

(b) ICNIRP imposes a maximum level of exposure of 0.08 W/kg (which translates to 450 $\mu\text{W}/\text{cm}^2$) at the cellsite's frequency.

(2) we have not considered condition 4 as necessary for mitigation of any effects -- principally because we consider the effects of (or the risk which is the combination of them) exposure to RFR to be so minor that they do not require mitigation. Thus any argument over the level is essentially irrelevant so long as the ANZ Standard is met.

251. Given that background, and all our findings in the previous chapter we now find that:

(a) There is no reasonable defect in the ANZ Standard's non-occupational limit of 200 $\mu\text{W}/\text{cm}^2$ (or SAR equivalent) except perhaps that it is too low at the cellsite frequencies (see the ICNIRP standard which is equivalent to 450 $\mu\text{W}/\text{cm}^2$);

(b) The Council has, in the *Telecom* case and since, adopted a policy of not imposing a "condition 4" type of limitation, and we can see sense in consistency of conditions across consents;

(c) Imposing a limit lower than the ANZ Standard would tend to undermine the credibility of the standards;

(d) Imposing the lower limit of condition 4 would suggest that exposures of more than 6 $\mu\text{W}/\text{cm}^2$ do cause adverse health effects.

(e) Any limit such as 6 $\mu\text{W}/\text{cm}^2$ is arbitrary and arbitrary figures serve no purpose,

(f) The words "SUBJECT TO" in the ANZ Standard mean what they say, that is, any lower figures dictated by prudence or caution are subservient to the ANZ Standard for enforcement purposes [applying the principle in *Environmental Defence Soc v Manganui County Council* [1989] 13 NZTPA 197 at 202 (CA)]; and

(g) This decision may be referred to by communities elsewhere in New Zealand, so it may have some precedent value. Thus we should not undermine the Standards for no good reason if, as we have found, that the risk of adverse health effects from chronic exposure to athermal RFR at the levels to be emitted from the cellsite is very low.

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252. Weighing those aspects up, we hold that both condition 4 and SPS' suggested amendment are inappropriate and that condition 4 should be deleted.

Chapter 12: Outcome

253. The outcome of these proceedings is that the SPS appeal (RMA 343/96) fails, and the Telecom appeal (RMA 429/97) succeeds. No party sought that costs be reserved, and indeed we consider this an inappropriate case for any order as to costs. Accordingly we make the following orders:

(1) Under s 290 of the Act, the decision of the Council granting resource consent is confirmed, except that it is varied by:

- (a) the deletion of condition 4; and
- (b) corresponding deletions to the remaining conditions where necessary to reflect the deletion of condition 4.

(2) There is no order for costs.

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Draft
Commercial Sex Strategy of Waitakere City
Council

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1. Summary of the Strategy

Waitakere City Council has developed a draft Commercial Sex Strategy (the Strategy) that will apply to prostitution and the sex industry in Waitakere City, following public feedback in January 2005. This is in response to the decriminalisation of prostitution as provided for by the Prostitution Reform Act (PRA) 2003. The PRA was introduced for a variety of reasons, in particular, from a recognition of the need to improve the protection of sex workers.

The Council wants its response to the decriminalisation of prostitution to be responsive to residents' concerns and that any controls it puts in place over the commercial sex industry are appropriate, equitable, effective and reasonable.

The Strategy comprises five approaches which the Council considers appropriate to achieve the aims, which are regulatory and non-regulatory in nature.

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2. Background information

2.1. Need for the Strategy

Waitakere City Council has developed a draft Commercial Sex Strategy (the Strategy) that will apply to prostitution in Waitakere City.

This is in response to the decriminalisation of prostitution which occurred as a result of the introduction of the Prostitution Reform Act 2003 (PRA). The PRA was passed into law for a variety of reasons, in particular, out of recognition of the need to improve the protection of sex workers. As a result, the Council considers it appropriate to develop a workable, enforceable policy framework to address the issues that arise from implementing the statutory requirements of the PRA.

The Strategy is the result of a robust and inclusive process, including collaborative working with key internal and external stakeholders. The resultant Strategy recognises, and where appropriate, responds to the views, concerns and issues raised by the community and external organisations and agencies.

2.2. The Prostitution Reform Act

The Prostitution Reform Act 2003 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 brothels. In the PRA, definitions are given to 'brothels', 'small owner-operated brothels', 'businesses of prostitution' and 'commercial sex premises'.

The PRA enables the Council to control:

- (a) signage advertising commercial sexual services (section 12);
- (b) the location of brothels (section 14); and
- (c) the location of businesses of prostitution (section 15).

2.3. The role of the Council

The Council has a responsibility to consider how best to manage the potential adverse effects of prostitution. Of prime concern are the potential effects on neighbourhood amenity and on property values.

It is not the Council's role to re-criminalise these activities or to enter into a debate about the morality of prostitution. Nevertheless, due to the sensitive nature of the issue, the Council is adopting a holistic and 'collaborative' approach to encourage "good behaviour" by continuing to work with key stakeholders, rather than taking a punitive and enforcement-based approach.

The Council can manage any potential adverse environmental effects stemming from prostitution, such as the effects upon amenity values and upon the character of communities and places.

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The strategy enables the Council to put in place regulations and planning controls to avoid, remedy or mitigate any adverse community and environmental effects resulting from the decriminalisation of prostitution. This is in keeping with the principles of the Resource Management Act, 1991. The focus is on managing environmental effects and not on implementing blanket bans across the City or banning all types of brothels from residential areas.

2.4. Linkages to other Waitakere City Council strategies

The objectives of the strategy are supportive of the Council's strategic objectives. There are three Eco-city outcomes for sustainability that are likely to directly benefit from the proposed strategy. These are:

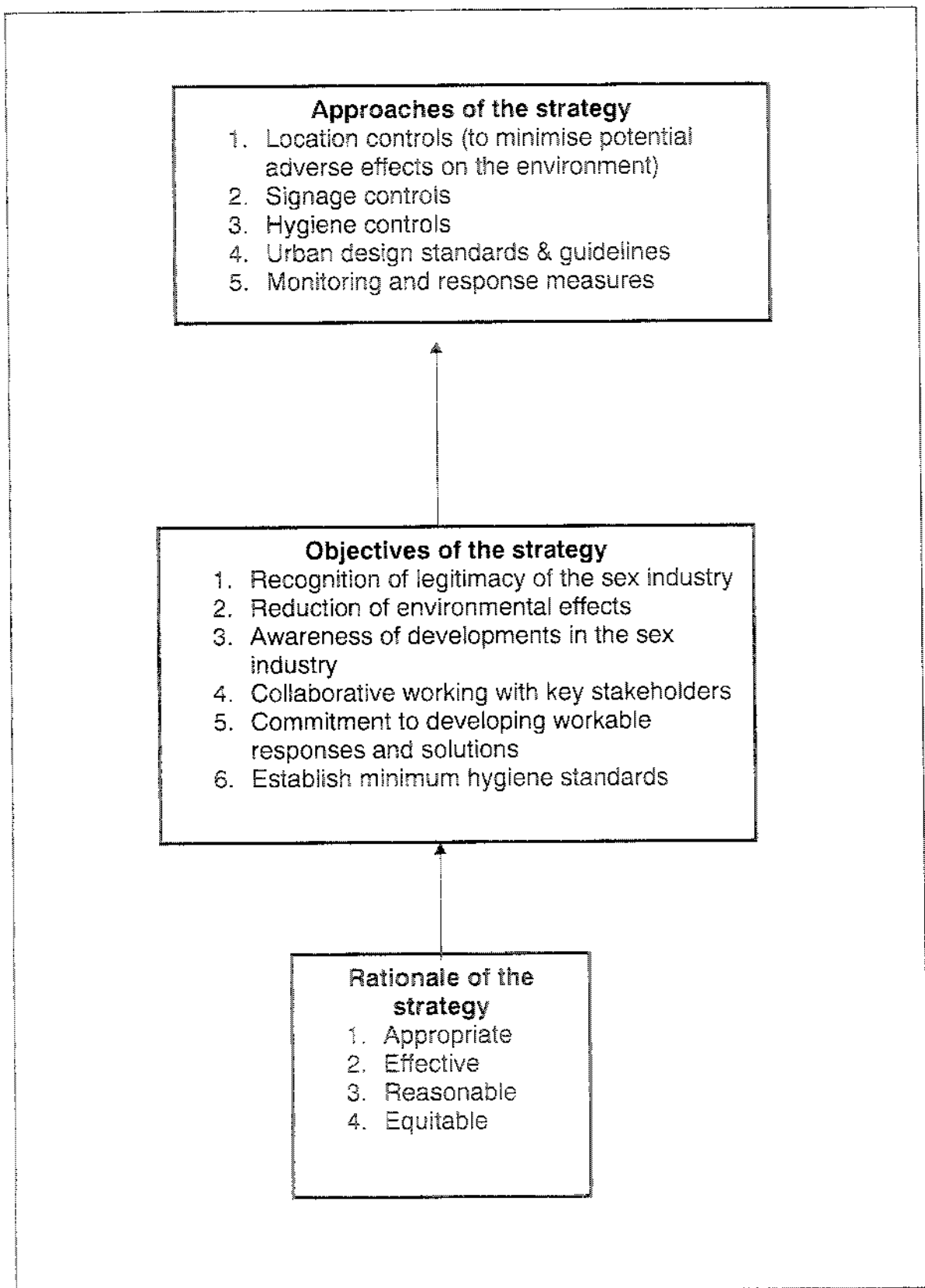
- to encourage social and economic activity in urban and rural centres;
- to encourage the development of strong and safe communities; and
- to provide a home for innovative economic activities.

As a strategy it is supportive of the Five Priorities of the Council which will help to bring about the level of change required to build a sustainable City. These are:

- Safe City
- Lifelong Learning
- Sustainable Development
- Uphold the Treaty of Waitangi
- First Call for Children

By focusing on measures that can be effective in controlling the potentially negative effects of brothels in Waitakere City, the Council is seeking to take a pragmatic and workable approach. It is creating a regulatory framework which the Council can enforce and which enables the sex industry to operate legitimately (as it is entitled to do so), in a way that can be licensed and monitored. By taking this action the Council is reinforcing its commitment to the First Call for Children principle and creating a City which is great for children and young people and also enables them to play a part in that development.

3. Overview of Waitakere City Council's Commercial Sex Strategy



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4. Rationale of the Strategy

The Council proposes to adopt a strategy that provides for a holistic and collaborative approach to manage any potential adverse effects that may result from the establishment or operation of brothels. This approach will enable the Council to continue to work with key stakeholders, rather than take a punitive and enforcement-based approach which can be detrimental. The Council wants its response to the decriminalisation of prostitution to be responsive to residents' concerns and that any controls it puts in place over the commercial sex industry are appropriate, equitable, effective and reasonable. These constitute the four principles:

4.1. Appropriate

Any controls and measures that have an effect upon the activities of the commercial sex industry need to be appropriate given the legitimacy of that industry. In keeping with the purpose of the Prostitution Reform Act, the Council does not adopt a moral position on prostitution, yet it will put in place, appropriate measures to try to reduce any negative effects that may be felt in the community.

4.2. Equitable

The Strategy seeks to be equitable, through a desire to strike a balance between residents' concerns and the decriminalisation of prostitution. A role of the Strategy 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 controlling or regulating the industry.

4.3. Effective

The focus is on actions which will be effective and enforceable in addressing the concerns of the public and reducing negative effects that may arise from the activities of the commercial sex industry. Consequently, the emphasis is upon actions which can be implemented, which make good use of resources, and which can be funded on an ongoing basis.

Given the experiences of other Councils, it appears to be more productive to focus on potential adverse environmental effects that the industry may have on the community, rather than attempting to restrict the location of all brothels as a particular type of "unwanted activity". Controls that prohibit the location of brothels across the City will not satisfy residents' concerns, because the desired result (no brothels in the City) is unlikely to be achievable, and enforcement of such prohibitions is difficult (regardless of whether the controls are imposed by a Bylaw or District Plan).

4.4. Reasonable

The intention of the Strategy is to embrace actions that are 'reasonable' in a legal sense, so that they can be implemented, and where necessary, enforced. This is perhaps most pertinent to the way in which controls are placed over the location of brothels.

5. Objectives and scope of the Strategy

The Strategy comprises five approaches which the Council considers appropriate to achieve the following 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 impacts 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 or problems that arise within the community concerning the commercial sex industry; and
- f. establish minimum hygiene standards in commercial sex premises.

The Strategy will apply to 'brothels' (as defined in the Explanation of Terms, see Appendix B). Two types of Brothels are defined in the Strategy: Small Owner Operated Brothels and Managed brothels. Similarly in the PRA there two types of brothels but they are defined as: 'Small Owner Operated Brothels' and 'Brothels'.

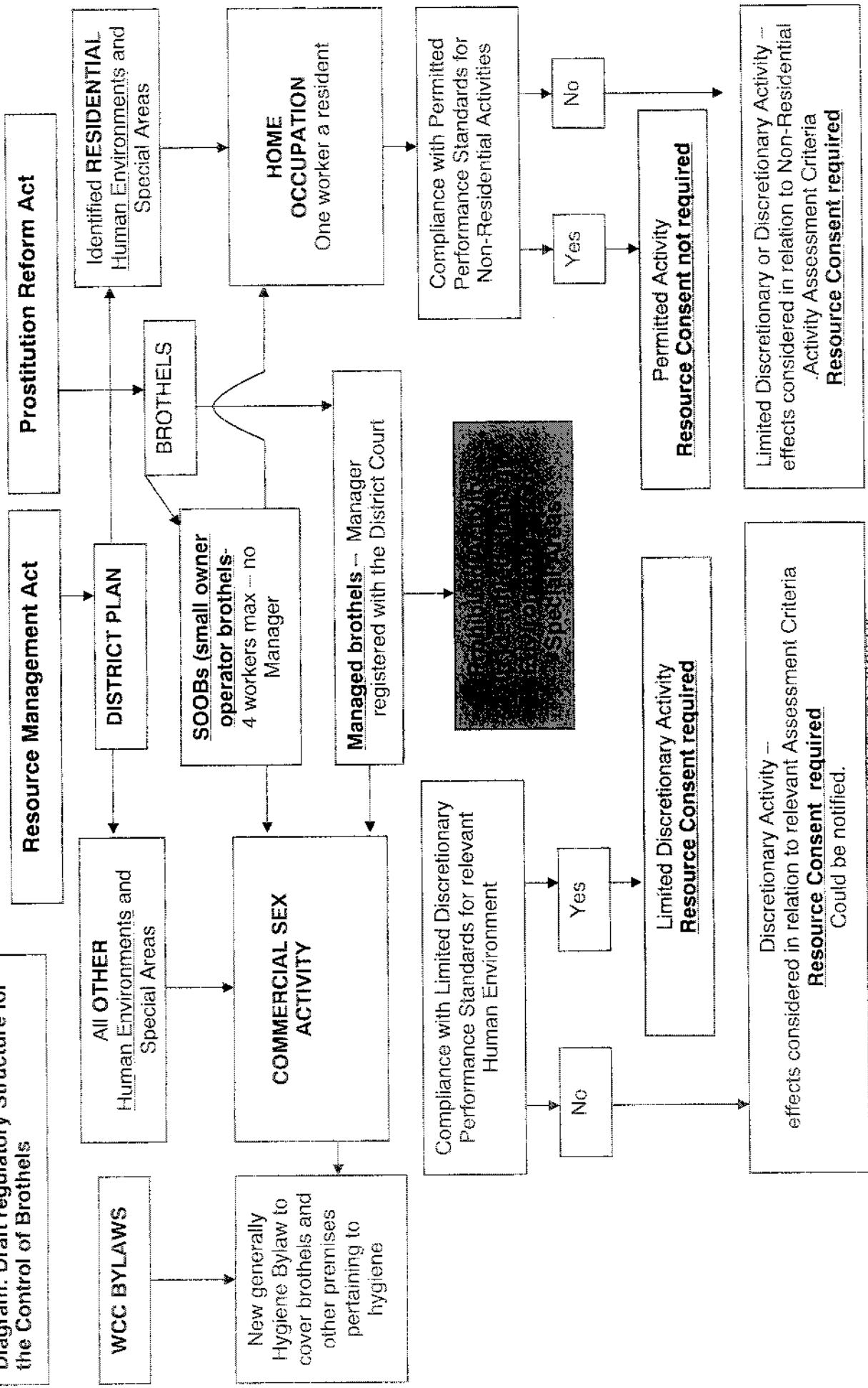
For the purposes of this Strategy:

- Small Owner Operated Brothels (as defined in the PRA) shall be referred to as Small Brothels; and
- Commercial Sex Activities (as defined in the draft District Plan Change) shall be referred to as Managed Brothels.

The regulatory framework set out by the strategy is outlined in the Diagram below and involves application of:

- Resource Management Act 1991
- Prostitution Reform Act 2003
- New general hygiene Bylaw (to replace Bylaw No. 31, 1999, Hygienic Operation of Massage Facilities)
- Waitakere City Council District Plan

Diagram: Draft regulatory Structure for the Control of Brothels



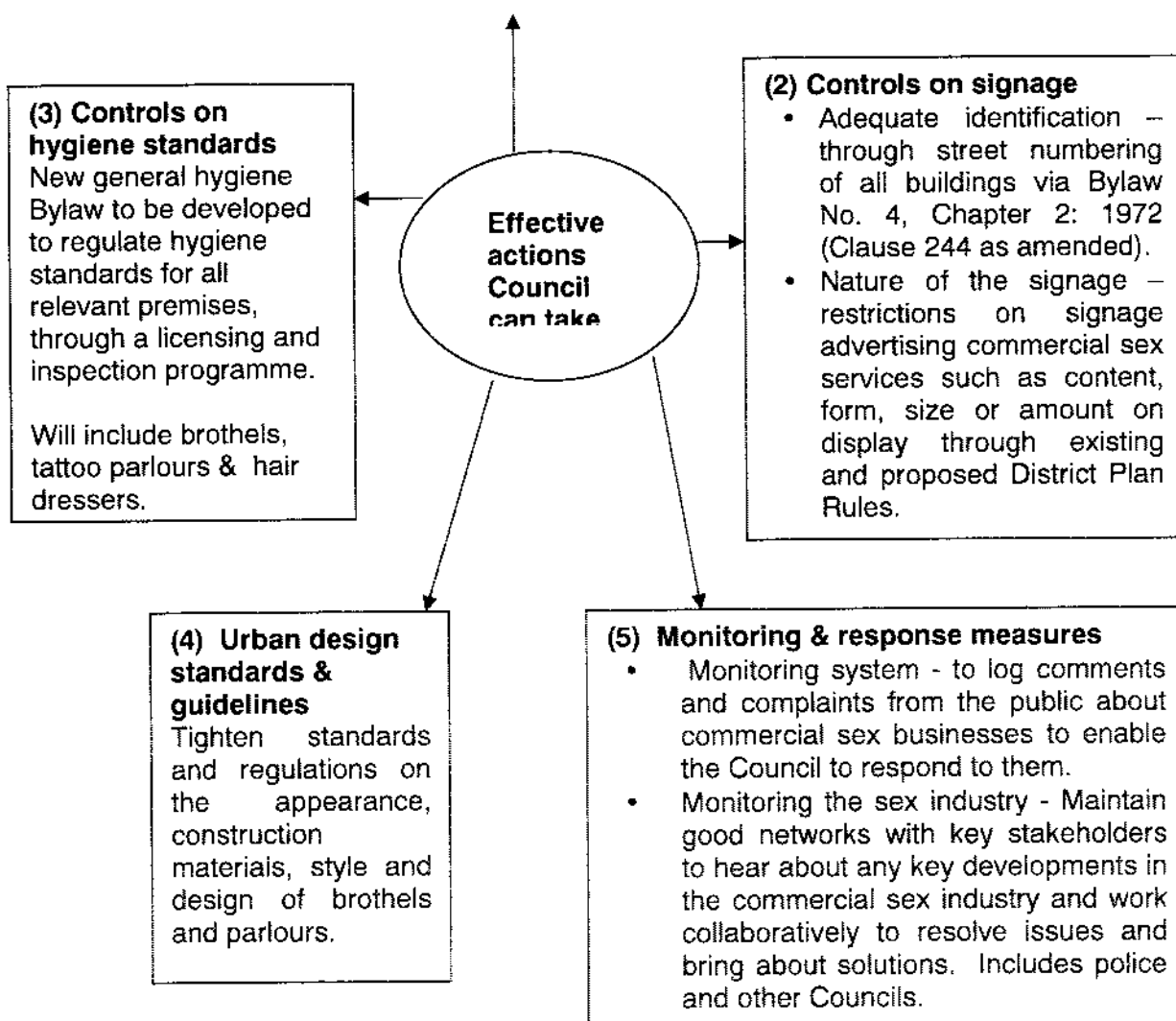
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6. Approaches of the Strategy

(1) Manage the environmental effects of brothels

Reduce adverse environmental effects by placing conditions on the operation of brothels through extending the District Plan non-residential activity rules. Controls on environmental effects will regulate the location of commercial sex activities (i.e brothels). Controls include:

- Operating hours
- Levels of traffic, parking, noise & light
- Signage for identification purposes
- Amenity values & neighbourhood character
- Managed brothels – Prohibited Activity within predominantly residential areas (as defined in the District Plan). Permitted to establish in most non-residential areas as a Limited Discretionary Activity, subject to approval of an application for Resource Consent.
- Small Brothel (defined in the PRA as 'Small owner operated brothel': SOOB) – able to establish in residential areas as a home occupation (as defined in the District Plan.)



The approaches of the strategy include a mixture of regulatory and non-regulatory responses (voluntary codes of conduct or guidelines) and are discussed below.

6.1. Location controls according to environmental effects

The strategy 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.

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 neighbourhoods ('Human Environments'), and will be regulated by the District Plan. 'Environmental effects' may include, for example, noise, traffic levels and business activity, and are defined in Appendix B: Explanation of Terms.

In essence, a two pronged approach distinguishes between brothels according to their size and the way in which it is managed, which is in keeping with the PRA. Managed brothels (all brothels which are run by an operator regardless of size) will be directed predominantly to commercial or industrial areas of the City and are prohibited from specific residential areas ('Human Environments') where they are considered to be inappropriate. Small brothels will be permitted across the City, but subject to conditions in some environments.

Controls will include consideration of assessment criteria that take into account the effects of adjoining properties, where a resource consent is required. Any resource consent issued for a brothel would be enforceable by the Council if the activity operates in breach of the conditions of that resource consent.

a). Location of small brothels according to environmental effects

Residential Environments

Small brothels (with 4 or less sex workers, and one of whom resides at the property), will be deemed a Permitted Activity in identified residential Human Environments, as a home occupation subject to the requirements of the Non-Residential Activity rules of the District Plan.

The identified residential Human Environments are listed in the proposed changes to the District Plan - Clause (ix) of the City Wide Rule 1 – Prohibited Activities (see Appendix C.2).

Small Brothels which comply with the Permitted Activity requirements for these identified residential Human Environments will not require Resource Consent. If Small Brothels do not comply with the Permitted Activities requirements, the relevant District Plan Rules and assessment criteria will apply, and a resource consent will be required.

The non-residential activity rules for all Home Occupations including brothels, will be tightened up to help avoid or mitigate any potential negative effects of their activities on residential neighbours. This will involve regulating activities such as hours of operation, signage, noise, light, number of vehicle movements and off and on street parking.

The District Plan changes will include but not be limited to performance standards covering such matters as:

- Restricting the number of vehicle movements per day (24 hours). The current rules permit 20 vehicle movements per day regardless of time. The average household carries out 11 vehicle movements per day.
- Restricting the hours of operation for home occupations and commercial sex activities.

If a small brothel wishes to employ more than 4 staff, it becomes defined as a managed brothel for the purposes of this strategy (and as a "Commercial Sex Activity " under the proposed District Plan change), and the City Wide Prohibited Activity Rules then apply in the identified residential Human Environments. This will mean that if a small brothel wishes to expand its business to include more than 4 staff, it will need to locate in the parts of the City where that size of operation is not prohibited.

Non-residential areas

Small brothels may also locate in non-residential areas, and will be subject to the relevant Human Environment Rules and assessment criteria in the District Plan to avoid, remedy or mitigate adverse environmental effects. No resource consent will be required unless the small brothel does not comply with the Permitted Activity requirements of relevant District Plan Rules.

Non-residential areas in the District Plan include Working and Community Environments and some Special Areas. Residential areas are mainly defined as Living Human Environments.

b). Location of managed brothels according to environmental effects

Brothels that do not meet the definition of a small brothel (Small Owner Operated Brothel in the PRA) will be considered a Commercial Sex Activity as defined in the draft District Plan change, (i.e. a managed brothel where a person either alone or with others, owns, operates, controls, or manages the business).

Location controls for managed brothels will be included in changes to the City Wide Prohibited Activities Rule in the District Plan. To avoid adverse effects on residential areas of the City, managed brothels will be prohibited from being established in identified residential Human Environments.

Non-residential areas

Managed brothels will be permitted to establish in non-residential areas, but will be Limited Discretionary Activities and therefore subject to assessment criteria when obtaining a resource consent. There will be the ability for the Council to consider notification of any resource consent application for these activities, depending upon the effects of the activity.

Residential areas

Managed brothels will be able to establish in mainly commercial and industrial areas of the City, but prohibited from establishing in listed residential areas (ie. identified residential Human Environments). This will be effected by the City Wide Rule 1 – Prohibited Activities (see Appendix C.2).

c). The intended effects 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 that is outside the District Plan rules or the conditions of its resource consent, if it is required to have one, then enforcement action can be commenced.
- Reduce the likelihood of problems associated with the opening hours of small brothels due to the ability to impose limitations via resource consents on the hours of operation, as specified in the non-residential activity rules
- Reduce the likelihood of complaints about the effects of late night business activity, due to the requirement for these activities to obtain a resource consent if the effects of activities of brothels exceed the requirements of the non-residential activity rules.
- The non-residential activity rules will help to avoid or mitigate potential adverse effects of any small brothels operating in residential areas as a Permitted Activity.

Environmental and social effects

- The potential to reduce adverse environmental effects which may affect neighbourhood character, especially in residential areas. Managed brothels are only permitted 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.
- Reduce social impacts, particularly perceptions of safety and well-being, by restricting activities where they create adverse environmental effects.

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 (eg. 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 enforce the resource consent conditions when it is alleged that a small or managed brothel is operating outside of its conditions or without the necessary resource consents.

6.2. Signage controls

Two types of signage issues relating to commercial sex premises are covered by the Strategy.

a). 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. This issue is able to 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 E.

b). Nature of the signage

Signage of commercial sex premises are controlled by signage policy and rules in the District Plan. There are restrictions on content, form, size or amount of signage on display under the rules of all Human Environments.

For example, policy and assessment criteria would manage the use of signs that could “detract from the surrounding neighbourhood character”, and the type of environment can affect the size of the signage.

It is proposed that there will be further District Plan requirements associated with signage for commercial sex activities. Proposals include the requirement of signage at all public entrances of home occupations, including brothels, and that there will be set standards for signage of all commercial sex activities (managed brothels). For further details refer to Appendix C3 (no.4) & C4 (no.5).

c). The intended effects of the controls

- Better signage 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.

6.3. Controls on hygiene standards

a). All brothels

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.

b). 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.

6.4. Urban design standards and guidelines

The appearance of brothels and commercial sex activities can be influenced by the Council through standards of urban design determined by the objectives, policies and rules of the WCC District Plan and through specialist advice and/or guidance provided in a range of development guidelines.

a). Design standards

Building design within town centres is currently regulated by performance/design standards and assessment criteria within the Human Environments Rules of the Operative District Plan. These include, for example:

- Community Environment (the principle zoning within town centres) rules that govern building form, location and the quality of public amenity provided by development of a property.
- City Wide Rules that provide general design standards that are applicable to a number of Human Environments.

This Council has the opportunity to increase its ability to regulate the design quality and location of brothels within the City. This stems from the requirement that Councils under the Local Government (Auckland) Amendment Act develop growth management strategies to give effect to the objectives and policies of the Auckland Region Policy Statement. Significant emphasis is placed on the need to achieve high quality urban design outcomes in the development of a more intensified urban environment. In response, Waitakere City Council has notified Proposed Plan Changes (Numbers 13 - 18) to its Operative District Plan which, if approved, will increase and strengthen the objectives, policies, rules and performance/design criteria related to the principles of urban design and development. Refer to Appendix F for details about the proposals.

b). 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.

c). The intended effects

- Help 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.

6.5. Response and Monitoring Measures

Waitakere City Council is keen for the Strategy to offer a framework which allows it 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.

a). Monitoring system

A 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 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.

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 this Strategy can be assessed over time. The revised non-residential activity rules and City-Wide Rule in the District Plan can be monitored and, if necessary, improved by a subsequent plan change in the future. The relevant provisions of the District Plan are required to be reported on every five years.

b). Monitoring the industry

To monitor the commercial sex industry over time, the Council, will continue to liaise with New Zealand Police, the New Zealand Prostitutes Collective, other councils in the Auckland Region, and other relevant agencies and organisations.

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. For example, in the event that the Council seeks to take action against a brothel or massage parlour that is contravening resource consent conditions, District Plan or Waitakere City Council Bylaws.

The Council is keen to work towards an agreed process with these agencies. A formal working relationship between the Council and the New Zealand Police, as set out in a Memorandum of Understanding, appears to be successful, and is currently under review.

c). The intended effects of this approach

- 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.

APPENDICES TO WAITAKERE CITY COUNCIL'S COMMERCIAL SEX
STRATEGY

APPENDIX A

Supplementary information to the Draft Commercial Sex Strategy

To aid an understanding of why Waitakere City Council developed a Commercial Sex Strategy and the approaches that has taken, here is some background information. It is an accompaniment to the strategy.

A.1. Summary of the development of the Strategy

The Prostitution Reform Act (PRA) which came into force in June 2003, decriminalised prostitution, meaning that the establishment of brothels was legal. In response, the Council considers it necessary to adopt a position on the commercial sex industry, and is developing a commercial sex strategy.

Key stakeholders have contributed to this strategy, including representatives of the New Zealand Police Force, 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 given feedback on the initial draft of the strategy (during the period 31 January 2005 – 14 March 2005). A total of 184 submissions were received by the Council, with one submission comprising a petition of nearly 200 signatures about a localised issue. 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.

This is the revised strategy which has been changed in light of the comments and concerns of the public and other stakeholders, further work with the Councillors and a report to the Planning and Regulatory Committee in August 2005. The most significant changes to the strategy concern the proposed controls on the location of brothels in Waitakere City.

A.2. Factors Considered in the Development of the Strategy

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

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.

A.3. The sex industry in the 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 at 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.

A.4. The sex industry in 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 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.

In Waitakere City, there have been a number of localised issues regarding the sex industry in residential areas. 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 roughly twelve 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 “pokies” in the City.

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.

A.5. Public perceptions of the commercial sex industry

On the basis of feedback about an earlier draft of the Commercial Sex Strategy obtained from the public during an initial consultation phase (January – March 2005), there appear to be diverse views and opinions about the commercial sex industry.

Differences exist between perceptions of the legitimacy of the commercial sex industry and experiences of the realities of the commercial sex industry. There remains a reluctance on the part of some of the public to accept that prostitution is now legal and that brothels are legitimate businesses which are legally able to operate from somewhere in Waitakere City. Clients spoke favourably about the commercial sex industry and about the brothels, with users ranging from the working to the retired, and the able bodied to the less able bodied.

The impact of brothels in residential and urban areas

The location of brothels is one of the most contentious aspects of the commercial sex strategy, on the basis of feedback received from members of the general public. Some of the public agreed with the Council’s practical approach of managing the adverse environmental effects that may arise from brothels, although there was greater support for prohibiting brothels in residential areas or adjacent to sensitive sites.

Those opposed to brothels in residential areas, suggested that brothels would adversely affect the character of neighbourhoods, and result in negative perceptions of crime and feelings of reduced personal safety. Residents and families in particular, would be affected. Typically, it was perceived that residents would be put at greater risk from offensive behaviour, harassment, or violence due to clients visiting sexual premises or due to street prostitution.

For these reasons some members of the public supported a ‘hardline’ approach, by prohibiting all brothels in residential areas. The use of a bylaw was the most popular option as it was considered to be the toughest approach. An example often cited was the Auckland City bylaw as it was viewed to be working well, although in practice, there are problems with the implementation of the bylaw and Auckland City Council is facing legal challenges about it.

There was less support for a 'softer' approach of restricting the location of brothels according to their negative environmental effects in any given area. This would be controlled through the District Plan (via a City Wide Rule). Under this approach, small brothels are not prohibited from establishing in residential areas.

Waitakere City Council has strategic goals for the City's town centres which it is keen to deliver on, and 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. Of relevance, is that the commercial sex industry can have negative impacts on urban areas and their amenity values according to international research findings. Amenity values include the natural or physical qualities and characteristics of an area and/or property values. These adverse effects are what make commercial sex businesses different from other entertainment businesses (such as pubs, clubs and gambling venues).

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

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

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.

Sensitive sites

There is community concern over the location of commercial sex premises in the community, particularly with 'sensitive sites' that are mainly used by children, such as schools, day-care centres and playgrounds. This is partly due to a desire to limit the exposure of children and young people to commercial sex activities and to safeguard their personal safety.

Appropriate and suitable signage

Signs that advertise commercial sexual services have the potential to cause offence to members of the public using the area, and to be incompatible with the surrounding use of the area.

A.6. Legal challenges and enforcement issues

Unreasonable restrictions on the industry based on moral grounds may result in the action being declared ultra vires (beyond the powers of Council) and declared invalid if challenged. However, a separate issue is that such a stance will discourage compliance and potentially encourage activities to operate underground and outside the ambit of the Prostitution Reform Act's protection.

The use of a bylaw to control the location of brothels may be legally challenged on grounds of 'unreasonableness' given the low level of activity in Waitakere City when compared to other areas in the Auckland region and the decriminalisation under the Prostitution Reform Act. Therefore, it is difficult to justify the adoption of a heavy enforcement orientated approach. If the Council were to impose strict conditions on the location of brothels through a bylaw, it could be open to legal challenge on the grounds of unreasonableness. Legal challenges can be costly, as the experience of other councils will testify to. For example, the cost to Christchurch City Council of defending a legal challenge against the lawfulness of its bylaw, is estimated to have cost in excess of \$100,000.

Consequently, the strategy does not endorse a blanket prohibition of brothels across the City (which would be in conflict to the PRA), or prohibition of all brothels in residential areas (as not intended by the PRA).

Buffer zones have not been used to restrict the location of brothels from certain areas or sites as this would suggest that there are risks posed to the public by the existence of brothels, and may be contrary to the intent of the PRA, viz, the decriminalisation of brothels and commercial legalisation of the industry.

Enforcement issues arise in respect of placing controls or restrictions on the location of commercial sex businesses, particularly brothels (of any size). Any controls over the location of brothels throughout the City will need to be actively enforced, incurring a cost to Council using resources to regulate an industry that is not currently a significant problem, nor is it likely to be.

In principle, various options are available to the Council to determine or influence the areas where brothels can and cannot establish, such as the use of a bylaw to control the location of brothels. However, in practice, it is difficult to enforce the prohibition of brothels in residential areas for the following reasons:

- The Council would have to prove the business causes some adverse effect in accordance with the Resource Management Act;
- Whether the premises in fact operates as a brothel or is merely a therapeutic massage premise or some other such facility;
- To close down alleged brothels, the Council would need to prove that 'commercial sex activity' has occurred and the level of proof required for a conviction is evidence of the sexual act and payment, and where relevant, consider existing use rights under the Resource Management Act. The elements of proof would require that Council investigation take place which may mean the Council must obtain a warrant to enter premises for the purposes of detecting a breach;
- Brothels are unlikely to comply or may be driven underground which is contrary to legislation decriminalising prostitution under the Prostitution Reform Act.
- The Council cannot take a moral stance about the sex industry and consider brothels to be an "inappropriate" activity.

Other councils in the Auckland region have taken a regulatory and enforcement approach, by implementing bylaws to control the location of brothels and signage. However, in Auckland City and Manukau the scale of the sex industry is significantly