

11. Brothel Location Bylaw 2016 – adopt draft for public consultation

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Summary

- The purpose of this report is to consider the draft Brothel Location Bylaw (the Bylaw) and decide whether it is fit for public consultation, having considered the section 155 tests under the Local Government Act 2002 (LGA), and the objectives of the Bylaw Review.
- The purpose of the Bylaw is to:
 - regulate the location of brothels;
 - minimise potential and/or perceived community harm or offence; and
 - support the intent of the Prostitution Reform Act 2003 (PRA 2003).
- For reasons set out in this report, Officers conclude that the proposal to make minor amendments to the Brothel Location Bylaw meets the legal tests under section 155 of the LGA, addresses the issues identified, meets the assessment criteria and is fit for public consultation.

Recommendation

- 1. That** Council determines that:
 - a) A bylaw is the most appropriate way of addressing the perceived problems; and
 - b) The proposed amendment to the Brothel Location Bylaw is the most appropriate form of the bylaw; and
 - c) does not give rise to implications under the New Zealand Bill of Rights Act (NZBORA) 1990
- 2. That** Council adopts the proposal to amend the Brothel Location Bylaw 2016, attached as Appendix 1, as the basis for public consultation.

Attachments

- Appendix 1** Draft Brothel Location Bylaw 2016 with tracked changes
Appendix 2 Draft consultation document

Background

1. The Brothel Location Bylaw was last reviewed in 2021.
2. In 2021, the Council decided to review the bylaw in 2026, this was five years' earlier than the maximum statutory review period of ten years.
3. The purpose of the bylaw is to:
 - regulate the location of brothels;
 - minimise potential and/or perceived community harm or offence; and
 - support the intent of the Prostitution Reform Act 2003.
4. The key provisions of the Bylaw are:
 - Brothels are permitted within a Business Zone of Ashburton District's operative District Plan and 100 metres away from any sensitive site.
 - Sensitive sites include Early Learning Centres/Schools, or a Place of worship, or a Marae.
 - The Bylaw does not apply on Small Owner-Operated Brothels in the district. (SOOB).

Current Situation

5. During the Bylaw review process, officers have considered and met following criteria:
 - Lawfulness – Legal review of the draft Bylaw has been completed to ensure compliance with the LGA and the Prostitution Reform Act 2003
 - Affordability - Bylaw can be reviewed and implemented within existing resources
 - Effectiveness – the Bylaw can deliver on its purpose
 - Relevance – the Bylaw meets present and anticipated community needs
 - Timeliness – adoption of the bylaw by 30 June 2026.
 - Alignment – bylaw is aligned with existing strategies and plans.
6. Officers have spoken with various teams across ADC to determine whether there are any established brothels in the district to which the Brothel Location Bylaw would currently apply. However, we have received no evidence that a brothel exists.
7. For further confirmation, officers contacted the Ministry of Justice which issues Brothel Operator Certificates, to check whether any certificates had been issued in the Ashburton District. They advised that there are no operator certificates—active or expired—listed for Ashburton in their database.
8. A review of CRMs suggests that, since the last review of this bylaw, Council has received no complaints nor queries about where brothels can be located.

9. This suggests that the scale of the issue is relatively small, and the effectiveness of the bylaw remains untested due to the absence of an established brothel.
10. Officers consider that, given the relatively small scale of the issue, the next review of the Bylaw should occur at the end of the maximum statutory review period of ten years. Council may choose to bring the review forward if circumstances arise that warrant an earlier review.

What are we proposing to change

11. Based on the information mentioned from para 6 to 8, officers are proposing to make following minor changes to improve clarity and make the Bylaw up to date.
 - Updating references to related legislation and regulations
 - Adding definitions for Offence, Person, and Premises
 - Making editorial changes to improve readability

Options analysis

Option one – Consult on the amended Bylaw

12. Under this Option, Council would consult on the proposal to make minor amendments to the Bylaw as attached as Appendix 1.

<p>Advantages:</p> <ul style="list-style-type: none"> • Updating references to legislation and regulations ensures the Bylaw is legally accurate and up to date. • Additional definitions make the document easier for the reader to use, improve clarity and ensure consistency with Council’s Explanatory Bylaw. • Maintaining the key provisions help us balance between permitting the activity and protecting the public from potential nuisance or offensive behaviour near brothels. 	<p>Disadvantages:</p> <ul style="list-style-type: none"> • Presenting a draft bylaw in which the key provisions are not proposed to change limits Council’s ability to make substantive changes to those provisions in response to community views. • Option One requires more resources than Option Two or Option Four
<p>Risks:</p> <p>The principal risks when reviewing a bylaw are the legal risk of making changes that are outside the bylaw-making powers of the Council or failure to follow the correct bylaw-making process. Non-compliance can result in operational, financial and reputational risk. Compliance risk has been mitigated with legal advice. Issues arising later in the process will be mitigated in the same way. Overall, this is considered LOW risk.</p>	

Option two – Revoke the Bylaw and rely on the Ashburton District Plan and PRA 2003

13. Under this option, Council will revoke the Bylaw and will rely on the District Plan process meaning establishing a brothel will trigger an application for resource consent.
14. Under [section 15 of the PRA 2003](#), Council has a duty 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.
15. The current District Plan rules treat brothels similarly to other commercial activities that are subject to zoning and section 15 of the PRA considerations, but cannot apply additional controls, such as requiring brothels to be located at least 100 metres away from sensitive sites.
16. Officers are of view that revoking the Bylaw would remove a document that has been publicly consulted on and developed with community input, including views about what may be offensive or out of character in different areas.
17. Option two is not recommended.

<p>Advantages:</p> <ul style="list-style-type: none"> • None identified 	<p>Disadvantages:</p> <ul style="list-style-type: none"> • Option 2 is not preferred because the Bylaw provides a clear benchmark for brothel permitted areas in the Ashburton District and gives decision-makers stronger guidance than relying on the District Plan alone
<p>Risks:</p> <p>The principal risks when reviewing a bylaw are the legal risk of making changes that are outside the bylaw-making powers of the Council or failure to follow the correct bylaw-making process. Non-compliance can result in operational, financial and reputational risk. Compliance risk has been mitigated with legal advice. Issues arising later in the process will be mitigated in the same way. Overall, this is considered LOW risk.</p>	

Option three – Revoke and Replace the Bylaw

18. Under this option Council will choose to revoke the existing Bylaw and replace it with a new bylaw.

19. As there are no brothels currently operating in the district, the existing Bylaw largely remains fit for purpose. Revoking the Bylaw to replace with a new bylaw is unnecessary at this time. A further review can be undertaken in the future if required.

<p>Advantages: None identified</p>	<p>Disadvantages:</p> <ul style="list-style-type: none"> This would be an inefficient use of Council’s resources and time and would inappropriate response to the minor tweaking required.
<p>Risks:</p> <p>The principal risks when reviewing a bylaw are the legal risk of making changes that are outside the bylaw-making powers of the Council or failure to follow the correct bylaw-making process. Non-compliance can result in operational, financial and reputational risk. Compliance risk has been mitigated with legal advice. Issues arising later in the process will be mitigated in the same way. Overall, this is considered LOW risk.</p>	

Option Four – Roll over the Bylaw with no change

20. Under this option Council will choose to rollover the Bylaw with no change.

<p>Advantages: None identified</p>	<p>Disadvantages:</p> <ul style="list-style-type: none"> This does not support the purpose of the Bylaw review. The Bylaw will not be fit purpose and The Bylaw will be less accurate legally
<p>Risks:</p> <p>The principal risks when reviewing a bylaw are the legal risk of making changes that are outside the bylaw-making powers of the Council or failure to follow the correct bylaw-making process. Non-compliance can result in operational, financial and reputational risk. Compliance risk has been mitigated with legal advice. Issues arising later in the process will be mitigated in the same way. Overall, this is considered LOW risk.</p>	

Legal/policy implications

Local Government Act 2002

21. Council is authorised to make this bylaw under sections [145](#) and [146](#) of the Local Government Act 2002 (“the LGA”) and under section 14 of the PRA.

Section 145 of the LGA states that a territorial authority may make bylaws for its district for one or more of the following purposes:

- o protecting the public from nuisance.

- protecting, promoting, and maintaining public health and safety; and
 - minimising the potential for offensive behaviour in public places.
22. This is supported by a specific bylaw-making power in section 146 (a)(vi), which provides that regulations can be made for the regulation of ‘trading in public places’.
23. Council must also consider legal tests [in section 155](#) of the Local Government Act 2002 (LGA02) when making decisions on bylaws. The determination under the legal tests includes the following.
- ✓ Is the most appropriate way of addressing the perceived problems; and
 - ✓ Is the most appropriate form of bylaw; and
 - ✓ Does not give rise to implications under the New Zealand Bill of Rights Act (NZBORA)

Prostitution Reform Act 2003

24. [Section 14 of the PRA](#) states that, without limiting the application of section 145, Council can make Bylaws under section 146 for the purpose “of regulating the location of brothels.”

Climate change

25. This topic of report does not have any direct or indirect impact on climate change.

Review of legal / policy implications

Reviewed by In-house Counsel

Jacqui Watson; Senior Legal Counsel

26. The recommendation relates to Council’s community outcome of a district of great spaces and places because as it supports community wellbeing and safety.

Wellbeing		Reasons why the recommended outcome has an effect on this wellbeing
Economic	X	The proposal supports social wellbeing by ensuring safe, vibrant and thriving community.
Environmental	X	
Cultural	X	
Social	✓	

Financial implications

Requirement	Explanation
What is the cost?	Consultation costs covered by existing budgets.
Is there budget available in LTP / AP?	Yes
Where is the funding coming from?	Existing budgets – Strategy and Policy and Communications Teams
Are there any future budget implications?	No
Reviewed by Finance	Erin Register; Finance Manager.

Significance and engagement assessment

Requirement	Explanation
Is the matter considered significant?	No
Level of significance	Low
Rationale for selecting level of significance	N/A
Level of engagement selected	Consult – formal two-way communication using consultation under s.82 of the LGA02
Rationale for selecting level of engagement	Consultation is always required for bylaws with this to be consulted on under Section 82 of the Local Government Act.
Reviewed by Strategy & Policy	Mark Low; Strategy and Policy Manager

Next steps

Date	Action / milestone
4 March to 7 April 2026	Public consultation on proposed bylaw
28 – 29 April 2026	Hearings & Deliberations
May – June 2026	Adoption of final Bylaw by Council