

Draft
Commercial Sex Policy
of
Waitakere City Council

February 2007

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1. Background Information

Waitakere City Council has developed a draft Commercial Sex Policy (the Policy) that will apply to the sex industry in the City. This is in response to the decriminalisation of prostitution as provided for by the Prostitution Reform Act 2003.

1.1. The Prostitution Reform Act

The Prostitution Reform Act 2003 ("the PRA") decriminalises prostitution and provides a framework that is concerned with safeguarding the human rights and occupational health and safety of sex workers. The intention of the PRA is to make sex work safer and to give statutory agencies responsibility to help achieve this outcome. The PRA makes prostitution legal but it does not endorse or morally sanction prostitution or its use. The PRA applies to all brothels, including small owner-operated brothels¹.

Upon coming into force the PRA repealed a number of statutes and provisions of the Crimes Act relating to the business of prostitution. Among statutes repealed was the Massage Parlours Act 1978 which legitimises massage parlours which were in effect brothels. Any premises where the purposes of the business is the sale of commercial sex services is now regulated by the PRA. This means that any business that used to operate as massage parlour, must now re-classify itself as a brothel and comply with the PRA.

1.2. The roles and responsibilities of the Council

The Policy outlines Waitakere City Council's goals and objectives relating to the regulation of brothels in the City and provides a framework to achieve those goals and objectives.

The Council acknowledges that the PRA was passed into law for a variety of reasons, in particular, the need to improve the protection and safety of sex workers.

As part of this framework introduced by the PRA, territorial authorities are permitted to regulate certain matters relating to the business of prostitution. Such matters include:

1. Making of a signage bylaw (s.12) to regulate or prohibit signage that is in, or is visible from a public place, and that advertises commercial sexual services on the basis that the territorial authority deems such a bylaw necessary and appropriate 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.
2. Making a bylaw under section 146 of the Local Government Act 2002

¹ *Small owner-operated brothels* are defined in section 4 of the PRA. They are a brothel at which no more than 4 sex workers work, and, where each of those sex workers retains control over his/her individual earnings. *Brothel* is defined as any premises kept or habitually used for the purpose of providing commercial sexual services. A brothel does not include premises at which accommodation is normally provided on a commercial basis, such as a motel. This is because the arrangement for the provision of the service is arranged elsewhere.

("LGA02") the purpose of regulating the location of brothels (section 14);

3. In considering applications for land use consent relating to a business of prostitution, the PRA or Quarries local authorities to have regard to the following criteria(section 15):

- 3.2 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
- 3.3 Is incompatible with the existing character or use of that area in which the land is situated.

The Council does not have a statutory power to re-criminalise prostitution or to regulate the morality of prostitution. Recent case law arising from the High Court of Auckland and Christchurch has proved the difficulties faced by local authorities in regulating the specific location of brothels. The Courts have considered that specific location controls may lead to a de facto criminalisation of an otherwise legal and commercial activity.²

An effective way for local authorities to regulate the activities relating to the business of prostitution is through the district plan. This is a regulatory framework that provides for managing the effects of prostitution where resource consent is required.

1.3. Fulfilment of Waitakere City Council's roles and responsibilities under the Policy

Within the legal context, the Council can consider how best to regulate the potential adverse effects of prostitution. Council's primary concern is to address potential effects from the activities relating to the business of prostitution on neighbourhood amenity and character. Council has expressed it would like to be able to manage potential or actual adverse effects on the community, prior to any effects arising.

The Council is of the view that the Policy should aim to provide a workable, enforceable policy framework to address the issues that arise from implementing the statutory requirements of the PRA.

The Policy applies to *businesses of prostitution, brothels and commercial sexual services* only, so it does not apply to street prostitution in public places, which is aligned with the PRA (for Explanation of Terms see Appendix A).

One aim of the Policy is to enable the Council to put in place regulations and planning controls to avoid, remedy or mitigate any adverse environmental effects on the community resulting from the decriminalisation of prostitution. This is in keeping with the Resource Management Act 1991, section 15 of the PRA and the common law. The focus is on managing environmental effects rather than implementing City-wide bans or banning all types of brothels from residential areas.

² *Willowford Family Trust and Another v Christchurch City Council*, HC, Christchurch 2005; *J B International Ltd v Auckland City Council*, HC, Auckland 2006.

The Council wants the Policy to be responsive to residents' concerns and ensure that any controls it puts in place to regulate the industry are appropriate, effective and reasonable. Where possible, bearing in mind risks such as a legal challenge, the Policy recognises and responds to, the views, concerns and issues raised by the community and external organisations and agencies.

Due to the sensitive nature of the issue, the Council has adopted a holistic and collaborative approach to encourage good behaviour by the sex industry by continuing to work with key stakeholders. It must be noted that a punitive and enforcement-based approach did not prevent the business of the sex industry from operating in the days before legalisation. The Policy is a product of a robust and inclusive process, resulting from a collaborative relationship with key internal and external stakeholders.

1.4. The role of other agencies and organisations to regulate businesses of prostitution

The PRA sets out other roles that are to be fulfilled by a variety of agencies and organisations in regulating businesses of prostitution. These are not covered by the Policy. Some of the other roles and responsibilities assigned by the PRA are discussed below and they include:

- Medical Officer of Health to promote safe sex practices and achieve other health and hygiene objectives (sections 24 – 29);
- Registrar of the District Court to allocate licenses to operators of managed brothels (section 35); and
- Broadcasting Standards Authority to respond to complaints about media advertisements (section 11).

1.4.1. Control of sexually transmitted infections

To reduce the risk of sexually transmitted infections, sex workers and their clients are required to adopt safe sex practices. The PRA states that the Medical Officer of Health is responsible for appointing the health inspectors who inspect premises to ensure that operators are promoting safer sex practices and that sex workers and clients are adopting safe sex practices.

Operators of businesses of prostitution are required to: adopt and promote safe sex practices; provide health information to sex workers and their clients and minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections. Medical Officers of Health have the power to enter and carry out a health and safety inspection at any reasonable time.

In the case of *small brothels* sex workers and clients are required under the PRA to adopt safe sex practices. Medical Officers of Health need to fulfil legal requirements (i.e. obtain a consent or have authorisation) before entering a home in which a business of prostitution is being carried on.

1.4.2. Licensing brothels

The PRA addresses concerns about brothels being managed poorly by unsuitable operators (ie. managers and/or owners) with an ensuing risk to the general wellbeing and health and safety of sex workers and clients. Operators of managed brothels are required to obtain a licence from the District Court. To make an application to the Court, the operator must fulfil certain criteria, for example, be 18 years or over and have no criminal record.

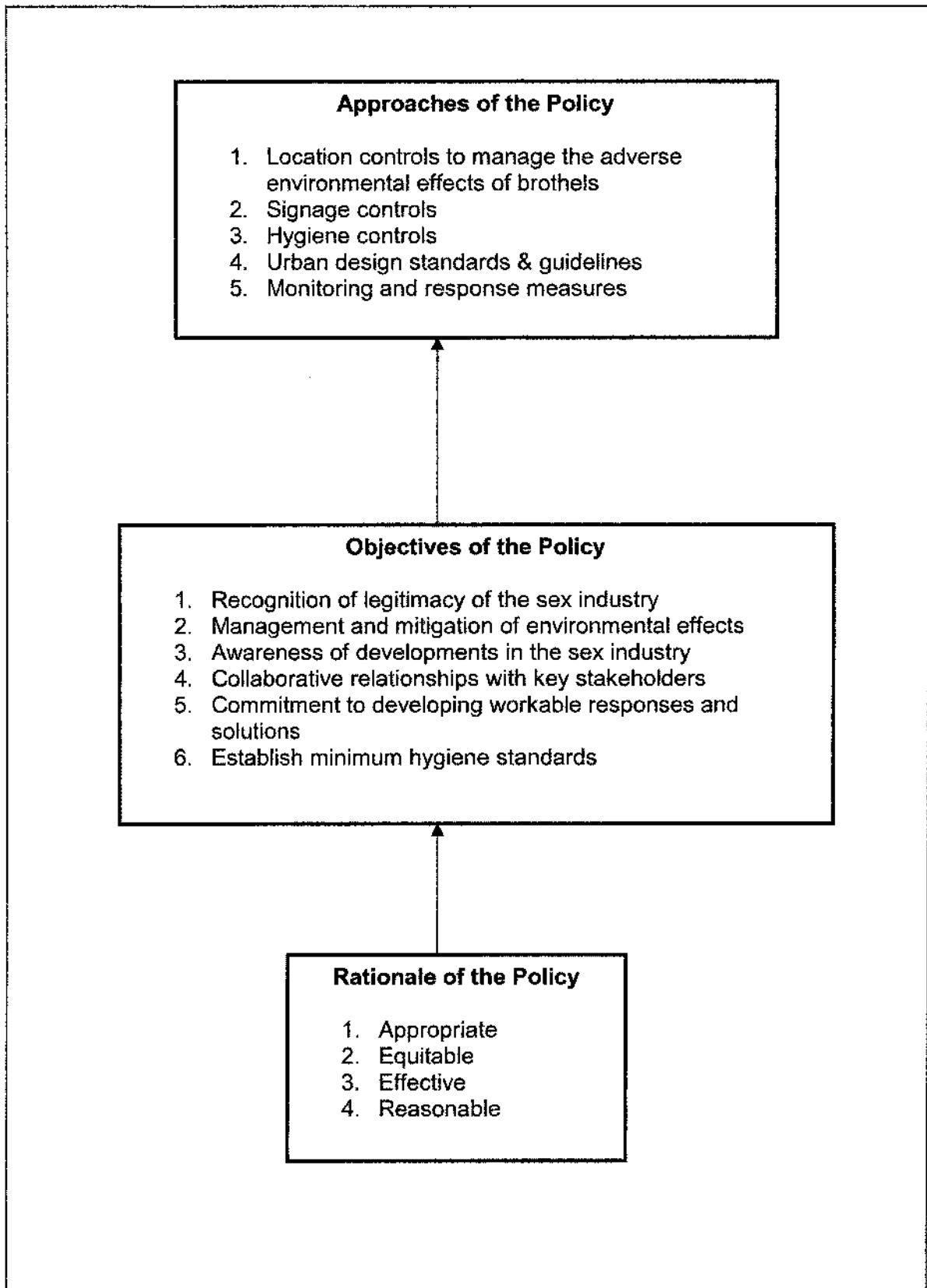
1.4.3. Crime and public safety

The New Zealand Police are responsible for dealing with complaints from the public, such as disorderly behaviour, nuisance, harassment, and violence. However, incidents of this kind are more likely to be associated with bars and nightclubs than with the commercial sex industry.

1.4.4. Media advertising

Inappropriate or offensive media advertising could cause offence to the community. Mindful of this, the PRA imposes a partial advertising ban. It states that commercial sexual services can only be advertised in the classified advertisements section of the newspaper or periodical. Advertising is not allowed on radio, television, or at a public cinema, or other parts of a newspaper or periodical. The PRA provides for the Broadcasting Standards Authority to deal with complaints about media advertisements.

2. Overview of Waitakere City Council's Commercial Sex Policy



3. Rationale of the Policy

The Policy provides for a holistic and collaborative approach that will enable the Council to continue to work with key stakeholders, rather than take a punitive and enforcement-based approach. This response will assist the Council to be responsive to residents' concerns and ensure that any controls it puts in place over the commercial sex industry are appropriate, equitable, effective and reasonable. These constitute the four principles that underpin the Policy:

3.1. Appropriate

Any controls and measures that may affect the operation of the commercial sex industry need to be appropriate given the legitimacy of that industry. As such the Council aims to implement controls that are suitable and fitting to any negative effects that may arise as a result of prostitution activities in the city. One key indicator of what is appropriate at this time, is whether the Council is able under the framework of the Policy to address any concerns or issues raised by the public in relation to prostitution activities.

3.2. Equitable

The Policy aims to be equitable. The mechanisms it adopts strike a balance between residents' concerns and the possible operation of brothels in residential areas as well as reasonably regulate the effects that the activity of brothels may give rise to in those areas. Furthermore, the Policy permits the commercial operation of brothels in commercial centres ensuring that as a commercial enterprise they are not treated inequitably. A role of the Policy is to assist the Council in balancing the activities of the bona fide commercial sex industry and managing the expectations of the public in respect of regulating the industry.

3.3. Effective

The focus is on actions which will be effective and enforceable in addressing the concerns of the public and reducing adverse effects that may arise from the operation of the commercial sex industry in the City of Waitakere. Consequently, the emphasis is upon mechanisms that can be implemented, which make good use of existing resources, and which can be funded on an ongoing basis through Council's Annual Plan.

Given the experiences of other local authorities in New Zealand, it is important to keep the focus on the likely adverse effects of this industry on the community. Controls that may lead to prohibitions on the location of brothels across the City are likely to be *ultra vires* (outside of the scope of the powers of Council).

3.4. Reasonable

The intention of the Policy is to embrace actions that are reasonable. This is perhaps most pertinent to the way in which controls are placed over the location of brothels. This Council cannot implement controls that the Courts consider impinge on the operation of this activity in the City. Given the sensitivity of this subject matter, legal challenges have been made, and the Courts have found that the actions of Councils in Christchurch and Auckland to prohibit brothels in certain locations to have been unreasonable and beyond the scope of the powers of the Council.

4. Objectives, scope and regulatory framework of the Policy

4.1. Objectives

The Policy comprises the following six objectives:

- a. recognise the legitimate status of the commercial sex industry as intended by the PRA, in particular, 'businesses of prostitution';
- b. avoid, remedy or mitigate adverse environmental effects arising from the sex industry (in particular, amenity values);
- c. remain aware of key developments concerning the prostitution industry in Waitakere City;
- d. work collaboratively, where possible, with key stakeholders in the Auckland region;
- e. develop workable responses and solutions, where appropriate, to significant issues arising within the community regarding the commercial sex industry; and
- f. establish minimum hygiene standards in commercial sex premises.

The objectives of the Policy are supportive of the Council's strategic objectives: the 'Safe City' strategic priority, the 'Strong Communities' and 'Strong Innovative Economy' strategic platforms.

The Council believes that a pragmatic approach will provide the most effective measures to control any potentially adverse effects of brothels. This will provide a workable enforcement regime of licenses and monitoring while enabling the sex industry to operate legitimately. This ability to effectively monitor and control the industry will contribute to a Safe City.

4.2. Scope

The Policy applies to *businesses of prostitution, brothels and commercial sexual services* only. It will include 'brothels' as defined in the PRA. (See Explanation of Terms: Appendix A).

For the purposes of the Policy:

- 'Small Brothel' as defined in the Policy is similar to the definition of 'Small Owner Operated Brothel' (as defined in the PRA); and
- 'Brothel' as defined in the Policy serves to distinguish all other brothels that do not constitute a 'small brothel'.

Issues relating to street prostitution in public places are not addressed in the Policy, which is in keeping with the PRA (for an explanation of terms see Appendix A). Street prostitution in Waitakere City has been considered during the review of the Mobile or Travelling Shops and Hawkers Bylaw. As a result of that review the Bylaw may introduce a licensing system for persons soliciting or loitering for the business of prostitution in public places if the Council is of the view that this is necessary. If this is the case, the Council will have the power, if it so chooses, to operate the licensing system to help control the occurrence of street prostitution in public places in the City. However, as this is not a matter which is a problem in Waitakere City this option is not advised at this stage.

4.3. Regulatory framework

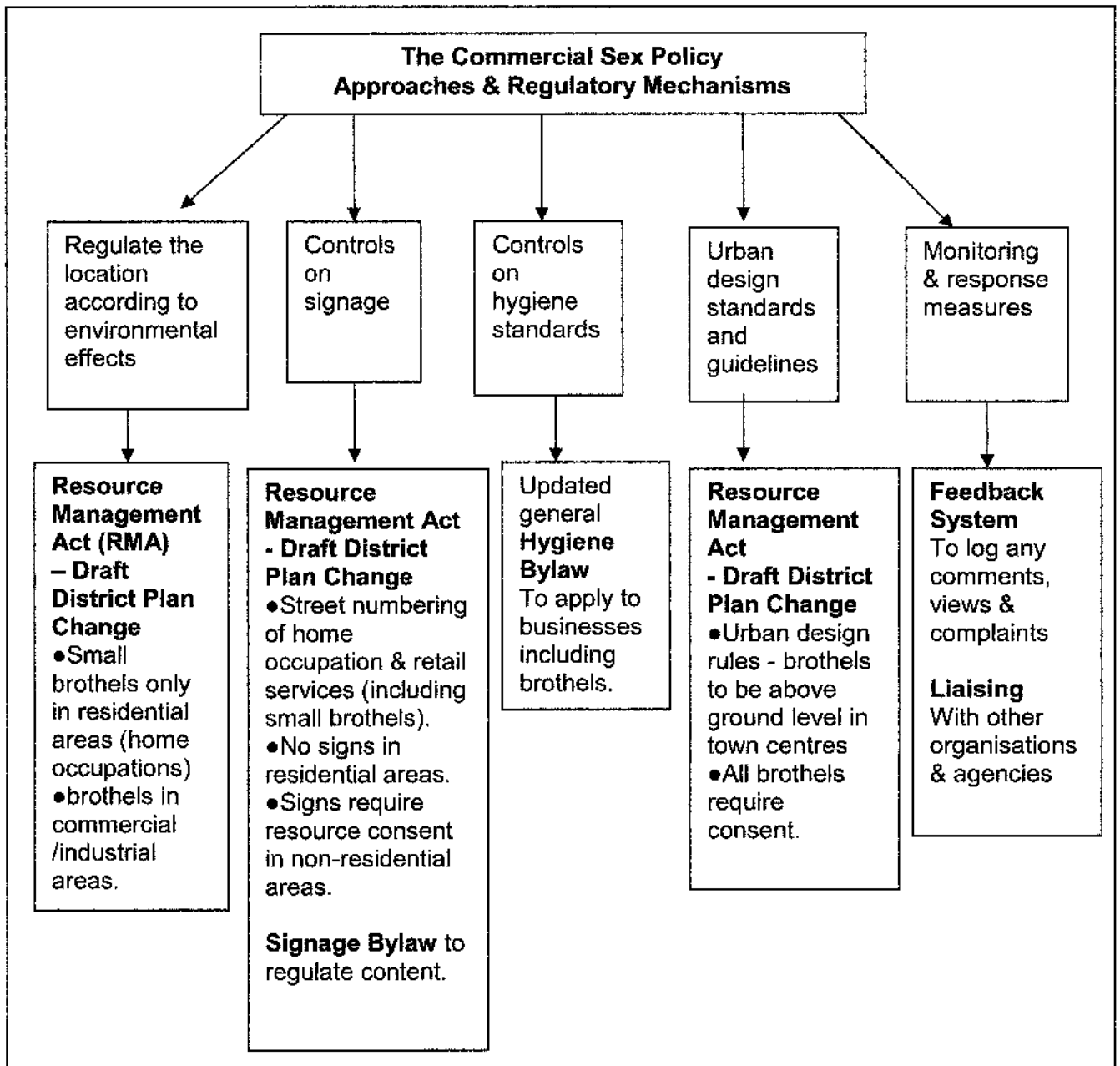
The Policy makes use of existing regulatory mechanisms that are available to the Council. The regulatory framework of the Policy is outlined in Diagram 1 below. It involves application of the following:

- Prostitution Reform Act 2003 ("PRA")
- Waitakere City Council District Plan
- Resource Management Act 1991
- New General Hygiene Bylaw (to replace Bylaw No. 31, 1999, Hygienic Operation of Massage Facilities)
- New Signage Bylaw under the PRA

The implementation of the Policy involves the application of these mechanisms as outlined in the approaches (see Section 5 below).

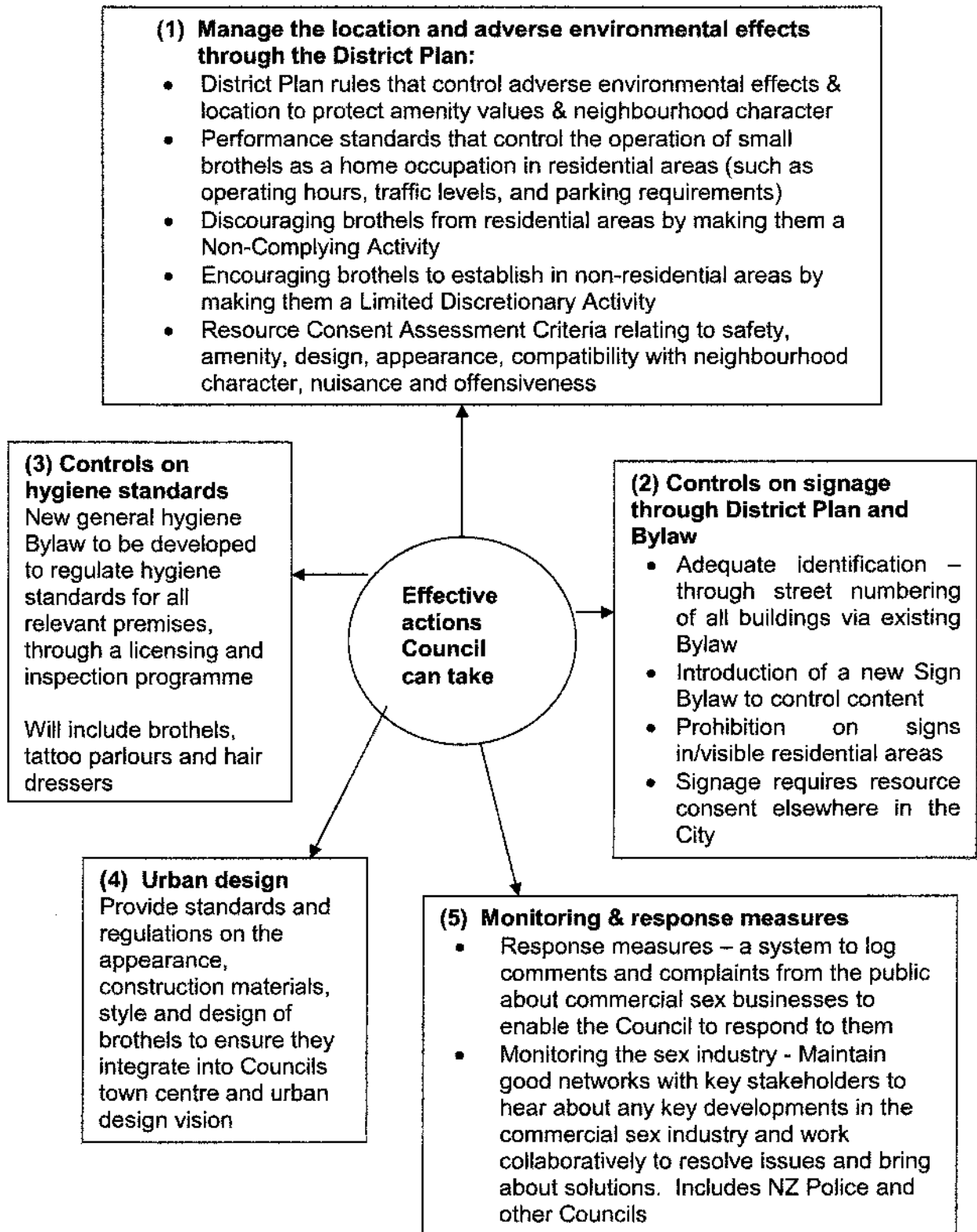
Where possible, the Policy uses the terminology of the PRA to ensure that there is compatibility with the legislation. Key concepts of the Policy have been derived from the PRA. In some cases, new terms and definitions have been developed so that the relevant changes can be made to the Council's own regulations.

4.4. Overview - Approaches and regulatory mechanisms of the Policy
Diagram 1



5. Approaches of the Policy

The objectives of the Policy are intended to be achieved by implementing the five approaches. These approaches are a mixture of both regulatory and non-regulatory responses (voluntary codes of conduct or guidelines). They are discussed below.



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5.1. Location controls according to environmental effects

5.1.1. Overview

The Policy enables the Council to put in place a framework which includes the use of bylaws and planning controls to avoid, remedy or mitigate any adverse community and environmental effects resulting from the decriminalisation of prostitution. The focus of the planning controls is to manage environmental effects; not to implement prohibitive rules. This approach is consistent with the intention of the PRA and in keeping with the principles of the Resource Management Act, 1991.

A change to the District Plan will be publicly notified to control the effects of the sex industry. A summary of the intended changes to the District Plan is described in Appendix B.

An overview of the framework to regulate the location of brothels is shown in Diagram 3 below.

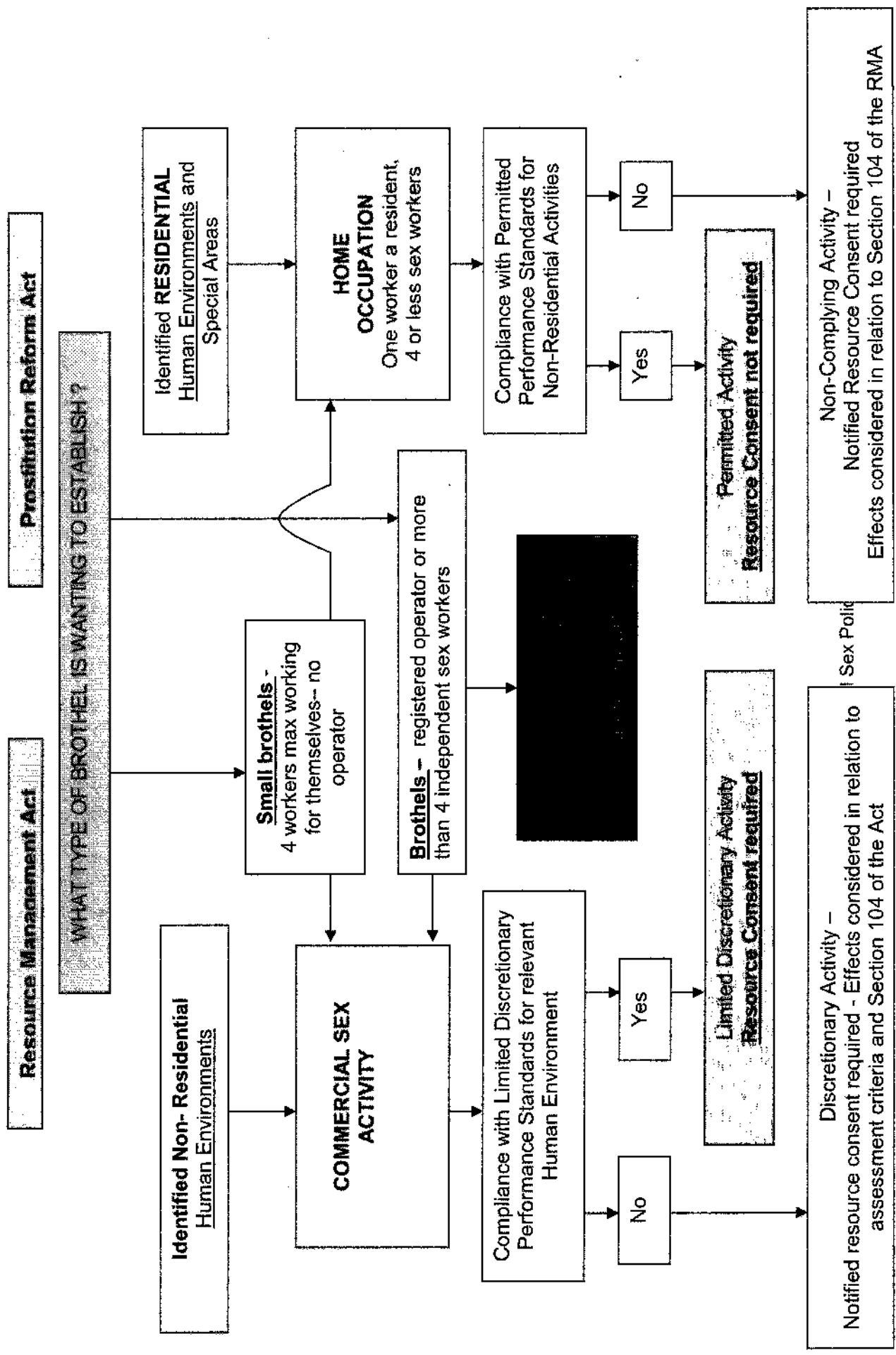
The location of brothels will be determined according to the possible environmental effects they may have upon the nature and qualities of the City's residential and non-residential neighbourhoods and will be regulated by the District Plan. 'Environmental effects' may include, noise, traffic levels and hours of operation, and are defined in Appendix A: Explanation of Terms.

In essence, a two pronged approach distinguishes between brothels according to their size and the way in which they are operated, which is in keeping with the PRA:

- **Small Brothels** include those that are home occupations (i.e. brothels with 4 or less sex workers who work for themselves, one of whom resides on the site i.e. with no operator or manager) will be permitted across the residential areas of the City; as a home occupation, but like all home occupations will be subject to performance standards.
- **Brothels** all brothels which are run by an operator (defined by the need for a licence) regardless of size or have more than 4 sex workers working for the operator and are not a home occupation. These will be directed predominantly to commercial or industrial areas of the City and are discouraged from residential areas where they are considered to be inappropriate.

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Diagram 3: Proposed District Plan framework to regulate the location of Brothels



5.1.2. Location of small brothels according to environmental effects

5.1.2.1 Residential environments - existing District Plan Rules and home occupations

Small brothels (with 4 or less independent sex workers, one of whom resides at the property), would fit within the District Plan definition of *retail services* and may be a permitted *Home Occupation* throughout the residential area of the City, subject to performance standards. Existing performance standards for a *home occupation* such as a *small brothel* include the following:

- the use of the site for the home occupation is secondary and incidental to its residential use
- maximum number of 4 persons who can operate from the site as a home occupation
- one of the workers must reside on the site
- noise arising from the home occupation is controlled with maximum noise levels at different times of the day stated
- the home occupation is carried out only on a front site with a site size of 450m² or greater and separate driveway access
- the home occupation is screened from the road and adjoining sites
- the home occupation is carried out in an existing building
- the home occupation only generates an additional 20 vehicle movements and 2 heavy vehicle movements per day
- an additional parking space is provided

Existing District Plan rules relating to *retail services* that are home occupations already adequately address the following matters:

- numbers of vehicle movements
- driveway access and parking
- site size and location
- noise

5.1.2.2 Draft plan change – home occupations

The District Plan Change (refer Appendix B) will include additional performance standards for retail services that are home occupations covering such matters as:

- Restricting the hours of operation for home occupations that are retail services (which would include small brothels). This is to ensure that neighbouring properties are not disturbed by noise arising from the activity such as departures and arrivals after hours;
- Ensuring that all home occupations have adequate street numbering for identification. Compliance with existing Bylaw No 4 Chapter 2 Public Places 1972 (Clause 244 as amended) - Street numbering, will be considered as part of the District Plan Assessment Criteria. This is to help ensure that clients of retail services go to the correct house and do not approach adjoining properties; and
- The number of workers permitted in a small brothel that is a home occupation will be restricted to four, (compared with other home occupations which are

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allowed five). This is to make it consistent with the definition of a Small Owner Operated Brothel under the PRA.

Small Brothels which comply with these Permitted Activity requirements for the residential areas of the City will not require a Resource Consent. If *Small Brothels* do not comply with the Permitted Activities requirements, an application for a resource consent for a non-complying activity will be required

If a *small brothel* has more than 4 independent sex workers and/or has a manager/operator, it becomes defined as a *brothel* for the purposes of the Policy and/or as a "*Commercial Sex Activity*" in the District Plan. This is consistent with the PRA. The District Plan recognises that commercial sex activities are inappropriate in the residential areas of the City and discourages their establishment in those areas by making them a non complying activity.

This will mean that if a small brothel wishes to:

- expand its business to include more than 4 independent sex workers; or
- use a manager; or
- not have a worker that resides on the site;

then it will need to locate in those parts of the City where this is encouraged, i.e. the Community and Working Environment.

Non-residential areas

Small brothels may also locate in non-residential areas, and will be subject to the relevant Rules and Assessment Criteria in the District Plan to avoid, remedy or mitigate adverse environmental effects. The non-residential areas include industrial ('Working Environments'), commercial areas ('Community Environments') and some District Plan Special Areas.

5.1.3. Location of brothels according to environmental effects

Commercial Sex premises that do not meet the definition of a *small brothel* will be considered a *brothel* as defined in the District Plan Change, (that is either a managed brothel where a person either alone or with others, owns, operates, controls, or manages the business or a brothel with more than 4 independent sex workers).

A new definition, "*commercial sex activities*" refers to both *brothels* and *small brothels* but excludes *home occupations*.

It is proposed that location controls for *commercial sex activities* which includes *brothels* will be incorporated into a new City Wide Rule in the District Plan (see Appendix B). To avoid adverse effects on residential areas of the City, *commercial sex activities* which includes *brothels* will be discouraged by applying non complying activity status if it applies to establish in a residential area.

If brothels are to serve liquor and be licensed under the Sale of Liquor Act, they will need to meet the existing City Wide Noise Rule of the District Plan (Rule 1.7, General Noise Standards) relating to licensed premises which restrict the hours licensed premises can operate if located within or near a residential area.

Non-complying Activities are generally publicly notified. The non-complying activity category clearly signals that Council does not consider that the activity is appropriate in that District Plan Human Environment and would not be consistent with the objectives and policies of the District Plan.

Commercial sex activities which includes *brothels* will be encouraged to establish in non-residential areas, but will be a Limited Discretionary Activity and therefore still need to obtain a resource consent. Section 15 of the PRA must be taken into account when assessing any resource consent for commercial sex activities.

5.1.4. Resource consent

When a resource consent is required, assessment criteria will take into account the effects on adjoining properties, the design and appearance of the building/sign as well as safety as well as offence and nuisance issues as required by Section 15 of the PRA. Consideration will also be given to the presence of existing brothels and the potential for adverse cumulative effects if for example, there are clusters of brothels. It is proposed that there are no minimum distance limits between brothels. The location of brothels across the City will also be subject to monitoring by Council to observe if any significant changes or patterns arise, such as clustering of brothels in town centres or other areas.

For all resource consent applications that seek consent to establish a business of prostitution, the Council is required under S.15 of the RMA to have regard to whether the business of prostitution –

- (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 in which the land is situated.

In the resource consent assessment Council will have regard to the following factors:

- Safety
- Cumulative effects (effects of brothels locating in proximity of each other)
- Design and external appearance
- Urban design
- Whether the brothel is likely to cause offence or be a nuisance to ordinary members of the public
- Compatibility with existing neighbourhood character
- Landscaping
- Parking
- Amenity values
- Scale
- Intensity
- Screening
- Hours of operation
- Visibility

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Any resource consent issued for a brothel or sign associated with a brothel would be enforceable by the Council under the Resource Management Act if the activity operates in breach of the conditions of that resource consent.

5.1.5. The intended effect of the controls:

Responsive to public concerns

- Provide a regulatory framework for resolving any complaints made by the public about adverse effects arising from alleged and actual brothels in residential areas. For example, any complaints received about the operation of a brothel can be investigated in relation to any limitations regarding location requirements under the District Plan Rules. If any brothel is operating in a manner outside of the District Plan Rules or the conditions of its resource consent, if it is required to have one, then enforcement action under the Resource Management Act can be taken.
- Reduce the likelihood of problems associated with the opening hours of small brothels due to the proposed new limitations on the hours of operation for retail services that are home occupations, in the non-residential activity rules.
- Reduce the likelihood of nuisance for adjoining properties due to the requirement for adequate street numbering.
- Reduce the likelihood of inappropriate location and incompatibility with neighbouring properties in the residential, commercial and industrial areas of the City by requiring brothels to obtain resource consent to establish.

Environmental and social effects

- The potential to reduce adverse environmental effects which may affect neighbourhood character, especially in residential areas. *Brothels* are strongly encouraged to locate in the City's commercial and industrial areas, where their environmental effects are less likely to affect the City's established residential areas.
- Greater certainty about traffic movements, signage, noise and the effects of the activity on amenity values and neighbourhood character.
- Reduce social impacts, particularly perceptions of safety and well-being, by restricting activities where they may cause offence, be a nuisance or be incompatible with the neighbourhood character.

Enforcement

- Controls over brothels are enforceable as their environmental effects are measurable, and there is not the need to prove the nature of the establishment (e.g. that it is a brothel and not a therapeutic massage parlour) by having to obtain evidence that 'commercial sex activity' has occurred.
- The Council can take enforcement action under the RMA when it is alleged that a *small brothel* or *brothel* is operating outside of District Plan performance standards, outside the terms of its resource consent conditions or without the necessary resource consents.

Urban Design and Town Centre Planning

- To ensure compatibility with the Council's strategic and urban design goals for the City's town centres. Currently the Council is working with a range of partners (including business and community groups) to revitalise the centres to make them attractive, economically vital, safe and people friendly.
- Discourage the creation of 'red light' districts in town centres and industrial areas, which can occur if brothels cluster in low cost shopping or industrial areas.

5.2. Signage controls

5.2.1. Overview

Signage relating to commercial sex premises will be controlled through existing and new District Plan rules and a proposed new bylaw.

5.2.2. Adequate identification through street numbering

There needs to be adequate identification of the address of all brothels operating in Waitakere City, including small brothels in residential areas that are home occupations. This can be managed by existing regulatory controls, such as the requirement that people adequately number their properties in accordance with an amendment to Bylaw No.4 Chapter 2 Public Places, 1972 (amendment to Clause 244 which was effective on 31 July 2005). The Clause is set out in Appendix D. The District Plan Change which will apply to all home occupations will require compliance with the standards of this bylaw.

5.2.3. Nature of the signage associated with brothels

Requirements for signage relating to brothels in the District Plan are intended to be introduced alongside the new bylaw. The Plan Change proposes that any signage associated with small brothels, other than a street number, should be a prohibited in residential areas in the City, and require a resource consent in the non residential areas of the City – See Appendix B. It is considered that this will provide discretion and anonymity for sex workers in the residential parts of the City and ensure that amenity values and character will be maintained in all areas of the City.

Form, size, location and amount

Signage of commercial sex premises are partly controlled by existing signage policy and rules in the District Plan. There are restrictions on form, size, location or amount of signage on display under all District Plan Human Environment Rules. For example, policy and assessment criteria will manage the use of signs that could "detract from the surrounding neighbourhood character", and the proposed location of the sign can affect the size of the signage allowed.

Content

Signs associated with brothels have the potential to be offensive and have offensive imagery and words. Although the Council can use Section 15 of the PRA and the District Plan to partially control the contents of signs it is proposed that a new bylaw consistent with Section 12 of the PRA shall be introduced to give Council the ability to fully control the content of signs to ensure that they are not offensive.

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The test for serious offence in a public place is whether the words, or images used are such as to be calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person. The standard to be applied is not one of undue sensibility, nor high tolerance, but rather the resilience of a reasonable person, and words or images have to be sufficiently serious to warrant the intervention of the law.

A bylaw controlling signage advertising commercial sexual services (ie. brothels) is not subject to the New Zealand Bill of Rights Act 1990, as stated in the PRA, Section 13 (2), where that signage control requires content control to prevent public display of signage that is likely to cause a nuisance or serious offence, or is incompatible with the existing character of the area.

5.2.4. The intended effects of the Controls

- Better street numbering will help to resolve problems experienced in residential areas, such as the disturbance of residents by clients of brothels who mistakenly visit the wrong premises.
- Council will have the ability to control offensive signs in all areas of the City.
- Amenity and character will be preserved/maintained in both the residential and non residential areas of the City.

5.3. Controls on hygiene standards

5.3.1. General bylaw for Hygiene

The existing bylaw relating to massage parlours (The Hygienic Operation of Massage Facilities, Bylaw No. 31, 1999) is not able to be relied upon for the maintenance of hygiene standards. A review is currently taking place to set standards to ensure that there is one bylaw for all premises pertaining to hygiene. Once the bylaw is drafted its scope will cover tattoo parlours, hair dressers, gymnasiums, brothels and any such premises. Once the bylaw is drafted and adopted, it will enable the Council to establish a licensing and inspection programme to ensure compliance of the hygiene standards in such premises.

In the interim, all the hygiene standards of all commercial sex premises are able to be controlled and monitored through the Health Act 1956 and the Building Code.

Environmental Health Inspectors from Council visit brothels each year to check compliance on hygiene. Inspectors also visit if specific complaints are made. Inspections for compliance with hygiene standards will be extended to include all brothels and all facilities previously known as massage parlours.

5.3.2. The intended effects of the Bylaw

- The Council continues to play a role in reducing the spread of infections, by setting hygiene standards through the revised Bylaw.
- Has a health and safety focus for both employees and clients.

- Would help to ensure suitable standards of hygiene in all brothels and other facilities likely to require hygienic practices to be adopted for the safety of their patrons.
- The emphasis upon hygiene and therefore general well-being and health of sex workers and clients, is in keeping with the aims of the Prostitution Reform Act.
- Proprietors are supportive of existing hygiene standards.
- The locations of brothels (formerly massage parlours) in Waitakere City are known to the Council through the licensing regime.

5.4. Urban design standards and guidelines

Council has a commitment to attaining liveable, attractive, and economically sustainable, intensified town and neighbourhood centres and other surrounding urban environments to ensure their ongoing vitality, safety, sustainability and economic success. It is the intention of the Council that sex industry premises are integrated into this urban design vision.

The appearance of new buildings and additions (including brothels) can be influenced by the Council through standards of urban design determined by the objectives, policies and rules of the District Plan and through specialist advice and/or guidance provided in a range of development guidelines

5.4.1. Design standards

Building design within town centres is currently regulated by performance and design standards and assessment criteria within the Community Environment Rules of the District Plan. These Rules require that at ground level up to 40% of ground floor frontage must be in glazing and display space. It must also provide active street frontages with good integration between the public and private realm and pedestrian friendly environment.

Council, through Proposed Plan Changes 13-18, is further strengthening the importance of the need for buildings, public spaces and amenities in town centres to be of high quality and design. The new rules reinforce urban design principles such as active street frontages and good public and private space integration by requiring larger amounts of display space on ground level (up to 70%) and substantial areas of doors and windows. The intention is that commercial services and residential apartments do not locate on the ground floor on main retail streets as they do not provide interactive displays to ensure a pedestrian friendly environment.

High levels of ground floor display space would also not be appropriate for brothels. Either on the whole they require discretion or if the display space is utilised would have the potential to offend. These requirements, unique to the commercial sex industry, would be inconsistent with the rules relating to display space and glazing in town centres. The District Plan Change requires that brothels are located above ground floor level within the Community Environment and are also subject to City Wide Urban Design Rules.

5.4.2. Guidelines and consultations

There are a number of urban design and development guidelines available which are recommended by Council. Developers are encouraged to refer to these for design guidance and best practice principles to help ensure that the quality and appearance of all buildings and open spaces are appropriate to their use and that they contribute to the vitality, character and general amenity of the City's urban environments.

Some of the most useful NZ guidelines are:

- People, Places and Spaces – Ministry for the Environment;
- The NZ Urban Design Protocol and associated documents;
- The Good Solutions Guide to Mixed Use Development in Town Centres; and
- Guidelines currently being developed include the design of Streetscapes, Apartments, Street Typologies and Building Frontages, Site Analysis.

Waitakere City Council provides a service for voluntary pre-design or pre-application consultations prior to the lodging of development proposals for resource consent approval. Property owners, designers, professional consultants and developers are encouraged to meet with Council Consent Planners and specialist advisory staff to discuss their proposed development. Early discussions about proposed developments can be helpful to the application process.

5.4.3. The intended effects of the standards and guidelines

- Improve the appearance of buildings that contain commercial sex activities.
- Help ensure that the buildings containing commercial sex premises blend in with the surrounding area.
- Help ensure that the establishment of brothels and commercial sex premises does not compromise Councils urban design objectives relating to town centres.

5.5. Response and monitoring measures

5.5.1. Overview

The Policy offers a framework which allows the Council to respond effectively and appropriately to issues regarding the commercial sex industry on an ongoing basis. Therefore it needs to stay informed about key developments within the industry through monitoring.

5.5.2. Response measures by the Council

Responding to enquiries

A monitoring system will be set up by the Council to capture and filter the comments and views of the community about commercial sex businesses and respond to them. Members of the public and the wider community will be able to contact the Council by speaking to Call Centre staff or by emailing the Council. There will be an expansion of the current system, so that comments, views and complaints will be recorded to allow easy tracking of how the Council has responded to any issues and complaints from the public and to examine the feedback more generally. Administratively, it will be possible for Council staff in the compliance area to access the complaints through its computer systems.

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Liaising with agencies, organisations and other stakeholders

A collaborative approach will be taken by the Council to ensure there is a co-ordinated and effective response to matters that arise in relation to alleged or actual brothels.

The Council considers that it is likely to benefit from the co-operation of other agencies, organisations or stakeholders if investigating a complaint or if taking action against a brothel that is suspected of contravening resource consent conditions, District Plan or Waitakere City Council Bylaws.

The Council is keen to liaise with a range of organisations, agencies and other stakeholders to address prostitution related issues. In some cases relationships already exist, but not necessarily in connection to the sex industry. Collaborative working is likely to occur with the:

- **New Zealand Police**
A formal working relationship exists between the Council and Waitakere at the District Police level as set out in a Memorandum of Understanding. It appears to be successful with a productive working relationship, and will be reviewed this year. Crime issues can be responded to by the local police as well as some nuisance issues such as disorderly and threatening conduct. Other nuisances that relate to noise, parking, or the illegal dumping of rubbish are the responsibility of the Council.
- **Department of Labour**
If a formal complaint was made to the Department of Labour about the status of an employment relationship regarding a sex worker at a brothel in the City, a Labour inspector could investigate and provide an opinion on the nature of that relationship in terms of whether it employer-employee, or principal and contractor.

The Department can act where there is evidence of an employer-employee relationship to enforce minimum standards legislation requirements (eg. presence of employment agreements, minimum wage and holiday pay). However, legislation does not apply and permit intervention when the relationship is between a principal and contractor. The Department can provide mediation services to resolve contractual disputes.

To help prevent young people (aged 18 or less), and those without eligibility to work being employed as sex workers (as provided for in Sections 20 – 23 of the PRA), the Council is willing, where appropriate and where possible, to assist the Department of Labour, any other relevant agency, and/or the police in this area.

It is illegal to employ anyone under 18 to work as a prostitute (as provided for in Section 20 of the PRA), or to employ persons as sex workers or operators who are not residents or citizens of New Zealand.

- **Housing providers and landlords**
The Council intends to work closely with housing providers and landlords

across Waitakere City to administer the Policy.

The City's largest landlord, Housing New Zealand Corporation (HNZC), is willing to investigate any complaints that may come through to the Council, and within its powers as a Landlord take action where appropriate and where it is able to assist.

Restrictions can be placed on the use of the property as a business or particular type of business by landlords in a private agreement attached to a Tenancy Agreement. This means that brothels can be prohibited in rental houses, provided that both parties, both the landlord and tenant(s) agree to the terms of the private agreement.

- **New Zealand Prostitutes Collective**
Representatives of this national organisation are keen to continue liaising with the Council regarding issues about the sex industry in Waitakere City and the application of the Policy.
- **Local Councils in the Auckland Region**
If regional issues arise in relation to brothels then it is likely that local Councils will work together where possible.

5.5.3. Monitoring and evaluation

The Policy will be subject to a review at two yearly intervals to assess its effectiveness in achieving the stated objectives. It is anticipated that a variety of sources of data will be referred to during the review which are discussed below.

Feedback from the public and other key stakeholders

Consideration will be given to any feedback that is received by the Council from members of the public will be considered during any future review. Modifications that will have been made to the Council's public response system to enable easy tracking of any complaints or issues relating to brothels in the City will be of use here. Views of key stakeholders such as other Councils in the Auckland region, the local police, the Department of Labour and the New Zealand Prostitutes Collective should also be sought.

Monitoring the industry

To help assess how effective the Policy has been, attention will need to be given to understanding how, if at all, the local commercial sex industry operates. This will involve ascertaining whether any significant changes have been observed in the industry over time, and if so, have they the potential to create adverse negative and/or environmental impacts in the community.

Since prostitution has only recently been decriminalised, the industry is now operating in a different climate and changes are likely at least in the long-term. Any new patterns or trends to emerge in the industry are of interest to the Council and may be of relevance to the Policy. Some examples of possible (but not necessarily likely) trends include a change in the number of brothels, more competition in the

industry, a move towards more “upmarket” brothels or large commercial brothels and a clustering of brothels in urban areas or other specific areas.

District Plan Monitoring

The implementation of the District Plan must be monitored (as required by section 35 of the Resource Management Act 1991), and so the performance of any changes to the District Plan initiated from the Policy can be assessed over time. The revised non-residential and home occupation activity rules and City-Wide Rule in the District Plan can be monitored and, if necessary, improved by a subsequent plan change. The relevant provisions of the District Plan are required to be reported on every five years.

5.5.4. The intended effects of this approach

- Gives effect to the intentions of the PRA by helping to give effect to the legal framework to address public policy concerns.
- The Council can be responsive to issues occurring in the community over time.
- Raise the Council’s awareness of changes and/or trends in the commercial sex industry that may impact upon the wellbeing of the community.
- The Council will maintain good links with relevant agencies and organisations.
- Maintaining good links with other councils will be beneficial if localised issues become regional.
- Good information and knowledge sharing; lessons can be learnt and best practice followed, where possible.
- Problems and solutions can be tackled at a regional level, where appropriate.
- When the Policy is reviewed consideration can be given to any important issues or trends that have been observed from monitoring the commercial sex industry.

6. Factors taken into consideration in the development of the Policy

This Section aims to give some understanding about why Waitakere City Council developed a Commercial Sex Policy to give effect to its roles and responsibilities as set out in the PRA.

The PRA decriminalised prostitution in 2003. All aspects of this activity including brothel keeping are now legal. In response, the Council has developed the Policy to fulfil its roles and responsibilities.

The approaches adopted in the Policy have been influenced by a number of factors, the main ones of which are discussed below. There are variations in the extent to which each of the factors have influenced the contents of the Policy, with some emphasis being given to the risks of legal challenge and enforcement issues.

It is considered that the Policy must be able to be implemented by methods that are legally valid and enforceable, rather than a Policy that is popular but cannot be implemented. Factors influencing the Policy include:

- Potential effects of the activity of the commercial sex industry on the community and environment;
- The needs of the local sex industry;
- Public consultation and feedback from the community received about the Policy;
- Legal challenges and enforcement issues; and
- The responsibilities of other agencies and organisations.

6.1. Potential effects of the activity of the commercial sex industry

Potential issues, impacts, benefits and 'community harms' of the effects of the commercial sex industry in the Auckland region and in Waitakere City, have been considered during the development of the Policy and have helped to shape its contents.

6.1.1. Research about the effects of prostitution

There is limited research about the effects of "indoor" prostitution (i.e. prostitution carried out in brothels and commercial sex premises) upon workers, clients and the community. Internationally, much of the research about the consequences of prostitution has been about street prostitution. However, only a minority of prostitutes work on the streets (10 – 30%) according to a recent review of the literature³. Findings about street prostitution are often presented as a feature of sex work per se which is not necessarily representative of the sex industry more generally. Therefore, most research has been done on the least prevalent type of prostitution.

There is strong evidence to indicate that the various harms in prostitution are not

³ Weitzer, Ronald; 2005; *New Directions in Research on Prostitution*; Crime, Law & Social Change

universal⁴. The type of prostitution matters greatly when examining the potential impacts on the community and worker experiences.

6.1.2. Impact on the community

A recent study that reviews the literature about the effects of prostitution has found that street prostitution and off-street prostitution have very different effects on the surrounding community⁵

Indoor prostitution has little, if any negative impact on the environment and, if discreet, there is normally little public awareness of it. For example, in Australia, a recent study of legal brothels in Queensland, Australia, found that the legal brothels had no negative impact on the local community⁶.

In-house prostitution has far less impact (if any) on the community when compared to street prostitution. Street prostitution is associated with a host of problems including: disorderly conduct; sex in public places; discarding of condoms and syringes in public areas (public health hazards); customer harassment of women on the streets; increased noise and traffic and loss of business to merchants and retailers.

Potential adverse environmental effects that can arise from prostitution related activities, including street prostitution, include:

- Affect on amenity values of a community which mean the natural or physical qualities and characteristics of a neighbourhood (see Appendix A: Explanation of Terms);
- Increased noise, traffic and pedestrian levels as a result of business activity; and
- Signage that may be considered inappropriate, offensive or obscene.

6.1.3. Impact on sex workers

International research indicates that street prostitutes and those who have been trafficked into prostitution overall experience the most victimization and exploitation⁷. Other workers including those based at brothels are much less vulnerable to violence, exercise more control over their work, and can derive some psychological or physical rewards from what they do.

Potential worker harm issues include for example:

- Ability to access resources for protection;
- Freedom to refuse clients and particular sex acts;
- Extent of dependence on managers & other third parties;
- Risk of victimisation – assault, robbery and rape;
- Risk of exposure to sexually transmitted diseases; and

⁴ Weitzer, Ronald; 2005 see above

⁵ Reynolds, Helen; 1986; *The Economics of Prostitution*

⁶ Crime and Misconduct Commission; 2004; *Regulating Prostitution: An Evaluation of the Prostitution Act 1999, Queensland*.

⁷ Weitzer, Ronald; 2005 see 1 above

- Psychological impact including self esteem, self-image and psyches.

Whilst there are prostitutes who do experience harms of a sexual, physical or psychological nature, this is not to deny that some feel positive about their work and feel beneficial effects. Some prostitutes experience positive impacts from working in the industry including an increase in self-esteem and a feeling that their lives have improved after entering the industry (see Weitzer, Ronald; *New Directions in Research on Prostitution*, p.219). A number of studies have found that indoor prostitutes in particular report an improvement in their self image, and some prostitutes feel that their work has been satisfying and view themselves as making the best of woman's major source of power and control; 'sexual capital'. Whilst there are prostitutes who feel positive about their work, this is not to deny, that some do experience harms of sexual, physical or psychological.

6.1.4. Research about the legalisation of prostitution

The effects of the legalisation of prostitution upon the sex industry are not yet clear, but most evidence suggests that some increase in the size of the industry can be expected. This was the case, for example, in Australia where prostitution was legalised in 1994.

If the commercial sex industry becomes more suburbanised (by moving into residential areas), this can raise issues about whether such businesses are compatible with the existing use and character of the area. This may have adverse impacts or the perception of adverse impacts upon:

- The character of suburban town centres and residential areas;
- Property values (residential & commercial); and
- Levels of business activity.

Factors that can increase the size of the sex industry include:

- An increasingly urbanised and cosmopolitan environment;
- Increasing numbers of tourists;
- Relaxation of liquor laws, particularly extended drinking hours in the inner city areas;
- New entertainment facilities, such as casinos; and
- Attempts by the sex industry to create new markets in urban areas.

6.2. The local sex industry

6.2.1. Auckland region

The majority of brothels in the Auckland Region are in Auckland City. Most street prostitution is concentrated in specific areas such as Karangahape Road and Fort Street in Auckland City, and Hunters Corner in Manukau City. Massage parlours have also concentrated in certain areas, such as Panmure and areas around the central business district, such as Newton. One trend is that brothels and parlours now offer a wider range of services to entertain clients, such as alcohol sales, pool tables and video games. A further trend is that sex shops have begun to establish in suburban shopping areas of Auckland City.

6.2.2. Waitakere City

In Waitakere City the commercial sex industry is well established, yet remains relatively small in scale when compared to its equivalent in Auckland City.

There are a number of massage parlours and brothels in Waitakere City that are known to Council. These are considered to be reasonably well-managed and the Council is not aware of any particular problems connected to them. There are around 20 private sex workers known to be operating from private addresses in the City, and such workers tend to value discretion, do not usually advertise their address, and work by appointment. Prime hours of business for many private sex workers are during daytime hours. Other sex workers and commercial sex businesses are likely to be operating in the City, but are not known to the Council, the District Court, or other agencies or organisations.

In Waitakere City, street prostitution is not regarded to be a significant issue by some of the key stakeholders, such as the New Zealand Police or the New Zealand Prostitutes Collective. Whilst, there have been reported cases of street workers in Henderson and New Lynn, these have been sporadic. Consequently, West Auckland does not have an outreach service that is supported by an appropriate agency or organisation, unlike other areas in the region, where outreach services are provided due to a perceived need by the New Zealand Prostitutes Collective, such as in Auckland and South Auckland. The local Police are not aware of any strong links between organised crime and the sex industry.

There have been a number of localised issues regarding the sex industry in residential areas of the city. Matters raised by the general public include:

- Being disturbed by clients of brothels and parlours mistakenly knocking on the doors of peoples' homes;
- Allegations that brothels are operating 24 hours a day; and
- Concerns due to rumours about the possibility of a brothel opening nearby.

Since the Prostitution Reform Act came into force, Waitakere City Council has received about six enquiries from people about the possibility of establishing brothels and approximately twelve enquiries about establishing massage parlours. It should be noted that these are estimations as precise figures are not available. Over a twelve month period (from February 2005 – February 2006), the number of massage parlours in Waitakere City which are known to the Council has remained constant and three new brothels (that are also massage parlours) have emerged.

Factors likely to lead to an increase in the sex industry are not as apparent in Waitakere City as they are in other parts of the region, such as Auckland City. For example, the nightlife scene is not of a sufficient scale to promote a large customer base for the sex industry. Limited night-time entertainment facilities (that include adult entertainment businesses), and restrictions on casinos and "pokies" are not conducive to growth in the industry. Casinos are unlikely to increase in number due to national gaming regulations, and Council's Gambling Venue Policy places a cap on the number of "pokie machines" in the City.

Businesses of prostitution can cluster in low cost premises in suburban shopping centres due to the potential client base and relatively affordable rents. In Waitakere City, such centres include Glen Eden Mall, New Lynn and Henderson. These clusters can give rise to 'red light districts' which tend to have distinctive characteristics. Currently, the prostitution industry appears to be relatively stable with for instance the number of brothels operating remaining fairly constant. Under these conditions it is not anticipated that 'red light districts' will emerge in the town centres in the near future.

6.3. Public consultation and feedback received about the Policy

6.3.1. Consultation

Key stakeholders have contributed to the development of the Policy, including representatives of the New Zealand Police, Auckland Regional Public Health Service, the New Zealand Prostitutes' Collective and owners of local massage parlours.

Members of the public and the wider community have on two occasions been given the opportunity to express their views about drafts of the Policy.

The first feedback period held from 31 January 2005 – 14 March 2005 resulted in a total of 184 submissions, with one submission comprising a petition of nearly 200 signatures about a localised issue in Te Atatu South. Other contributors at this stage included Councillors and Community Board Chairs, and there were opportunities for specific groups to give input, including representatives of local Iwi, the Te Taumata Runanga, the Pacific Islands Advisory Board and the Waitakere Ethnic Board.

Following this feedback, further work was carried out with the Councillors to revise the Policy with several reports being presented to the Planning and Regulatory Committee in August 2005.

A second consultation exercise that occurred from 6 June to 7 July 2006 gave stakeholders a further opportunity to comment on a revised draft of the Policy. In total, 130 submissions were received predominantly from residents, with identical submissions made by 44 residents from Glen Eden, Henderson, Massey and Te Atatu South. Organisations or groups that gave feedback included: Medisafe; St Paul's Parish Massey, Te Atatu Residents & Ratepayers Association, and the New Zealand Prostitutes Collective. As a result of the comments and suggestions received, the draft Policy was further amended to help ensure that the Council can respond to residents' concerns and that any restraints over the commercial sex industry are appropriate, equitable, effective and reasonable.

6.3.2. Perceptions of the sex industry

Legitimacy of the sex industry

On the basis of feedback obtained from the public there appear to be diverse views and opinions about the commercial sex industry. Differences exist between perceptions about the legitimacy of the commercial sex industry and experiences of the realities of the commercial sex industry.

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