

# **Proposed Revocation of New Plymouth District Council Bylaw: Part 4 Brothels (Location and Signage) and Commercial Sex Premises (Signage)**

## **Statement of Proposal** **November 2021**



Te Kaunihera-ā-Rohe o Ngāmotu  
**New Plymouth  
District Council**

## Introduction

The Council is reviewing the New Plymouth District Council Bylaw Part 4 Brothels (Location and Signage) and Commercial Sex Premises (Signage) (the Current Bylaw) in accordance with the Local Government Act 2002 (LGA).

The Council is able to make a bylaw to control the location of brothels and signage advertising commercial sexual services under the Prostitution Reform Act 2003 (PRA). The PRA decriminalised prostitution and brothel keeping. The PRA has a strong emphasis on protecting the rights of those who work in the sex industry while not endorsing or morally sanctioning sex work or its use. The intention of the PRA is to create a framework that:

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

These legislative powers have been supplemented by bylaw making provisions under the PRA. The Council cannot prohibit brothels in the district. It is also inappropriate for a bylaw to make any moral judgements. A Bylaw can, however, make rules to protect the community from some of the effects that may arise from the provision of commercial sex services. The PRA only enables councils to make bylaws that regulate:

- the location of brothels; and/or
- signage associated with commercial sex services.

The Council originally adopted a bylaw on brothels and commercial sex premises in response to the enactment of the PRA in 2003. This bylaw was reviewed resulting in the Current Bylaw being adopted in 2010.

The Council has taken the review as an opportunity to revisit the previous approach adopted in 2010 by proposing to revoke the Current Bylaw and remove the specific regulation of brothels (location and signage) and commercial sex premises (signage).

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Under the proposal there would be no specific regulation controlling brothels (location and signage) or commercial sex premises (signage). While no specific provisions would apply following revocation of the Current Bylaw alternative regulatory considerations would still take place through the:

- New Plymouth District Plan (the DPlan);
- New Plymouth District Bylaw 2008: Part 5 Public Places (the Public Places Bylaw);
- Films, Videos and Publications Classification Act 1993 (FVPCA1993); and
- Advertising Standards Code of Practice.

Where a brothel requires a land use consent under the DPlan, section 15 of the PRA requires that a territorial authority must have regard to whether the business of prostitution is:

- a) 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) incompatible with the existing character or use of the area in which the land is situated.

Signage for brothels and commercial sexual premises would be regulated (in addition to the signage provisions of the DPlan) under the provisions of the Public Places Bylaw, the FVPCA1993 and the Advertising Standards Code of Practice.

## Determinations

To aid the Council in determining whether to review and amend the bylaw or revoke the bylaw, a Regulatory Impact Assessment (RIA) was undertaken. The assessment sets out the authority to make a bylaw, the perceived problems or nuisance the bylaw addresses, and the options available to the Council to deal with these problems.

The RIA was informed by a separate options analysis<sup>1</sup> which assessed three key options for the ongoing regulation of brothel location and signage within the District:

- Regulation via an amended bylaw.
- Specific regulation via the DPlan.
- Reliance on existing local and national regulation, and revocation of the bylaw.

The options analysis concluded that a reviewed and amended bylaw was the most appropriate form of regulation of this issue for the Council, but also noted that reliance on existing local and national regulation and revocation of the bylaw was also a viable option.

At its meeting on 5 October 2021, the Council's Strategy and Operations Committee resolved to propose revoking the Current Bylaw and relying on alternative regulation and existing legislation as the preferred option for consultation.

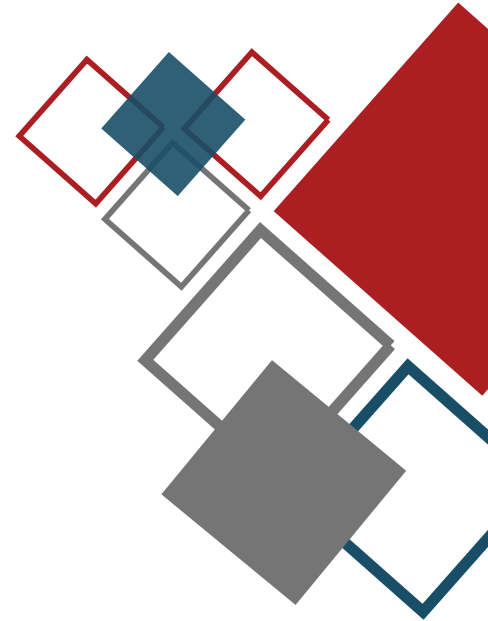
In proposing to revoke the Current Bylaw and relying on alternative regulation and existing legislation, the Council has also considered whether there are any implications under the New Zealand Bill of Rights Act 1990. The Council is of the view that the proposal is the most appropriate means of addressing the perceived problem and considers that it is not inconsistent with the Bill of Rights Act.

## Reasons for reviewing the Current Bylaw

The Current Bylaw must be reviewed before 9 April 2022 otherwise it would be revoked under section 160A of the Local Government Act 2002 (LGA).

In recent times, the Council has received relatively few complaints regarding the operation of brothels and commercial sex premises, leading the Council to determine that revoking the Current Bylaw and relying on alternative regulation and existing legislation is the preferred approach.

<sup>1</sup> Options analysis for the ongoing regulation of brothel location and signage within New Plymouth District. Prepared by GMD Consultants for New Plymouth District Council. April 2021



# Options

When determining the best approach, revoking the Current Bylaw and relying on alternative regulation and existing legislation was considered the most appropriate.

There are three options which were considered during the review of the Current Bylaw:

1. Revoke the Current Bylaw and rely on alternative regulation and existing legislation to ensure compliance (the recommended option).
2. Review and amend the Current Bylaw.
3. Retain the status quo and make no changes to the Current Bylaw.

A summary of the analysis is shown below.

**1**

## **Revoke the Current Bylaw and rely on alternative regulation and existing legislation (the recommended option)**

### **Advantages**

- Revocation of the Current Bylaw would require a special consultative procedure, enabling the Council to gather information regarding community preference in relation to this option before making a final decision.
- There are many existing regulatory mechanisms available to the Council to fill the regulatory gap left by not having a bylaw, including the PRA, District Plan and Public Places Bylaw.
- The Council will save resources on regulation, enforcement, and administration of a bylaw.
- Does not single out commercial sexual businesses and instead treats them like any other commercial activity.
- Common approach taken by other councils.

### **Disadvantages**

- Removal of a regulatory instrument controlling brothels locating in perceived 'sensitive areas' including the removal of the existing 'ground floor control area' within the central city, instead being treated like any other commercial activity, which may result in an increase in antisocial behaviour which the existing regulatory tools currently manage.
- This indicates a change in approach, so the Council could be perceived as being overly permissive and not responsive to community preferences.
- The Council's regulatory approach is no longer clearly contained in one document, which may require the Council to develop guidance to fill the gap.
- Risk that consultation signals that the community would like to keep a bylaw leaving little time to review prior to the revocation date.

Option 1 is the recommended option. Under this option it is proposed to revoke the Current Bylaw and rely on alternative regulation and existing legislation.

## 2 Review and amend the Current Bylaw

This option included a draft Location of Brothels Bylaw 2021 which proposed to continue with the regulation of the location of brothels only (and not signage). The advantages and disadvantages below reflect the draft Location of Brothels Bylaw 2021 that supported this option.

### Advantages

- Provides the Council with a tool to regulate the perceived problems associated with the location of brothels with the district.
- Allows the Council to take into consideration any new information on the matter since the last review of the Current Bylaw.
- Enables the Council to address any matters with the Current Bylaw.
- Regulation via a bylaw is consistent with the Council's current approach.
- Review of the bylaw with consultation can address some of the perceived community concerns regarding the location and signage of commercial sexual premises and create an updated and fit for purpose regulatory instrument.
- Gives the Council the opportunity to remove duplicate and unused regulation of signage and streamline the bylaw to only reflect the regulation of the location of brothels.
- A bylaw clearly articulates the Council's position which gives regulatory certainty to potential commercial sexual operators.
- A bylaw must be consistent with the PRA therefore it will allow the industry to legitimately operate.

### Disadvantages

- Requires resources to undertake the review of the Current Bylaw.
- There are costs and issues associated with monitoring and enforcing a bylaw.
- There is a risk of over regulation, as there is a limit to how far a bylaw can go to regulate the location and signage of commercial sexual premises before it becomes an overly restrictive restraint on trade and non-compliant with the PRA.

## 3 Retain the status quo and make no changes to the Current Bylaw

### Advantages

- Retains consistency in approach to regulation.
- The public and key stakeholders have certainty in what the regulations are.
- A bylaw clearly articulates the Council's position which gives regulatory certainty to potential commercial sexual operators.

### Disadvantages

- The Council continues to have duplication of regulation in relation to signage.
- Feedback from public consultation may indicate the need for a change in approach, requiring further consultation.
- The bylaw will remain part of the consolidated bylaw.
- Approach not consistent with findings of the options analysis and this regulatory impact assessment.

## Key proposals in the proposed revocation of the Current Bylaw

### Alternative regulatory considerations

Under the proposal there would be no specific regulation controlling brothels (location and signage) or commercial sex premises (signage). While no specific provisions would apply following revocation of the Current Bylaw alternative regulatory considerations would still take place through the:

- New Plymouth District Plan (the DPlan);
- New Plymouth District Bylaw 2008: Part 5 Public Places (the Public Places Bylaw);
- Films, Videos and Publications Classification Act 1993 (FVPCA1993); and
- Advertising Standards Code of Practice.

Where a brothel requires a land use consent under the DPlan, section 15 of the PRA requires that a territorial authority must have regard to whether the business of prostitution is:

- a) 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) incompatible with the existing character or use of the area in which the land is situated.

Signage for brothels and other commercial sexual premises would be regulated (in addition to the signage provisions of the DPlan) under the provisions of the Public Places Bylaw and other options, including the FVPCA1993 and the Advertising Standards Code of Practice.

Clause 23.1 of the Public Places Bylaw states:

*No person may in any public place:*

- a) *expose to view or distribute for offer or sale any sign, banner, placard, handbill, print or other matter of any offensive or indecent character.*

### Where can I get more information?

For more information about this consultation visit the Council's website [npdc.govt.nz/HaveYourSay](http://npdc.govt.nz/HaveYourSay) or phone us on 06-759 6060.

A copy of this document is available for viewing at the Civic Centre, Liardet Street, New Plymouth; or library and service centres at Bell Block, Inglewood and Waitara.





## Have your say!

The proposed revocation of the New Plymouth District Council Bylaw: Part 4 Brothels (Location and Signage) and Commercial Sex Premises (Signage) is now open for public consultation. This is your chance to let the Council hear your views and preferences about the proposals, so please take the time to get involved and have your say.

There are several ways you can have your say. A submission form is provided with this document or you can fill in your submission online.

To get your submission to us, either:

Do it online: [npdc.govt.nz/HaveYourSay](https://npdc.govt.nz/HaveYourSay)

Email it to: [submissions@npdc.govt.nz](mailto:submissions@npdc.govt.nz)

Post it to: NPDC Brothels Bylaw Submissions, Reply Paid DX, DX Box NX10026, New Plymouth 4342

Deliver it to: Civic Centre, Liardet Street, New Plymouth or to a library and service centre in Bell Block, Inglewood or Waitara

**Be sure to get your submission to the Council by 5pm on Tuesday 14 December 2021**

**Late submissions will not be accepted**

# Proposed Revocation of the New Plymouth District Council Bylaw: Part 4: Brothels (Location and Signage) and Commercial Sex Premises (Signage)

## Submission Form

Save time by filling in your submission online at [npdc.govt.nz/HaveYourSay](http://npdc.govt.nz/HaveYourSay)

Full Name:

Organisation:

Address:

Email:

Phone (Day):

Do you want to speak to the Council in support of your submission?

Yes  No

If one of the boxes is not ticked, we'll assume you don't want to be heard.

Do you support the Council's proposed revocation of the New Plymouth District Council Bylaw: Part 4 Brothels (Location and Signage) and Commercial Sex Premises (Signage)?

Yes  No

### My submission

### Thank you for your submission!

All submissions (including your name, address and contact details) are provided to Council officers and elected members for the purpose of analysing feedback. Your personal information will also be used for the administration of the engagement and decision-making process. Submissions (with individuals names only) will be available online. If requested, submitter details may be released under the Local Government Official Information and Meetings Act 1987. If there are good reasons why your details and/or submission should be kept confidential please contact our Privacy Officer on 06-759 5688 or through [enquiries@npdc.govt.nz](mailto:enquiries@npdc.govt.nz)

