to a 'red-light' district. Some commented that such districts led to an inevitable sleaze of the area as it attracted other similar 'entertainment' premises such as strip clubs and gambling machines bars. One brothel owner suggested that the bylaw should follow the example of Sydney and require a distance of 75 metres between new and existing brothels. The rationale for the policy is to prevent the establishment of any new 'red-light' districts in Sydney. The policy states that the cumulative effects of the clustering of brothels into a 'red-light' district would have an adverse effect on the neighbouring amenity.

Two owners said that council should ensure that future brothels are restricted to the Central Area and brothels in suburban areas should be prohibited. Focus group members considered that brothels could be permitted in suburban areas with appropriate restrictions but that large entertainment centres with brothels as part of the facility should be restricted to the Central Area.

If council decided to permit brothels in the Central City then certain precincts would be inappropriate locations e.g. Tertiary Education, Residential, Western Reclamation, Viaduct Harbour, Britomart, Port, and Aotea precincts due to incompatibility with the precinct activity. Brothels, other than the small owner-operators type, should not be encouraged into those precincts where housing is a major factor i.e. Residential, Viaduct Harbour and Britomart Precincts. Brothels should be excluded from the Tertiary Education, Aotea, Port and Western Reclamation Precincts.

c) Home Occupation

As stated above there are around 150 small owner-operator brothels operating in residential zones and inner-city apartments. The NZ Prostitutes Collective is of the opinion that, in terms of the health and safety of sex workers, it is the preferred operation compared to licensed brothels and street sex work. NZPC argues that the small owner-operator brothels fulfil the purposes of the PR Act which is to create a framework that:

- a) Safeguards the human rights of sex workers and protects them from exploitation:
- b) Promotes the welfare and occupational health and safety of sex workers:
- c) Is conducive to public health:
- d) Prohibits the use in prostitution of persons under 18 years of age:
- e) Implements certain other related reforms.

Any attempts to squeeze out small owner-operators could result in the industry operating illegally and moving underground with the danger of criminal/gang control and/or sex workers being forced to work on the street (the most dangerous environment for sex workers) or in larger private brothels. One owner of an inner-

city brothel said that he did not favour small owner-operators because they were vulnerable to gang control. However, neither the NZPC nor the Police have had any complaints about small owner-operators and have no knowledge of any gang affiliation with these types of brothels. The Focus Group considered that small owner operated brothels in residential areas were acceptable, in the same way that home occupations are permitted in the Isthmus District Plan, providing they did not cause nuisance to neighbours and that signage was prohibited.

The Isthmus District Plan provides for home occupation as a permitted use providing there is no more than one person from outside the household employed in the home activity and provided that there are no more than four people who live there engaged in the activity. This would seem to cover the small owner-operators as described in the paragraph above.

d) Distance from Residential Areas and Sensitive Sites

There was agreement that brothels should not be close to sensitive sites such as schools and pre-schools. A distance of say 250 metres was suggested as an appropriate distance. This requirement would seem to be appropriate for the Isthmus and Gulf Islands but would not be practical in the Central Area (except for the Karangahape Road precinct which abuts the long established Auckland Girls Grammar).

In terms of distances from residential areas on the Isthmus a distance of 250 metres would effectively ban all licensed brothels from practically all suburban retail areas. If council wishes to promote a dispersed policy to the location of brothels then the 250 metres distance may work against such a policy. However, it could be argued that there are sufficient locations available in the Central City and within the Mixed Use zone of the Isthmus. The Police would prefer brothels to be in areas that they patrol such as main retail districts rather than in back street commercial areas.

e) Street Frontages

An important suggestion that has received support, especially from the business associations is that brothels in business zones should not be permitted to occupy the ground floor level of a building. This would ensure that the brothel did not adversely affect the business of neighbouring businesses such as retailers and would effectively prevent brothels from using the ground floor level of retail main streets. For similar reasons, this particular requirement is a policy in Sydney. This requirement would also be pertinent for the Karangahape and Queen Street precincts.

f) Signs

The PR Act gives powers to a territorial authority to control signage advertising commercial sexual services. It may prohibit or regulate such signage where it is likely to cause nuisance or serious offence, or is incompatible with the existing character or use of the area. There has been general agreement from those interviewed that signs should not be allowed to advertise commercial sexual services.

Signage should be restricted to informing the public of the name of the premises and all other advertising should be disallowed. One person said that commercial sex premises should not be allowed to advertise using sandwich boards. A brothel operator said that the bylaw should prohibit flashing neon signs. Another inner-city brothel owner agreed that a signs bylaw should not permit objectionable or offensive advertisements. The Focus Group considered that signage should be discreet. Signs for brothels should not be permitted in residential areas. The group also considered that signs should be restricted to words only and images should be prohibited.

It is also important to note that the solicitors acting for the Massage Parlours Association, in presenting submissions to the Select Committee considering the Prostitution Reform Bill, stated that the association supported strict controls on signage for brothels. The association wanted to restrict signs in terms of size, and allow the name of the premises plus a generic description such as 'massage parlour'. Also a massage parlour owner, in a submission to Council on a proposed change to the district plan, made a similar suggestion.

g) Street Sex Workers

Some of those interviewed expressed regret that the legislation did not deal with the effects of street sex workers. The Newton Central Primary School said that they have had to fence off their school to prevent use of school ground by parked-up cars. They also have to check their grounds every morning for offensive and dangerous material such as used condoms and syringes. The level of similar material being left at Auckland Girls Grammar School has reduced significantly over the past few years.

Along with other South Auckland districts along the Great South Road, Otahuhu has, over recent years, become a small centre for street sex workers. The Otahuhu Business Association does not look favourably on this but authorities have few powers to act providing the sex workers do not cause offence. With the new legislation, the Police focus is on the safety of the street sex workers.

4. Options for Controlling the Location of Brothels

With the passing of the PR Act, Council has new options for controlling the location of brothels in the City. The key options are:

1. Bylaws

The PR Act gives Council powers to control the location of brothels by making bylaws but gives no further guidance. Controls could include the location of brothels in relation to residential zones, and distances from sensitive areas such as schools, pre-schools and children's playgrounds. Providing the bylaw provisions are justified and clearly expressed, this approach should be easy to administer. The making of bylaws is subject to the special consultative procedure under the Local Government Act. Council could have a bylaw in place within a few months from the release of the draft. As provided for by the PR Act, bylaws can also be made for the control of signage relating to commercial sexual premises.

2. District Plans

The PR Act also gives Council powers to use rules in its three district plans to control the location of brothels. Under this approach, Council would set rules in its district plans and establish a new regulatory regime to administer the issuing of resource consents. This could involve high costs in the preparation of changes to the district plans and in the cost to Council and applicants for administering resource consents. District plan changes are often lengthy processes and the time taken would likely be longer than for the making of bylaws.

3. Status Quo

This approach would have a low administration cost. Brothels could continue to locate in parts of the Central Area and Business zones on the isthmus, in the same way that other forms of entertainment are allowed. It is likely that this approach would be subject to public complaints when brothels are set up in inappropriate places e.g. close to schools and/or concentrating in one suburban retail centre. Council could rely on the sex industry to self-regulate. The Massage Parlours Association is not functioning and the brothel owners that were interviewed had such diverse views about the possible content of a bylaw that there was no clear guidance from them.

4. Use of Both Bylaws and Changes to District Plans

A third approach would rely predominantly on the provisions of a bylaw but would ensure that the District Plans are consistent with the bylaw. Under this approach, the district plan changes would not establish any new consent process, rather it would rely on bylaw provisions to control the location of brothels. The bylaw would be cross-referenced to different district plans and their zones. Because of the lengthy time to make changes to district plans, it is likely that the bylaws would be in place long before the changes to the district plans. This option is the favoured approach.

A synopsis of the advantages and disadvantages of the approaches are tabled below.

Alternative	Advantages	Disadvantages
Bylaw	Clear process for bylaw making. Open to public scrutiny. Certainty & clear provisions for the industry to follow. Time scale manageable.	Cost to Council in preparing the bylaw and not cost recoverable. However, the costs for making a bylaw would be less than for changes to district plans
District Plan Change	Each application would be dealt with on its environmental effects and subject to a resource consent.	Length of time to change the District Plans. Cost to Council in preparing the changes to the DPs. Cost to Council and applicants in administering resource consent procedures. Lack of certainty due to the consent process, and appeals.
Status Quo	Low cost of administration. Use of existing rules in DPs.	Complaints from the public on the location of brothels in inappropriate locations. No clear advice from the industry to rely on self-regulation
Bylaw & District Plan Change	Certainty & clear process for preparation of bylaw and minor changes to DPs.	Costs to Council in bylaw making and changes to DPs.

5. Suggested Bylaw Provisions

It is suggested that the aims of the bylaw should be to:

- Ensure that brothels can operate legitimately within appropriate areas of the city and in accordance of the provisions of the Prostitution Reform Act.
- Control the cumulative impacts of brothels by prohibiting their clustering in suburban commercial areas.
- Ensure that brothels are not located close to residential areas and places that children frequent.
- Ensure that the location of brothels and signage does not cause offence to ordinary members of the public, and is compatible with the surrounding area.

To meet these objectives, the following bylaw provisions are recommended:

A. No person may establish or use land as a brothel:

1. On sites zoned Residential in the Isthmus Section of the District Plan.

Reason: Brothels should not be established within residential areas. However, small owner-operator brothels with no more than two persons would be permitted as a home occupation activity and be subject to the provisions of that policy (except for signs).

- 2. Within 250 metres of a school or pre-school in those parts of the city covered by:**
- a) the Isthmus section of the District Plan,**
 - b) the Hauraki Gulf Islands section of the District Plan, and**
 - c) the Karangahape Road precinct of the Central Area section of the District Plan.**

Reason: Brothels should not be located close to places normally frequented by children such as schools and pre-schools. The Karangahape Road precinct has been included because of the closeness of the sex industry in that area to Auckland Girls Grammar School.

- 3. Within 250 metres of:**
- a) land zoned Residential in the Isthmus section of the District Plan.**
 - b) Land Unit 11 and Land Unit 12 of the Hauraki Gulf Islands section of the District Plan.**

Reason: Informants have suggested that there should be some distance between residential areas and the location of brothels. The 250-metre distance would restrict any brothels from most suburban commercial districts.

4. Within 75 metres of any existing brothel in that area of the City covered by the Isthmus section of the District Plan

Reason: This provision would ensure that no new 'red-light' district could become established in suburban commercial areas. This assists in meeting the objective of controlling the cumulative impacts.

- 5. At ground level on any site subject to the provisions of Rule 8.8.1.3 Frontages A and B in the Isthmus section of the District Plan, and on any site subject to a Frontage Activity Control in the Proposed Central Area section of the District Plan.**

Reasons: The ground level prohibition recognises the impact that brothels could have on neighbouring businesses, especially retailing. Many people feel uncomfortable shopping in areas where the sex industry is operating. Informants wanted a degree of discretion in the location of brothels. This issue of discretion is also linked to the suggested bylaw provision of signage.

6. On any site located within the Residential Precinct, Tertiary Education Precinct, Viaduct Harbour Precinct, Port Precinct, Aotea Precinct, Western Reclamation, or Britomart Precinct of the Central Area District Plan.

Reason: Certain areas of the Central Area are inappropriate for the location of brothels due to incompatibility with the precinct activity and these have been identified.

B. Home Occupation

Persons of no more than four, living within the same residential household may operate a small owner-operator brothel. This provision is subject to the rules of the Isthmus section of the District Plan as they apply to home occupations except that no advertising signs or displays will be permitted in a residential area.

Reason: The PR Act permits small owner-operators of no more than four persons to operate without obtaining a licence. The Isthmus section of the District Plan permits home occupation subject to various rules e.g. that there are no significant adverse effects. It is inappropriate for small owner-operator premises in residential areas to advertise by means of exterior signs or displays.

C. Signage

No exterior displays or signs may display words or images, which are in the opinion of the Council, sexually explicit, lewd or offensive. Signs for brothels should comply with the following criteria:

- **The sign does not exceed 1 metre x 0.3 metres in size (or other dimensions, but of equivalent surface area), and identifies only the name of the business.**
- **A clearly visible street number must be displayed.**
- **There is only one sign per premises.**
- **There are no flashing lights visible from outside the premises.**
- **There are no sandwich board advertisements.**
- **There are no signs visible from residential areas in the Isthmus section of the District Plan.**

Reason: This requirement fulfils the aim of achieving a high degree of discretion in the location and content of signs of brothels. It is also compatible with section 12 of the PR Act.

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People/Organisations Interviewed

Business Associations:

Onehunga (2 persons)

Newmarket (1)

Otahuhu (1)

Panmure (1)

K'Road (2)

NZ Prostitutes Collective (1)

NZ Police (2)

Brothel Owners/representatives (7)

Schools:

Auckland Girls Grammar School (1)

Newton Central Primary School (1)

Focus Group of 13 Auckland citizens

INTERVIEW GUIDE FOR FOCUS GROUP ON BYLAW ON THE LOCATION OF BROTHELS

Parliament has recently passed a new law to decriminalise prostitution. Now that it is decriminalised it can now be regulated in various ways. The legislation gives local authorities the power to bring in a bylaw on the location of brothels, i.e. where they can and cannot go in the city.

1. Council would like to seek your advice on this issue.
2. Are you aware of the Prostitution Law Reform Act and the section that gives powers to local authorities? Do you have any comments about it?
3. Looking at this map of Auckland you will see the licensed massage parlours which are now called brothels. Would you like to comment on the distribution of brothels in the City. **Probe regarding suburban retail areas.**
4. If you could set criteria about where brothels could and could not locate in the city, what would they be?

Probe if necessary: residential, near schools, churches and other sensitive places. What about commercial areas like shopping centres. What about ground floor levels as opposed to floor higher up.

5. Do you have any views on permitted signs for brothels?

Probe if necessary: size, neon, content.

6. Do you have any other comments you would like to make on this issue?