

THE HUTT CITY COUNCIL

Democratic Services

DISTRICT PLAN COMMITTEE

**HEARINGS FOR PROPOSED DISTRICT PLAN CHANGE 5 -
PROSTITUTION REFORM ACT 2003**

Minutes of a meeting of the District Plan Committee held in The Hutt City Council Chambers, Administration Building, 30 Laings Road, Lower Hutt on Wednesday 28 September 2005 and deliberations held on 28 September 2005.

PRESENT:

Cr RW Styles (Chair)
Cr MJ Cousins
Cr D Hislop

IN ATTENDANCE:

D Kelly, General Manager Customer Services (part meeting)
E Albuquerque, Divisional Manager Environmental Policy & Approvals
D Kellow, Environmental Policy Analyst
H Oram, Team Leader Resource Consents (part meeting)
M Hurley, Team Leader Environmental Policy
V Rodgers, Environmental Policy Analyst
JE Stevens, Senior Committee Advisor

In accordance with a delegation by Council, pursuant to the provisions of section 34 of the Resource Management Act 1991, the District Plan Committee had power to act in determination of Changes to the Operative District Plan for recommendation to Council following the hearing of submissions.

DISTRICT PLAN - CITY OF LOWER HUTT

**HEARINGS FOR PROPOSED DISTRICT PLAN CHANGE 5 -
PROSTITUTION REFORM ACT 2003**

1. APPEARANCES

Submitter:

Murray Smith MP
 Andrew Thomas
 Warren Thessman
 NZ Prostitutes Collective
 Desmond Ford
 Lance Thomas
 Hutt City Hall Trust

Represented by:

Murray Smith MP
 Andrew Thomas
 Warren Thessman
 Catherine Healy
 Desmond Ford
 Lance Thomas
 Stephen Moore & Jeremy
 Cashmore

2. THE HEARING

The parties who appeared at the hearing presented additional written and/or oral submissions and/or written statements of evidence.

This hearing addressed matters raised in submissions and further submissions lodged on Proposed District Plan Change 5 which addressed the changes that could be made to the District Plan in response to the Prostitution Reform Act 2003.

Volumes containing copies of all submissions and further submissions were available to all parties. A background report and specific comments and recommendations individually addressing all submissions and further submissions were pre-circulated to all parties to the hearing.

3. DELIBERATIONS OF THE COMMITTEE

Statutory Regime and Legal Framework

Section 32 of the Resource Management Act 1991 contains direction that applies to the Council regarding considerations of alternatives, benefits, and costs. The Resource Management Amendment Act (No.2) repealed the existing section 32 and substituted a new section 32. The new section 32 states inter alia:

"32. Consideration of alternatives, benefits, and costs

(1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by-

- (a)*
- (b)*

- (c) *the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or*
 - (d) *....*
- (2) *A further evaluation must also be made by-*
- (a) *a local authority before making a decision under clause 10 or clause 29(4) of Schedule 1 ; and*
 - (b) *....*
- (3) *An evaluation must examine-*
- (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purpose of this examination, an evaluation must take into account-*
- (a) *the benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*
- (6) *The report must be made available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made."*

While the Resource Management Amendment Act 2003 has substituted a new Section 32, it is considered that the following passage from the Planning Tribunal's decision in *Nugent v Auckland City Council* (1966, NZRMA 481) is generally still acceptable and summarises the requirements as follows:

"..a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its functions of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have the purpose of achieving the objective and policies of the plan."

Part II of the Act is also relevant to any consideration. With regard to Part II, section 5 is fundamental to any assessment. The approach in section 5 is to weigh the matters in section 5(2) in order to reach a broad judgement as to whether a policy or rule would promote the sustainable management of natural and physical resources. The values in section 5 have been variously referred to as “indicators”, “guidelines”, “directions” or “touchstones” for promoting the goal of sustainable management. It is considered that the “enabling” and “management” functions of section 5(2) are of equal importance. The circumstances of each case determine the level of management that is required to promote sustainable management of natural and physical resources.

It is therefore considered that applying section 5 involves a broad overall judgement whether a proposal or provision in the Plan would promote the single purpose of the Act. This allows for balancing of conflicting considerations in terms of their respective significance or proportion in the final outcome.

Environment is also defined to include social, economic, aesthetic and cultural considerations. Section 7 matters of relevance are:

- (i) the efficient use and development of natural and physical resources – section 7(b); and
- (ii) the maintenance and enhancement of the quality of the environment – section 7(f).

In addition to the above provisions of the Resource Management Act 1991, the provisions of the Prostitution Reform Act 2003 (PRA) are also relevant. The PRA was enacted in June 2003. It decriminalises prostitution and provides a framework that is concerned with safeguarding the human rights of sex workers and promotes their occupational health and safety.

The key issues arising from the PRA as it relates to Territorial Authorities (TAs) are specified in sections 12 to 15. They relate to the following matters:

- TAs may make bylaws to control signage that advertise commercial sexual services (Section 12 of the PRA) and regulate the location of brothels of any scale but not extending to other businesses of prostitution (Section 14 of the PRA).
- Section 15 provides that a TA, when considering whether to issue a resource consent for a business of prostitution (i.e. wider than brothels), must have regard to whether business 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 is incompatible with the existing character or use of the area in which the land is situated.

The PRA therefore does provide for bylaws controlling the location of brothels but not the location of commercial sexual services. The PRA specifically recognises that the District Plan is capable of requiring resource consent for businesses of prostitution. In order to erase any statutory doubt about the scope of matters that could be taken into account in determining such resource consent, the PRA in Section 15 includes two statutory criteria that regard must be had to, irrespective of the provisions of the District Plan. They are:

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.”

Therefore, the PRA allows the control and location of brothels either by means of a bylaw or by provisions in the District Plan. However, the control of commercial sexual services can only be achieved by District Plan rules. While a bylaw can be challenged at any stage (even after it is passed by Council) as to its validity on the grounds of unreasonableness and, if found unreasonable, it may be declared invalid by the Courts [see *Kruse v Johnson (1898) 2 QB 91*; *Bylaws Act 1990*], a District Plan rule, once in force after the statutory process, cannot be challenged on the ground of unreasonableness and therefore is a more powerful and certain process. A District Plan rule would override a bylaw in the event of a conflict of interpretation. Thus, it is considered that it is more appropriate to use the District Plan to control the location of brothels and commercial sexual services.

Consideration has been given to whether a city or district can prohibit “businesses of prostitution” entirely. Local Government New Zealand has prepared a “Prostitution Reform Act Guide” and this matter is discussed in the document. In essence Local Government New Zealand concludes that prohibiting brothels from all parts of the City or District is unlawful.

Therefore taking the Local Government New Zealand Guide into account it is clear that a TA cannot prohibit or ban brothels from all parts of the City. However, brothels and commercial sexual services can be excluded from certain parts of the City.

Current Provisions in the District Plan

Currently in the District Plan resource consents are required for brothels and commercial sexual services to establish in all Residential Activity Areas unless they fall within the ambit of home occupations as defined in the District Plan.

Brothels and commercial sexual services are Permitted Activities in the Central Commercial, Petone Commercial and Suburban Commercial Activity Areas but are not permitted in the Special Commercial Activity Area - Station Village.

In General and Special Business Activity Areas, brothels and commercial sexual services are Permitted Activities. However, in the Avalon and Extraction Activity Areas they are not a Permitted Activity.

With regard to the other Activity Areas, brothels and commercial sexual services are not Permitted Activities in all Recreation Activity Areas.

However, it would appear that brothels and commercial sexual services are Permitted Activities in the General Rural and Rural Residential Activity Areas.

In the Community Health Activity Area brothels and commercial sexual services are not Permitted Activities unless they fall within the ambit of home occupations.

Brothels and commercial sexual services are not Permitted Activities in the Community Iwi Activity Areas except as a home occupation in the Community Iwi Activity Area 1 - Marae.

Proposed Plan Change

Central Commercial Activity Areas

The Discussion Document that went out for public consultation prior to promulgation of the Proposed Plan Change recommended that in the Central Commercial Activity Area brothels and commercial sexual services should be excluded from the area shown in Appendix Central Commercial 6. In the Proposed Plan Change brothels and commercial sexual services are Discretionary Activities in the area shown in Appendix Central Commercial 6.

The area shown in Appendix Central Commercial 6 includes part of High Street and Queens Drive between Laings Road and Margaret Street where buildings are required to be built to the front boundary and where display windows are compulsory. It is considered that

brothels and commercial sexual services should be excluded from this area for the following reasons:

- (a) The need to have display windows in this area is incompatible with the requirements of brothels and commercial sexual services. There would be adverse effects on the amenity values and character of this area if brothels and commercial sexual services were established.
- (b) Some of the land use activities in the area are “family or children oriented” (such as the amusement parlour and Hoyts cinemas on High Street) and brothels and commercial sexual services would likely be offensive to ordinary members of the public using this area.

Petone and Suburban Commercial Activity Areas

In the Petone Commercial Activity Area 1 (both sides of Jackson Street generally bounded by Victoria and Cuba Streets) and the Suburban Commercial Activity Area, it is considered that brothels and commercial sexual services should be excluded from the ground floor as such areas require to have display windows, and brothels and commercial sexual services would adversely affect amenity values and compromise the character of these areas.

While it is recognised that excluding brothels and commercial sexual services from the ground floor might exclude in some cases the disabled using such services, it is considered on balance that the amenity values and character of such areas are better protected while alternative arrangements can be made for the disabled.

The Petone Commercial Activity Area 2 is essentially an area for large-scale vehicular oriented retail activities. This Activity Area is also well separated from Residential Activity Areas. Taking these matters into account it is considered that brothels and commercial sexual services are compatible with the character of existing land use activities and amenity values will not be adversely affected.

It is considered that the concerns expressed by submitters regarding controls on brothels and commercial sexual services where they are in close proximity to schools, pre-school facilities and churches or other religious activities have some merit and that Council should seek to control the location of brothels and commercial sexual services in such situations. This being the case in the Proposed Plan Change brothels and commercial sexual services are Discretionary Activities in the Central Commercial, Petone Commercial and Suburban Commercial Activity Areas where they abut, are adjacent to or are on the opposite

side of the road from schools, pre-school facilities, churches and other religious establishments or a residential activity area.

Following the hearing of submissions it was considered that the word "adjacent" creates a buffer zone that is undefined and open to interpretation, therefore introducing uncertainty to the provisions, and this wording was therefore removed. "Opposite side of the road" was also considered to be open to interpretation in respect of the distance involved, and was amended to "directly across the road". The amended provisions will enable Council to exercise control over amenity values such as traffic generated, external appearance and design of buildings and structures, whether brothels and commercial sexual services are likely to cause a nuisance or serious offence to ordinary members of the public using the area, and whether brothels and commercial sexual services are incompatible with the existing character or use of the area.

Special Commercial Activity Area

The activities permitted in this Activity Area have deliberately been limited to activities that are compatible with adjoining areas and after considerable discussions with adjoining property owners. Taking these matters into account it is considered that brothels and commercial sexual services should be not permitted activities. No changes to the District Plan are required for the Special Commercial Activity Area - Station Village as brothels and commercial sexual services are already Non-Complying Activities. An amendment is made to the District Plan so that brothels and commercial sexual services are Discretionary Activities in the Special Commercial Activity Area - Boulcott Village, where brothels and commercial sexual services are on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.

General Business and Special Business Activity Areas

For the General Business and Special Business Activity Areas it was recommended that brothels and commercial sexual services should be Permitted Activities. Submissions received on the Discussion Document generally supported this approach but some submitters were concerned that brothels and commercial sexual services on sites in proximity to Residential Activity Areas should be excluded. Taking those submissions and amenity values into account, brothels and commercial sexual services abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area are Discretionary Activities.

Avalon and Extraction Activity Areas

These are specialised activity areas and brothels and commercial sexual services are incompatible with the objectives, policies and rules. Brothels and commercial sexual services are Discretionary Activities in these activity areas.

All Residential Activity Areas

At present resource consent is required for brothels and commercial sexual services to be established in all Residential Activity Areas unless they fall within the ambit of home occupation. No changes are proposed to be made to the District Plan as brothels and commercial sexual services operating outside the ambit of home occupations may have adverse effects on the amenity values of residential activity areas (such as traffic generated, noise, disturbance to the neighbourhood, and safety concerns). However, small-scale brothels operating from dwelling houses as home occupations are unlikely to be noticeable from other types of home occupations and adverse effects are likely to be minor.

Rural Activity Areas

Taking amenity value considerations into account, similar controls to Residential Activity Areas are proposed, i.e. permitted in terms of home occupations but Discretionary Activities otherwise.

Recreation Activity Areas

Brothels and commercial sexual services are excluded from all Recreational Activity Areas as they would adversely affect amenity values, would be incompatible with permitted recreation activities and would cause serious nuisance and offence to members of the public.

Community Health Activity Areas

No changes are proposed to the provisions of the District Plan and brothels and commercial sexual services are excluded unless they fall within the ambit of home occupation.

Community Iwi Activity Areas

No changes to the District Plan are proposed and brothels and commercial sexual services are excluded unless they fall within the ambit of home occupations in the Community Iwi Activity Area 1.

Signage

Explicit signs advertising brothels and commercial sexual services can have adverse effects on amenity values and be offensive to members of the public. Taking these matters into account, it is appropriate to control the design, content, location, size, height and appearance of signs in all Activity Areas and signs advertising brothels and commercial sexual services are Restricted Discretionary Activities.

Consideration of Alternatives

Consideration was given as to whether brothels and commercial sexual services should be controlled by means of bylaws or provisions in the District Plan. It was considered that provisions in the District Plan should control brothels and commercial sexual services. However, the matter of soliciting was raised by a number of submitters and the Committee has asked Council officers to give further consideration to the need for a bylaw addressing this particular aspect should it become a concern.

Consideration was also given as to whether brothels and commercial sexual services can be excluded from all areas in the City. It is not legally possible to exclude brothels and commercial sexual services from all Activity Areas.

Conclusion

Overall after evaluating all matters it is considered that the Proposed Plan Change incorporating the amendments recommended by the Committee offer the most appropriate way of achieving the purpose and principles of the Resource Management Act 1991 and seek to ensure that amenity values are protected.

5. DECISIONS AND REASONS

Resolved:

“That the Committee notes that, in making its decisions on submissions and further submissions lodged on Proposed District Plan Change 5 – Prostitution Reform Act 2003, Council is restricted to the relief sought in those submissions and further submissions.

That in exercise of the powers delegated to it by Council pursuant to the provisions of section 34 of the Resource Management Act 1991 the District Plan Committee hereby resolves, pursuant to Schedule 1 of the Resource Management Act 1991, to make the following decisions on submissions and further submissions lodged, for recommendation to Council.”

DPC05/01	D1	Desmond and Gillian Ford
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Decision:

That the submission lodged by Desmond and Gillian Ford, seeking that people establishing brothels (including Home Occupations in residential areas) contact and apply for permission from all residents within 400 metres of the property they intend to operate from and obtain appropriate approval by publicly notified resource consent, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Whether a resource consent application is notified is determined on a case by case basis under section 93 of the Resource Management Act 1991 (RMA). Where the environmental effects of an activity are expected to be more than minor the application must be publicly notified. If the effects are expected to be no more than minor and those people Council considers to be adversely affected have given written approval, the application need not be notified. If people who may be adversely affected have not given written approval the application will be notified on a limited basis. Accordingly a standard 400m rule is not in keeping with the RMA.

For an activity to be classed as a home occupation several conditions must be complied with. The conditions ensure that home occupations have environmental effects that maintain amenity values. As discussed in the Section 32 Report, small-scale brothels operating from dwelling houses as home occupations are unlikely to be noticeable from other types of home occupations and adverse effects are likely to be minor.

DPC05/01	D2	Desmond and Gillian Ford
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Decision:

That the submission lodged by Desmond and Gillian Ford, seeking that no brothels or commercial sexual services be allowed to operate without applying for the appropriate permission from all of the neighbouring businesses within 400 metres of the proposed site via resource consent, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The Resource Management Act is an effects based framework which requires activities to be managed by the environmental effects an

activity generates. As discussed in the Section 32 Report, it is considered that the environmental effects of brothels and commercial sexual services will not be incompatible with other activities permitted in the Business, Suburban Commercial (above ground floor level), Petone Commercial (above ground floor level), and Central Commercial Activity Areas (except Central Commercial Area 6) and accordingly will not require resource consent.

DPC05/02	D1	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that the rules provide greater limitation on the location of brothels and commercial sexual services, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The Plan Change will provide greater limitation on the location of brothels and commercial sexual services than currently exists in the District Plan. The Plan Change has taken into account public comments expressed after the release of the Prostitution Discussion Document and alternative methods and approaches have been analysed in the Section 32 Report which accompanied the Plan Change.

DPC05/02	D2	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that sexual services be excluded from the definition of “home occupations”, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

For an activity to be classed as a home occupation several conditions must be complied with. The conditions ensure that home occupations have environmental effects that maintain amenity values. As discussed in the Section 32 Report, small-scale brothels operating from dwelling houses as home occupations are unlikely to be noticeable from other types of home occupations and adverse effects are likely to be minor.

DPC05/02	D3	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that brothels and other commercial sex services be prohibited in residential, commercial, recreational or other special areas other than Petone Commercial Activity Area 2 and that the establishment of premises for commercial sex services be limited to Industrial and Rural areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The approach taken in the District Plan has been to establish activity areas where activities with similar effects are permitted without resource consent, subject to meeting conditions. This approach means that brothels and commercial sexual services have been permitted in activity areas where the effects are expected to be compatible with other activities in the area. Each activity area has been considered separately in the drafting of provisions as outlined in paragraphs 21 to 36 of the Section 32 Report. Brothels and commercial sexual services will require resource consent in the Residential, Rural and Recreational Activity Areas and parts of the Commercial Activity Areas where it is considered brothels and commercial sexual services may be incompatible with existing uses. Brothels and commercial sexual services will not be permitted in the Rural Activity Area without resource consent due to amenity value considerations. The industrial parts of the city are mostly within the Business Activity Area where brothels and commercial sexual services will be permitted.

DPC05/02	D4	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that Council prohibit street soliciting and that the definition of street soliciting be looked into, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The issue of street soliciting is best dealt with through bylaws as it is an activity carried out on legal road rather than through the District Plan. This approach is considered acceptable given that street soliciting has not been an issue in Hutt City in the past.

DPC05/02 D5 Murray Smith MP

Decision:

That the submission lodged by Murray Smith MP, seeking that commercial sex services in the central commercial district be prohibited, both in respect of ground floor and upper floor premises, particularly in Petone Commercial Activity Area 1, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The approach taken in the District Plan has been to establish activity areas where activities with similar effects are permitted without resource consent, subject to conditions. This approach means that brothels and commercial sexual services have been permitted in activity areas which allow activities with similar effects. Each activity area has been considered separately in the drafting of provisions as outlined in paragraphs 21 to 36 of the Section 32 Report. Resource consent will be required for ground floor brothels and commercial sexual services in Petone Commercial Activity Area 1 and all brothels and commercial sexual services in Central Commercial 6, as these areas require window displays and because it is considered that brothels and commercial sexual services would adversely affect amenity values and compromise the character of these areas. Further, some of the land use activities in Central Commercial Area 6 are family or child orientated and brothels and commercial sexual services are likely to be offensive to ordinary members of the public using this area.

Brothels and commercial sexual services on the upper floors of premises in Petone Commercial Activity Area 1 are anticipated to have effects that are not incompatible with the surrounding environment and therefore will be permitted.

DPC05/02 D6 Murray Smith MP

Decision:

That the submission lodged by Murray Smith MP, seeking that the proposed restriction on commercial sex services be extended to 200 metres from specified public places and from any border with a non-complying activity area, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Rules in the District Plan need to be specific and enforceable. A rule specifying that resource consent is required for brothels or commercial sexual services within 200m of certain public places would not be specific enough given the difficulty in determining which public places would be included and where exactly the 200m area extends. However the Plan Change recognises that in some public areas, due to the presence of child and family orientated entertainment, such as Central Commercial Area 6, resource consent is required as such activities could be offensive to ordinary members of the public using the area. The Plan Change also requires resource consent for brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.

DPC05/02	D7	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that all commercial sex services should be Discretionary or Restricted Discretionary Activities rather than being Permitted Activities, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The approach taken in the District Plan has been to establish activity areas where activities with similar effects are permitted without resource consent, subject to conditions. This approach means that brothels and commercial sexual services have been permitted in activity areas where the effects are expected to be compatible with other activities in the area. Each activity area has been considered separately in the drafting of provisions as outlined in paragraphs 21 to 36 of the Section 32 Report. It would be difficult to justify requiring brothels and commercial sexual services to obtain resource consent in the commercial and business activity areas given the range of activities permitted in those areas.

DPC05/02	D8	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking signage as a Restricted Discretionary Activity with 'content' included as a discretionary factor, be ACCEPTED and the provisions of the Plan Change be amended by adding the word 'content' after the word 'design' in the provisions relating to signage, as follows:

Add to Rule 14B 2.3 “Restricted Discretionary Activities” the following:

“In all Activity Areas all signs advertising brothels and commercial sexual services.”

Add to “Matters in Which Council has restricted its discretion and Standards and Terms” the following:

“In all Activity Areas all signs advertising brothels and commercial sexual services.

(i) *Design, content, location, size, height and appearance of signs.*

The extent to which the design, content, location, size, height and appearance of signs will have adverse effects on the amenity values of the area.

The extent to which the design, content, location, size, height and appearance of signs are likely to cause a nuisance or serious offence to ordinary members of the public using the area.

Whether the design, content, location, size, height and appearance of signs are likely to be incompatible with the existing character or use of the area.”

Reasons:

As discussed in the Section 32 Report, it is acknowledged that explicit signs advertising brothels and commercial sexual services could have an adverse effect on amenity values and be offensive to members of the public. The Plan Change had restricted discretion to the extent the design, location, size, height and appearance of signs will have adverse effects on the amenity values of the area, are likely to cause a nuisance or serious offence to ordinary members of the public and to the extent the signs are likely to be incompatible with the existing character or use of the area. However it is considered that inclusion of the word ‘content’ would clarify what matters can be assessed when considering a resource consent application for signage.

DPC05/02	D9	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that Council avoid the creation of significant red light districts by prohibiting a brothel being situated within 200 metres of another brothel, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

It is anticipated that areas of notoriety will not develop given that brothels have been present in Hutt City for some time without a 'red light' district developing as is the case in other cities. As the Plan Change allows brothels to be established in several parts of the city without resource consent the likelihood of areas of notoriety developing is considered to be small. Further, the cumulative effect of granting resource consent can be taken into account where resource consent is required.

DPC05/02	D10	Murray Smith MP
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Decision:

That the submission lodged by Murray Smith MP, seeking that all applications for commercial sex services have conditions attached to them and all applications be notified, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Conditions are attached to resource consents where they are considered necessary which is dependent on the nature of the effects of the proposal. Conditions are attached to avoid, remedy or mitigate adverse environmental effects and must be within Council's powers under section 108 of the Resource Management Act. Conditions must be for resource management purposes, certain, relevant to the subject matter of the consent and be fair, reasonable and practical.

Whether a resource consent application is notified is determined on a case by case basis under section 93 of the Resource Management Act. Where the environmental effects of an activity are expected to be more than minor the application must be publicly notified. If the effects are expected to be no more than minor and those people Council considers to be adversely affected have given written approval, the application need not be notified.

DPC05/03	D1	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that prostitution be prohibited in all residential areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

A resource consent will be required for a brothel in all residential areas and a full assessment of environmental effects undertaken in accordance with the Resource Management Act. When considering a resource consent for a business of prostitution in accordance with section 15 of the Prostitution Reform Act 2003, regard must be had to whether the business 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 is incompatible with the existing character or use of the area in which the land is situated. Therefore a full consideration of environmental effects will be undertaken when considering a consent application for a brothel in a residential area before deciding if the activity is appropriate or not in a particular location.

DPC05/03	D2	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that prostitution be prohibited in all retail areas and all other areas where families visit and/or young people frequent and that prostitution be a discretionary activity in all other areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The Plan Change and Section 32 Report recognise that in some public areas, due to the presence of child and family orientated entertainment, such as Central Commercial Area 6, resource consent is required as such activities could be offensive to ordinary members of the public using the area. The Plan Change also requires resource consent for brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches, other similar religious establishments and any residential activity area.

DPC05/03	D3	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that "sensitive sites" be extended to include all family and children oriented areas of public activity such as maraes, supermarkets, public pools, playgrounds, community facilities and recreational halls, open public spaces and major transport facilities, and to extend the distance to not within 400 metres of all these sites, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Rules in the District Plan need to be specific and enforceable. A rule specifying that resource consent is required for a brothel or commercial sexual services to locate within 400m from such a wide variety of places would be difficult to implement. It would also be very difficult to determine which public places would be included and where exactly the 400m area extends. The Plan Change does recognise that in some public areas, due to the presence of child and family orientated entertainment, such as Central Commercial Area 6, resource consent should be required as such activities could be offensive to ordinary members of the public using the area. The Plan Change also requires resource consent for brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.

DPC05/03	D4	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking to extend the area of Petone where brothels and commercial sexual services are excluded from being established at ground floor level to include the bulk retail areas west of Victoria Street to the Hutt Road intersection, be **REJECTED** and the provisions of the Plan Change remain without change.

Reasons:

Jackson Street, between Victoria Street and Cuba Street, mainly consists of one and two storey buildings with small frontages with commercial and retail activity at the ground floor level. The area has a distinctive built form, style and character. As such it is considered that the character and amenity of Petone Commercial Activity Area 1 may be compromised if brothels were to be established as most of the buildings have commercial or retail shop fronts. However as discussed in the Section 32 Report, the area to the west along Jackson Street is an area for large scale vehicular orientated retail activities and is well separated from residential areas and would not suffer a loss of character or amenity values.

DPC05/03	D5	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking to exclude brothels and commercial sexual services from all retail shopping precincts in the Hutt Valley or at least from the ground floor of these areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Brothels and commercial sexual services will require resource consent at ground floor level of all Suburban Commercial Areas, Central Commercial Area 6 and the ground floor of Petone Commercial Activity Area 1. These areas encompass the majority of retail precincts in Hutt City. It was considered in the Section 32 Report that the area to the west along Jackson Street is an area for large scale vehicular orientated retail activities and is well separated from residential areas and therefore would not suffer a loss of character or amenity values if a brothel was to establish in the area. The Central Commercial Area (excluding Central Commercial Area 6) has a range of activities that generate effects that are considered to be similar to those created by a brothel and commercial sexual services.

DPC05/03	D6	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that all brothels and commercial sexual services be licensed annually and comply with all relevant Council bylaws, the Health Act 1956, the Building Act 1991 and the Building Regulations 1992, and that the licence be displayed in a prominent place, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

This matter is not within the ambit of the Plan Change and falls under the relevant legislation contained in the submission.

DPC05/03	D7	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that there be only one brothel within 400 metres of any other to prevent areas of notoriety developing, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

It is anticipated that areas of notoriety will not develop given that brothels have been present in Hutt City for some time without a 'red light' district developing as is the case in other cities. Because the Plan Change allows brothels to be established in several parts of the city without resource consent, the likelihood of areas of notoriety developing is considered to be small. Further, the cumulative effect of granting resource consent can be taken into account where resource consents are sought to take into account the effect of brothels locating in one area.

DPC05/03	D8	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that the provisions relating to signage be extended to include any sexually explicit, lewd or otherwise offensive visual material, and that they be not illuminated by flashing lights or by neon lights or be visible from any residential area, and that if this is not included in the District Plan it be achieved by a bylaw, be ACCEPTED and the provisions of the Plan Change be amended by adding the word 'content' after the word 'design' in the provisions relating to signage, as follows:

Add to Rule 14B 2.3 "Restricted Discretionary Activities" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services."

Add to "Matters in Which Council has restricted its discretion and Standards and Terms" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services.

(i) Design, content, location, size, height and appearance of signs.

The extent to which the design, content, location, size, height and appearance of signs will have adverse effects on the amenity values of the area.

The extent to which the design, content, location, size, height and appearance of signs are likely to cause a nuisance or serious offence to ordinary members of the public using the area.

Whether the design, content, location, size, height and appearance of signs are likely to be incompatible with the existing character or use of the area."

Reasons:

As discussed in the Section 32 Report, it is acknowledged that explicit signs advertising brothels and commercial sexual services could have an adverse effect on amenity values and be offensive to members of the public. The Plan Change had restricted discretion to the extent the design, location, size, height and appearance of signs will have adverse effects on the amenity values of the area, are likely to cause a nuisance or serious offence to ordinary members of the public and to the extent the signs are likely to be incompatible with the existing character or use of the area. However it is considered that inclusion of 'content' would clarify what matters can be assessed when considering a resource consent application for signage.

DPC05/03	D9	Hutt City Hall Trust
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Decision:

That the submission lodged by Hutt City Hall Trust, seeking that a bylaw be established to prohibit soliciting, be REJECTED and the provisions of the Plan Change remain without change, but Council officers be asked to consider the need for such a bylaw in the event that soliciting becomes a concern.

Reasons:

The issue of street soliciting is best dealt with through bylaws as it is an activity carried out on legal road rather than through the District Plan. This approach is considered acceptable given that street soliciting has not been an issue in Hutt City in the past.

DPC05/04	D1	Andrew Percival Thomas
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Decision:

That the submission lodged by Andrew Percival Thomas, seeking to prohibit prostitution from areas children frequent such as residential areas and shopping centres and within 400 metres of schools, community centres and places of worship, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Rules in the District Plan need to be specific and enforceable. A rule specifying that resource consent is required for a brothel or commercial sexual service within 400m of certain public places would not be specific enough given the difficulty in determining which public places would be included and where exactly the 400m area extends. However

the Plan Change recognises that in some public areas, due to the presence of child and family orientated entertainment, such as Central Commercial Area 6, resource consent is required as such activities could be offensive to ordinary members of the public using the area. The Plan Change also requires resource consent for brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.

DPC05/05	D1	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that Council acts consistently with other legislation such as the Prostitution Reform Act 2003 and the Bylaws Act 1910, be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The Plan Change is consistent with Sections 12 - 15 of the Prostitution Reform Act as it specifies that territorial authorities can make bylaws to control signage that advertise commercial sexual services and regulate the location of brothels of any scale but not extending to other businesses of prostitution. Section 15 provides that, when considering whether to issue a resource consent for a business of prostitution, the territorial authority must have regard to whether the business 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 is incompatible with the existing character or use of the area in which the land is situated.

DPC05/05	D2	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that Council allow brothels and commercial sex services in the

same way they would allow for bars and other adult entertainment focussed businesses, be ACCEPTED and the provisions of the Plan Change be amended by removing the words 'adjacent to' and replacing 'or on the opposite side of a road' with 'or directly across the road' in the following provisions:

Chapter 5A, "Central Commercial Activity Area". Make amendments to the following:

Add to Rule 5A 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Add to Rule 5A 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services in the area shown in Appendix Central Commercial 6."

Chapter 5B, "Petone Commercial Activity Area". Make amendments to the following:

Add to Rule 5B 2.1.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on the ground floor of buildings."

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Add to Rule 5B 2.2.1 "Permitted Activities" the following:

"Brothels and commercial sexual services."

Chapter 5C, "Suburban Commercial Activity Area". Make amendments to the following:

Add to Rule 5C 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on the ground floor of buildings."

Add to Rule 5C 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Chapter 5D(ii), "Special Commercial Activity Area - Boulcott Village". Make amendments to the following:

Add to Rule 5D(ii) 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Changes to Chapter 6 – Business

Chapter 6A, "General Business Activity Area". Make amendments to the following:

Add to Rule 6A 2.4 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Chapter 6B, "Special Business Activity Area". Make amendments to the following:

Add to Rule 6B 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

The Plan Change generally treats brothels and commercial sexual services in the same way as bars and other adult entertainment focused premises to the extent that resource consent is not needed in commercial areas and business areas – except Central Commercial Area 6 and Petone Commercial Activity Area 1 (ground floor) as outlined in the Section 32 Report. The Plan Change does however require resource consent to be obtained in areas where brothels and commercial sexual services are on a site abutting, adjacent to or on the opposite side of a road from schools, pre-school facilities, churches and other religious establishments or a residential activity area. This requirement is not in place for other adult entertainment focused activities and it is considered the word 'adjacent' is not specific enough and could result in problems implementing the provision. Also the use of 'adjacent' is not consistent with the wording used in other provisions of the District

Plan where only 'abutting' is used. The words 'or on the opposite side of a road' were also considered to be open to interpretation in respect of the distance involved, and were amended to 'or directly across the road' to add certainty to the rule.

DPC05/05	D3	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that sex workers who are working from home be governed by the same conditions that control any other person who works from home without having to apply for resource consent, be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

Businesses of prostitution that fall within the District Plan's definition of home occupation will be able to operate as a home occupation as the effects of such operations are expected to be compatible with surrounding residential uses.

DPC05/05	D4	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that the use of buffer zones around sites such as schools not be used as this is contrary to the aims of the Prostitution Reform Act 2003 and any illegal sexual behaviour is covered by the Summary Offences Act 1981, be ACCEPTED and the provisions of the Plan Change be amended by removing the words 'adjacent to' and replacing 'or on the opposite side of a road' with 'or directly across the road' in the following provisions:

Chapter 5A, "Central Commercial Activity Area". Make amendments to the following:

Add to Rule 5A 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Add to Rule 5A 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services in the area shown in Appendix Central Commercial 6."

Chapter 5B, "Petone Commercial Activity Area". Make amendments to the following:

Add to Rule 5B 2.1.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on the ground floor of buildings."

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Add to Rule 5B 2.2.1 "Permitted Activities" the following:

"Brothels and commercial sexual services."

Chapter 5C, "Suburban Commercial Activity Area". Make amendments to the following:

Add to Rule 5C 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on the ground floor of buildings."

Add to Rule 5C 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Chapter 5D(ii), " Special Commercial Activity Area - Boulcott Village". Make amendments to the following:

Add to Rule 5D(ii) 2.3 "Discretionary Activities" the following:

"Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area."

Changes to Chapter 6 – Business

Chapter 6A, "General Business Activity Area". Make amendments to the following:

Add to Rule 6A 2.4 "Discretionary Activities" the following:

“Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.”

Chapter 6B, “Special Business Activity Area”. Make amendments to the following:

Add to Rule 6B 2.3 “Discretionary Activities” the following:

“Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.”

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

The Section 32 Report recognised that a buffer zone of some degree was desired by the wider public as expressed through submissions on the Discussion Document. However the proposed buffer zone created by the provision which requires resource consent for brothels and commercial sexual services on a site abutting, adjacent to or on the opposite side of a road from schools, pre-school facilities, churches and other religious establishments or a residential activity area is considered to be unclear. It is considered the word ‘adjacent’ is not specific enough and could result in the provision being interpreted too broadly, becoming overly restrictive. Also the use of ‘adjacent’ is not consistent with the wording used in other provisions of the District Plan where only ‘abutting’ is used. The words ‘or on the opposite side of a road’ were also considered to be open to interpretation in respect of the distance involved, and were amended to ‘or directly across the road’ to add certainty to the rule.

DPC05/05	D5	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that the definition of brothel as contained within the Prostitution Reform Act 2003 not be used, be REJECTED and the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

It is good practice to use the definition from the parent legislation to ensure consistency.

DPC05/05	D6	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that brothels be allowed to operate in industrial zones if sex workers so wish, although the nature of industrial zones is not always conducive to providing such facilities as safe street lighting, public transport, pedestrian facilities, and complementary businesses and services, be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

There are no activity areas classed as 'Industrial' in Hutt City. However, brothels are permitted in General Business and the Special Business Activity Areas except where located on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity area.

DPC05/05	D7	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that in respect to individual sex workers and/or small owner operated brothels any Council processes that lead to individual sex workers being identified publicly be opposed, be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

A notified and limited notified resource consent application requires that the applicant's name is included in the public notice, however the application for resource consent does not necessarily have to be made by the sex worker/s.

DPC05/05	D8	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the Zealand Prostitutes Collective, seeking that sex workers have options beyond working for operators and have the option of working from home, be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

Trade competition cannot be considered under the Resource Management Act and accordingly the Plan Change makes no reference to the size and scale of brothels. Businesses of prostitution that fall within the definition of home occupation are subject to the same rights as any other home occupation.

DPC05/05	D9	New Zealand Prostitutes Collective
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Further Submission in Opposition: Desmond and Gillian Ford

Decision:

That the submission lodged by the New Zealand Prostitutes Collective, seeking that the content of signage be controlled but the definition of "signage" not include posters, flyers and stickers issued by the Ministry of Health pertaining to sexual health requirements under Sections 8 and 9 of the Prostitution Reform Act 2003, be PARTIALLY ACCEPTED and the provisions of the Plan Change be amended by adding the word 'content' after the word 'design' in the provisions relating to signage, as follows:

Add to Rule 14B 2.3 "Restricted Discretionary Activities" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services."

Add to "Matters in Which Council has restricted its discretion and Standards and Terms" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services.

(i) Design, content, location, size, height and appearance of signs.

The extent to which the design, content, location, size, height and appearance of signs will have adverse effects on the amenity values of the area.

The extent to which the design, content, location, size, height and appearance of signs are likely to cause a nuisance or serious offence to ordinary members of the public using the area.

Whether the design, content, location, size, height and appearance of signs are likely to be incompatible with the existing character or use of the area."

That the further submission lodged by Desmond and Gillian Ford be REJECTED.

Reasons:

The part of the Plan Change relating to signage only relates to signs advertising brothels and commercial sexual services. The definition of "sign" in the District Plan is broad but does not include advertising matter placed on or within a display window of a shop, business (excluding home occupation) or industrial premises. Therefore it is considered that there is sufficient scope to place posters and flyers in shop windows. However it is considered that inclusion of the word "content" would clarify what matters can be considered when assessing a resource consent application for signage.

DPC05/06	D1	Warren Thessman
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Decision:

That the submission lodged by Warren Thessman, seeking that public notification be a requirement, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Whether a resource consent application is notified is determined on a case by case basis under section 93 of the Resource Management Act. Where the environmental effects of an activity are expected to be more than minor the application must be publicly notified. If the effects are

expected to be no more than minor and those people Council considers to be adversely affected have given written approval, the application need not be notified. If people who may be adversely affected have not given written approval the application will be notified on a limited basis.

DPC05/07	D1	Ministry of Education
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Decision:

That the submission lodged by the Ministry of Education, seeking that brothels and commercial sexual services within a 250m radius of schools and licensed early childcare centres are non-complying activities in the Central, Petone, Suburban and Special Commercial, General and Special Business, and General and Rural Residential Activity Areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Most schools in Hutt City are within the Residential Activity Area where resource consent is required as a discretionary activity allowing a full consideration of the effects of the proposal. This includes the provisions in the Prostitution Reform Act which state regard must be had to whether the business 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 is incompatible with the existing character or use of the area in which the land is situated.

As discussed in the Section 32 Report, provision has been made for schools and licensed early childhood centres that are located in activity areas where brothels and commercial sexual services are permitted activities by requiring consent for "brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities...".

DPC05/07	D2	Ministry of Education
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Decision:

That the submission lodged by the Ministry of Education, seeking the inclusion of the following policies in each zone:

"To encourage applicants to consult with local schools and the Ministry of Education prior to lodging applications for brothels and commercial sexual services when they are within 250m of schools and licensed early childhood centres."

“To ensure that brothels and commercial sexual services are managed to avoid, remedy or mitigate adverse effects on schools and licensed early childhood centres.”

“To discourage signage of brothels and commercial sexual services when they are within a 250m radius of schools and licensed early childhood centres.”

be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Applicants would be required to consult with schools when they are considered to be adversely affected which depends on each particular application. As discussed in the Section 32 Report, provision has been made for schools and licensed early childhood centres that are located in activity areas where brothels and commercial sexual services are permitted activities by requiring consent for “brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities...”.

A resource consent is required for all signage relating to brothels and commercial sexual services.

DPC05/07	D3	Ministry of Education
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Decision:

That the submission lodged by the Ministry of Education, seeking that signage be restricted in size and nature, be ACCEPTED and the provisions of the Plan Change be amended by adding the word ‘content’ after the word ‘design’ in the provisions relating to signage, as follows:

Add to Rule 14B 2.3 “Restricted Discretionary Activities” the following:

“In all Activity Areas all signs advertising brothels and commercial sexual services.”

Add to “Matters in Which Council has restricted its discretion and Standards and Terms” the following:

“In all Activity Areas all signs advertising brothels and commercial sexual services.

(i) Design, content, location, size, height and appearance of signs.

The extent to which the design, content, location, size, height and appearance of signs will have adverse effects on the amenity values of the area.

The extent to which the design, content, location, size, height and appearance of signs are likely to cause a nuisance or serious offence to ordinary members of the public using the area.

Whether the design, content, location, size, height and appearance of signs are likely to be incompatible with the existing character or use of the area."

Reasons:

As outlined in the Section 32 Report, it is acknowledged that explicit signs advertising brothels and commercial sexual services could have an adverse effect on amenity values and be offensive to members of the public. The Plan Change has restricted discretion to the extent to which the design, location, size, height and appearance of signs will have adverse effects on the amenity values of the area, are likely to cause a nuisance or serious offence to ordinary members of the public and to the extent the signs are likely to be incompatible with the existing character or use of the area. Accordingly any resource consent application for a sign can be assessed in terms of its compatibility with the existing use of the area which, where relevant, will include schools. However it is considered that inclusion of the word "content" would clarify what matters can be considered when assessing a resource consent application for signage.

DPC05/08	D1	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking that brothels (including home occupations) be prohibited in and near to any residential areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Resource consent is required for brothels in residential areas and discretion has not been restricted. This allows a full consideration of the effects of the proposal including the provisions in the Prostitution Reform Act which states regard must be had to whether the business 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 is incompatible with the existing character or use of the area in which the land is situated.

For an activity to be classed as a home occupation several conditions must be complied with. The conditions ensure that home occupations have environmental effects that maintain amenity values. As discussed in the Section 32 Report, small-scale brothels operating from dwelling houses as home occupations are unlikely to be distinguishable from other types of home occupations and adverse effects are likely to be minor.

DPC05/08	D2	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking that the segregation of activities be at a distance of at least 250m but preferably 400m, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Rules in the District Plan need to be specific and enforceable. A rule specifying that resource consent is required for a brothel or commercial sexual service within 250m or 400m of schools, pre-school facilities, churches and other similar religious establishments or residential activities would not be sufficiently specific. The Plan Change requires resource consent for brothels and commercial sexual services on a site abutting or directly across the road from schools, pre-school facilities, churches and other similar religious establishments or a residential activity.

DPC05/08	D3	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking that brothels not be permitted anywhere as of right without resource consent and showing respect for the feelings of neighbours, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The effects of a brothel are not anticipated to be significantly different from many other commercial businesses and therefore the Plan Change permits brothels and commercial sexual services in commercial and business areas with the exception of the ground floor of Central Commercial Area 6 and Petone Commercial Activity Area 1.

The Resource Management Act is an effects based framework which requires activities to be managed by the environmental effects an activity generates. As outlined in the Section 32 Report, it is considered that the environmental effects of brothels and commercial sexual services will not be incompatible with other activities permitted in the Business, Suburban Commercial, Petone Commercial and Central Commercial Activity Areas (except Central Commercial Area 6) and accordingly will not require resource consent. The release of the Discussion Document resulted in submissions stating concern with brothels and commercial sexual services establishing near schools, pre-school facilities and churches/other religious activities. The submission resulted in the Plan Change controlling the location of brothels and commercial sexual services in such situations, as discussed in the Section 32 Report.

DPC05/08	D4	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking to prohibit brothels near retail shops (supermarkets etc), transport interchanges, recreational facilities and community service facilities, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

This would essentially limit brothels to rural areas and is not an effects based approach as required by the Resource Management Act.

Resource consent will be required for brothels and commercial sexual services within all Residential Activity Areas, Central Commercial Area 6 and on sites abutting or directly across the road from schools, pre-school facilities, churches and other religious establishments. This is in effect a buffer zone around sites where it is considered that brothels and commercial sexual services may be incompatible with existing activities, as discussed in the Section 32 Report.

It is considered to be problematic to extend the rule requiring resource consent for all sites abutting or directly across the road from areas where young people gather such as playgrounds, transport hubs and other areas due to the difficulty in clearly identifying and defining such places, which will change over time.

DPC05/08	D5	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking to prohibit soliciting in any public place or any place visible from a public place, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The issue of street soliciting is best dealt with through bylaws as it is an activity carried out on legal road rather than through the District Plan. This approach is considered acceptable given that street soliciting has not been an issue in Hutt City in the past.

DPC05/08	D6	Lance David Thomas
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Decision:

That the submission lodged by Lance David Thomas, seeking to place specific stringent restrictions on signage that reflect the nature of the activity, be ACCEPTED and the provisions of the Plan Change be amended by adding the word 'content' after the word 'design' in the provisions relating to signage, as follows:

Add to Rule 14B 2.3 "Restricted Discretionary Activities" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services."

Add to "Matters in Which Council has restricted its discretion and Standards and Terms" the following:

"In all Activity Areas all signs advertising brothels and commercial sexual services.

(i) Design, content, location, size, height and appearance of signs.

The extent to which the design, content, location, size, height and appearance of signs will have adverse effects on the amenity values of the area.

The extent to which the design, content, location, size, height and appearance of signs are likely to cause a nuisance or serious offence to ordinary members of the public using the area.

Whether the design, content, location, size, height and appearance of signs are likely to be incompatible with the existing character or use of the area."

Reasons:

As discussed in the Section 32 Report, it is acknowledged that explicit signs advertising brothels and commercial sexual services could have an adverse effect on amenity values and be offensive to members of the public. The Plan Change has restricted discretion to the extent the design, location, size, height and appearance of signs will have adverse effects on the amenity values of the area, are likely to cause a nuisance or serious offence to ordinary members of the public and to the extent the signs are likely to be incompatible with the existing character or use of the area. However it is considered that inclusion of the word "content" would clarify what matters can be considered when assessing a resource consent application for signage.

DPC05/09	D1	Eugene and Fiona van Wyk
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Decision:

That the submission lodged by Eugene and Fiona van Wyk, seeking to not allow brothels and sexual commercial services in public areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

As discussed in the Section 32 Report, a legal opinion obtained by Local Government New Zealand stated a territorial authority cannot prohibit or ban brothels from all parts of the city.

DPC05/09	D2	Eugene and Fiona van Wyk
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Decision:

That the submission lodged by Eugene and Fiona van Wyk, seeking that advertising of brothels and sexual commercial services not be permitted in public areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

As discussed in the Section 32 Report, it is acknowledged that explicit signs advertising brothels and commercial sexual services could have an adverse effect on amenity values and be offensive to members of the public. The Plan Change has restricted discretion to the extent the

design, location, size, height and appearance of signs will have adverse effects on the amenity values of the area, are likely to cause a nuisance or serious offence to ordinary members of the public and to the extent the signs are likely to be incompatible with the existing character or use of the area. Accordingly any resource consent application for a sign can be assessed in terms of its compatibility with the existing use of the area which, where relevant, will include schools. Prohibiting all signs would not be lawful under the Resource Management Act.

DPC05/10	D1	Angus D Gibb
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Decision:

That the submission lodged by Angus D Gibb, seeking that any 'legalised' brothels (including home occupations) not be permitted anywhere near his property or other residential areas, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

If an application is made for a brothel and the submitter is considered to be an affected person he will be consulted and given the opportunity to oppose the application.

For an activity to be defined as a home occupation several criteria must be complied with which ensure that home occupation activities have effects that maintain amenity values and are compatible with other residential activity. A rule not allowing commercial sexual services to be considered a home occupation would not be an effects based approach as is required by the Resource Management Act.

DPC05/10	D2	Angus D Gibb
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Decision:

That the submission lodged by Angus D Gibb, seeking that brothels not be permitted, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

The effects of a brothel are not anticipated to be significantly different from many other commercial businesses and therefore the Plan Change permits brothels and commercial sexual services in commercial and business areas with the exception of Central Commercial Area 6 and Petone Commercial Activity Area 1.

The Resource Management Act is an effects based framework which requires activities to be managed by the environmental effects an activity generates. As discussed in the Section 32 Report, it is considered that the environmental effects of brothels and commercial sexual services will not be incompatible with other activities permitted in the Business, Suburban Commercial, Petone Commercial and Central Commercial Activity Areas (except Central Commercial Area 6) and accordingly will not require resource consent. The release of the Discussion Document resulted in submissions stating concern with brothels and commercial sexual services establishing near schools, pre-school facilities and churches/other religious activities. The submission resulted in the Plan Change controlling the location of brothels and commercial sexual services in such situations, as discussed in the Section 32 Report.

DPC05/11 D1 Parish Council of the Parish of the Hutt City
Uniting Congregations (Methodist - Presbyterian)

Further Submitters in Opposition: Hutt City Hall Trust
Desmond and Gillian Ford

Decision:

That the submission lodged by the Parish Council of the Parish of the Hutt City Uniting Congregations (Methodist - Presbyterian), seeking removal of the words "...churches and other similar religious establishments" from the proposed rule (c), be REJECTED and the provisions of the Plan Change remain without change.

That the further submissions lodged by Hutt City Hall Trust and Desmond and Gillian Ford be ACCEPTED to the extent that the provisions of the Plan Change remain without change.

Reasons:

It is considered that brothels and commercial sexual services may be inappropriate next to churches and other religious establishments, as outlined in the Section 32 Report, and consequently resource consent will be required for sites abutting or directly across the road from churches and other religious establishments. The resource consent process will ensure consultation with churches and other religious establishments is undertaken when an application is made for a brothel next to a church or religious establishment.

DPC05/12 D1 Helen Joan Widdicombe

Decision:

That the submission lodged by Helen Joan Widdicombe, seeking to recognise private operators as defined in the Act and to not zone sole operator brothels into a small area with large operators, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Trade competition cannot be considered as stated in section 74(c) of the Resource Management Act when preparing or changing a District Plan. Accordingly the Plan Change makes no reference to the size and scale of brothels, as outlined in the Section 32 Report.

Small scale brothels that operate from dwelling houses and that meet the conditions of a home occupation are permitted without resource consent in the Residential Activity Area.

DPC05/13	D1	Jackson Street Programme
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Decision:

That the submission lodged by the Jackson Street Programme, seeking that brothels and commercial sexual services not be permitted in Jackson Street between Cuba and Victoria Streets, be REJECTED and the provisions of the Plan Change remain without change.

Reasons:

Resource consent will be required for ground floor brothels and commercial sexual services in Petone Commercial Activity Area 1, as such areas are required to have display windows and brothels and commercial sexual services would adversely affect amenity values and compromise the character of these areas, as outlined in the Section 32 Report.

Resource consent will not be required for brothels at first floor level as it is not anticipated that brothels and commercial sexual services would have environmental effects that justify requiring resource consent.

RW Styles
CHAIR