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Committee Secretariat
Local Government and Environment Select Committee
Parliament Buildings
Wellington

Submissions of the Manukau City Council on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 to the Local Government and Environment Select Committee.

1.0 Executive Summary

(1) Street prostitution is a significant problem for a small number of communities in Manukau. Although the problem is not widespread, the harm caused by the effects of street prostitution causes significant concern and anger in these communities. The problem is also uniquely local and requires a local solution.

(2) The anticipated benefits from the legalisation of prostitution have not been, and cannot be, realised in the street sector. There is general consensus that street workers must be encouraged to move indoors or leave the industry altogether. Opinions on the means to achieve this however differ. Evidence also shows that most street prostitutes are in business out of choice and are unlikely to appreciate offers of assistance to leave the industry.

(3) Manukau City Council (‘Council’) has implemented a variety of non-regulatory measures to address the problems relating to street prostitution. These efforts have had limited success to date. This is mainly because the success of a purely non-regulatory encouragement based approach depends on the voluntary goodwill of the street workers. The workers themselves have however been newly empowered by a completely unregulated regime and have no incentive to seek or maintain the benevolence of the local community. It is illogical and naïve to think support and negotiation itself without legally enforceable deterrence is sufficient to achieve appropriate conformity to community standards.

(4) Street prostitution remains a complex social issue that requires a multi-faceted approach. Like every other piece of legislation that seeks to address a complex social issue, the Manukau City Council (Regulation of Prostitution in Specified Places) Bill (‘the Bill’) can only play a part in the solution. The Bill however offers a fair compromise between the rights of street workers and the rights of local communities and plugs an important gap in the ability of communities to address the problems associated with street prostitution. Although the problems are confined to a small area of Manukau, Council unanimously endorses the Bill.
2.0 Introduction and Background

(1) Certain communities in Manukau are disproportionately and detrimentally affected by the generated effects of street prostitution. Street prostitution has been a relatively recent issue in the city and has had a noticeable presence since the late 1990s. Street prostitution has been concentrated in Hunter’s Corner and Manurewa Town Centres, although there have been sporadic instances of the activity occurring in areas such as Old Papatoetoe, Mangere and Otara town centres.

(2) The situation in Manukau is unique. The activity occurs in established areas that are surrounded by residential properties and small businesses. This is different to the situation in other street prostitution centres such as the Auckland and Christchurch CBDs. The residential developments in the other centres mainly took place after the establishment of the street prostitution sector. Street prostitution in inner city areas is also likely to face less opposition as the residents usually live in apartment style accommodation which is more secure and removed from street level. Inner city communities are also more likely to tolerate a larger degree of noise or disorder. Council’s advocacy for a local Bill is recognition of the fact that the issues in Manukau are unique.

(3) The residents and businesses in the affected areas in Manukau have witnessed the establishment, and then the increase, of street prostitution related problems in their communities. They now face the burden of living and working in communities that are becoming infamous for their problems despite making every effort to contribute positively and build a sense of pride and belonging in their communities. These communities also face the problem of trying to develop their communities and attract investment without being able to address a major factor that contributes to the infamy and decline of their communities.

(4) There are wide ranging views in every community about the business of prostitution. These range from the tolerance of what could be viewed as a private consensual matter between adults, to viewing prostitutes as victims that need to be saved or rehabilitated, or arguments based on the immortality of the behaviour. Council does not seek to adopt any moral perspective and acknowledges the fact that prostitution as a legal enterprise should be able to occur in accordance with the law. Council argues however that there is no reason to accord street prostitution a special status and make it exempt from regulation. Public authority intervention is justified and necessary to regulate behaviour that occurs in public places and generates significant harm to the public.

(5) The vast majority of Manukau communities and New Zealand communities are not affected by this problem and could be forgiven for dismissing it as the complaints of a vocal minority. Nevertheless the Manukau community sympathises with the situation of the affected communities and Council unanimously endorses the relief offered to these communities through the Bill.

(6) The time, expense and effort involved in seeking a solution to this problem have been significant and ultimately frustrating to date. Council and our communities believe that the Bill provides an effective, balanced and much needed tool to address the harm relating to street prostitution in our communities. The Bill is also consistent with the purposes of the Prostitution Reform Act 2003 (PRA) and offers an effective tool to address the shortcomings and unintended consequences of the PRA.
3.0 The Effects of the Prostitution Reform Act 2003

(1) Council submits that the PRA has had two major unanticipated consequences that the Bill is likely to address. Firstly there has been an increase in the number of street prostitutes and especially underage prostitutes in the city. This contention is based on feedback from affected communities and businesses in Manukau. Council acknowledges that the empirical evidence to support or disprove this claim is difficult to gather.

(2) The evidence to show that the PRA has resulted in little change to the number of street prostitutes is weak and unconvincing. Nevertheless, what is not in contention is that the intended benefits of a reduction in the street prostitution sector that was cited as a benefit of the PRA, has not materialised.

(3) Secondly, Council submits that the severity of the generated effects of street prostitution has increased in local communities since the enactment of the PRA. The sector has naturally taken advantage of the lack of regulation and has no incentive to seek the goodwill or tolerance of the community it operates in.

3.1 The size of the problem

(1) Council acknowledges that the street prostitution sector is not large and affects a small proportion of the city. The 2005 report of the Prostitution Law Review Committee (PLRC) estimated that there were approximately 150 street workers in the Counties Manukau Police District. The Christchurch School of Medicine survey (CSOM) for the PLRC estimated that the street based sector made up 11% of the industry in 2006.¹

(2) There are major methodological difficulties in estimating the size of the sector as the industry remains discreet. During consideration of the Prostitution Reform Bill in 2002, the Justice and Electoral Select Committee was concerned about the “logical” assumption that decriminalisation would lead to an increase in prostitution numbers. This led to a recommendation that the PLRC conduct an assessment of the numbers of people involved in the industry at the time and five years after the law was passed. The methodology used for this determination however makes any conclusion meaningless and flawed.

(3) Information of the numbers before law reform was carried out by a survey of Police Officers between October 2003 and February 2004. The Counties Manukau Police were unable to provide estimated numbers and therefore figures for the District were extrapolated from New Zealand population figures. Based on this method it was determined that there were approximately 150 street sex workers in Counties Manukau and a total of 510 in the Auckland region.²

(4) Using the survey of Police officers as “baseline data”, an estimation of sex workers was carried out by CSOM in 2006 with assistance of the New Zealand Prostitutes Collective. This estimation found that the number of sex workers in 2006 was less than half of the estimation during decriminalisation. The 2006 study estimated approximately 106 street based sex workers in the Auckland region. A second estimation was carried out in 2007 and it estimated 230 street workers in the Auckland region.³ All three determinations of numbers of street prostitutes used different methodologies which resulted in wildly varying

³ Ibid, 33-34
estimations. This makes any meaningful comparison between pre and post decriminalisation numbers impossible.

(5) The PLRC however accepted that there was an increase in the numbers of prostitutes in the street sector in Auckland during 2007. This is in line with the quantitative survey carried out by CSOM where a quarter of the respondents cited the legality of their work as one of the reasons for entering the sex industry. However, despite stating that direct comparisons between pre and post decriminalisation are not possible and receiving submissions to the contrary by community groups in Manukau, the PLRC concluded that the PRA had little impact on the number of sex workers.

(6) Council's submits that in light of the above fatal flaws in the data used by the PLRC, its conclusion cannot be considered reliable. Council further submits that the numbers and more importantly the generated effects of street prostitutes have increased since the passage of the PRA.

3.2 Increase in severity of generated effects

(1) The PRA does not specifically allow for local regulation of street prostitution and curbs the ability of councils to regulate the activity under existing powers. Council submits that an unregulated street sector has allowed a deterioration of behaviour and an exploitation of the protections afforded by the law to the detriment and chagrin of local communities.

(2) Prior to the PRA, street prostitution was generally of small scale, clandestine, and communities often turned a blind eye toward it or tolerated it. If the anti-social behaviour became unacceptable, powers existed for the community via the Police to take action. Therefore local communities had the power to either tolerate the activity or demand that the Police enforce the provisions of the law.

(3) With the introduction of the PRA the "power" has shifted from the community to the sex industry. This has resulted in the activity, and therefore its negative effects, becoming more visible and occurring at non-traditional times of the day. Residents have also reported bolder, offensive and more extreme behaviour from the prostitutes. As a result, some members of the community directly affected by this behaviour have felt vulnerable, defenceless and marginalised in their own communities.

(4) The generated effects of street prostitution in Manukau have caused significant concern in the affected areas. These effects include:

- The noise from circling traffic and boisterous behaviour from prostitutes and clients
- Anti-social behaviour as a result of intoxication including fighting, public drunkenness and interference with traffic
- Offensive and dangerous litter such as used syringes, condoms, human waste and alcohol containers
- Soliciting during non-traditional times including during times that children are on the way to school
- Aggressive solicitation of people waiting at traffic lights, using public amenities, customers entering local businesses and children
- Involvement of underage girls in street prostitution
- Involvement and profits for gangs from street prostitution

4 Ibid, 39
These effects have a significant impact on the quality of life, the look and feel of neighbourhoods, amenity value of public spaces and return on investment for residents and businesses. Council has also extended cleaning services in these areas to protect public health and safety at an additional financial burden to the ratepayer.

The response to these effects has brought the public and sex workers into direct conflict in Hunter’s Corner through the formation and operation of the Papatoetoe Residents Reclaiming Our Streets (PRROS) group. The group of local business people and residents has engaged in behaviour that seeks to disrupt the business of street workers and their clients. This has led to threats, confrontation and violence. Data from Council’s CCTV systems suggests that there was an initial reduction of prostitution in Hunter’s Corner that could be attributed to the PRROS group.

4.0 Council’s Approach

Council has advocated for a number of years to have an effectively regulated street prostitution sector. During the passage of the Prostitution Reform Bill, Council requested that it be amended to regulate or prohibit street prostitution and to provide appropriate enforcement powers to the Police. Since that time Council has promoted both legislative and non-legislative tools to address this issue.

4.1 Legislative Solutions

(1) After significant local concern about the increase in the numbers and the deleterious effects of street prostitution, Council promoted the Manukau City Council (Control of Street Prostitution) Bill 2005 (‘2005 Bill’). The purpose of the 2005 Bill was to prohibit soliciting and associated conduct in public places in Manukau City. The 2005 Bill:

(i) made it an offence to solicit for prostitution in a public place with a maximum $10,000 fine on summary conviction or $500 instant fine,

(ii) applied to both prostitutes and their clients,

(iii) applied to conduct connected to prostitution with a maximum $5,000 fine on summary conviction or $500 instant fine,

(iv) provided the Police with powers to require information to be supplied and to arrest offenders.

(2) The 2005 Bill was introduced to Parliament by the Hon. George Hawkins as Local Member of Parliament for Manurewa. The Bill failed in its second reading. The majority of the Local Government and Environment Select Committee opposed the 2005 Bill on the following grounds:

- undesirability of conflicting laws based on geographic boundaries
- local laws amending public laws set an undesirable precedent
- it was contradictory to the intent of the PRA to make prostitution a legitimate profession
- there was a lack of Police resources to enforce the law
- unreasonable infringement of Bill of Rights – mainly right to silence (Bill compelled suspects to provide information to Police)
- existing statutes are adequate to deal with “effects” of street prostitution
- should await the finding of the Prostitution Law Review Committee on the operation of the PRA
Council believes the current Bill addresses most of these concerns and achieves a fair balance between legitimate legislative policy considerations and the reality of the situation faced by Manukau’s communities.

4.2 Non-Legislative Solutions

(1) Council acknowledges the need for a holistic approach and has implemented a number of practical measures to reduce the problems associated with street prostitution. These measures include:

- re-directing and increasing cleaning of affected roads and public spaces
- installation and improvement of lighting
- installation and monitoring of CCTV systems
- Installation of additional rubbish bins
- Closing public car-parks and traffic re-direction efforts
- Provision of funding for volunteer street patrols to deter and report anti-social behaviour
- Enforcement and education of liquor licensees
- Partnership and liaison with local communities through safety groups involving Council, business, Police and NGOs to address the problem

(2) These measures have been implemented at a significant cost of time and ratepayer funds. They have proved to have limited effect in reducing the generated effects of street prostitution or encouraging street workers to move indoors. A major weakness has been the unavailability of an effective legal deterrent.

4.3 Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010

4.3.1 Development process

(1) The frustration of local communities led to direct action by the PRROS group in Hunter’s Corner. Attempts by the group to disrupt the work of the prostitutes and shame the clients were able to achieve a reduction in the incidences of prostitution. However the groups’ efforts caused some concern for the safety of all involved and criticism as to the appropriate boundaries between vigilism and vigilantism. Council therefore undertook to once again investigate solutions to the problem.

(2) In February 2009 Council established a working party, led by the Portfolio Leader for Community Safety to investigate and recommend solutions to address the problem. The working party consisted of Councillors, Community Board members and Council officers. The working party received advice from external sources such as the Ministry of Justice, Police, an international expert on the issue and Council’s solicitors. It also considered available research. The working party recommended the need for legislative and non-legislative solutions to address the issue. The working party also recommended that an immediate priority was to seek an amendment to the Prostitution Reform Act 2003 to address street prostitution. This was endorsed unanimously by Council.

(3) At the same time the Deputy Mayor and Counties Manukau Police met with relevant stakeholders in the Papatoetoe community to diffuse the tensions and implement practical measures to address the problem. The meeting involved affected residents, business groups, the Ministry of Justice and NGOs including the New Zealand Prostitutes Collective and Streetreach. Solutions such as increased Police patrols, reduced direct confrontations and improved NGO response to incidents were implemented. Some of these efforts have proved to be of limited value and of insufficient duration to alleviate the problems faced by affected communities.
(4) After the working party recommendation, the Mayor and Councillors met with a number of national politicians to progress this issue. Based on their advice it was determined that the most viable solution was to once again progress a Local Bill to allow Manukau to control street prostitution within the city.

4.3.2 The Bill

(1) The Bill allows Council to make bylaws designating any public place as a “specified area” where commercial sexual services cannot be provided or received. Such a bylaw must be made after consultation. The Bill specifically restricts Council from designating all public places in Manukau as “specified places”. The Bill has been drafted using the guidance offered by the Wanganui District Council (Prohibition of Gang Insignia) Act 2009 and the debate and deliberations that surrounded that piece of legislation.

(2) The Bill requires Council to be satisfied that the bylaw is reasonably necessary to prevent activities or behaviour in a public place that:

(i) are likely to cause a nuisance or serious offence to ordinary members of the public using the area; or

(ii) are incompatible with the existing character or use of that area

(3) The Bill gives the Police the power to arrest a person if there is a good cause to suspect a person has breached the bylaw. This includes the power to stop and search a vehicle to exercise the power of arrest for breach of the bylaw. Police have the power to stop and search vehicles under other enactments. Council notes however that the Law and Order Select committee commented on the desirability of an express provision for this power when considering the Wanganui District Council (Prohibition of Gang Insignia) Act as “necessary to the efficient enforcement of the provisions of the Bill”. Council agrees with this assessment.

(4) The maximum penalties available under the Bill is $1,000 in the case of an offence under clause 14 (failure to stop or provide details) or $2,000 in the case of an offence under clause 12 (commercial sexual services in a specified place). These are consistent with existing penalties for similar offences such as disorderly behaviour and intimidation.

(5) The test to be applied prior to designating an area as a specified place is consistent with the by-law making provisions under section 145 of the Local Government Act 2002. The extension of the test to “incompatibility with the existing character and use” of an area is recognition that sensitivities surrounding the effects of street prostitution are likely to be different in different areas. Furthermore, the Council is not permitted to designate all public areas as specified areas. This provides assurance to the Committee and street workers that their ability to carry on their trade will be preserved in Manukau.

(6) The Bill proposes targeted intervention to deal with problem areas rather than a broad-brush approach that is inconsistent with the PRA. Council submits that the Bill is an appropriate and reasonable response to the problems faced by local communities and provides an effective tool that can be used in conjunction with other non-legislative measures to address local concerns.
5.0 Response to Criticisms

(1) Council submits that the Bill addresses many of the concerns raised against the 2005 Bill and other concerns raised against a legislative solution to the issue. This section aims to address some of those concerns.

5.1 Local Bill v National Legislation

(1) A local Bill that amends national legislation and creates different rules and standards across the country is considered generally undesirable. For instance the Local Government and Environment Select Committee commented on Manukau’s 2005 Bill that: 5

“This local Bill creates offences that criminalise behaviour that exists throughout New Zealand. If the Bill were passed, citizens would be subject to conflicting criminal laws, depending on their current geographical location.”

(2) Council submits that the above criticism is neither a sufficient nor a justifiable reason against the Bill.

(3) Firstly, it is not apparent that local legislation that criminalises behaviour is inherently objectionable. While carte blanche local criminal law is undesirable on administrative and policy grounds, it is submitted that where a problem is truly localised and subject to the level of public opprobrium evident in Manukau’s communities, localised legislation offers the most effective and the least restrictive approach.

(4) Secondly, the problems related to street prostitution are not a national issue and the vast majority of New Zealand and Manukau communities are not affected by it. The Review of Street Based Prostitution in Manukau City conducted by the Ministry of Justice in 2009 noted that although street prostitution occurred in Auckland, Manukau, Wellington and Christchurch only Manukau saw it as an issue that creates serious problems. The Ministry also acknowledged that Manukau sought national debate on the issue through the Social Sector Forum Deputy Secretaries/Local Government representatives meeting in February 2009. The Ministry’s report noted that: 6

“The consensus of the Forum was that, while some communities do experience problems with street-based prostitution, problems are very localised rather than national. As such, the Forum recognised that MCC should be supported to address these issues at a local level.”

Council agrees with this assessment and submits that street prostitution is a local issue that needs a local solution.

(5) Thirdly there are a number of bylaws that create localised restrictions. Parliament has sanctioned powers under the Local Government Act 2002 to make bylaws at the local level. The powers relating to liquor control and gambling control are good examples of empowering legislation that recognises the principle of subsidiarity and the need for localised responses to local problems. The Wanganui Gang Insignia legislation also offers a precedent to the fact that localised regimes are not only appropriate but a desirable and efficient response to local problems.

5.2 Displacement of Problem

(1) A deemed consequence with any spatial restriction of a problem is that it would simply move to another area where similar problems and need for intervention would arise. Another suggested consequence is that such displacement would lead to prostitutes working in a more clandestine manner in areas that are likely to be less well lit and therefore dangerous. Council disputes that displacement is either an inevitable or even an undesirable consequence of the Bill.

(2) Firstly, the argument assumes zealous and consistent enforcement of the bylaw. Even before the Prostitution Reform Act, the powers against soliciting were not consistently enforced and prostitution was allowed to occur in general, where its generated effects remained within acceptable limits. In that sense it is similar to a number of offences that could otherwise be enforced but is addressed by negotiation or warnings without the need for formal enforcement. Enforcement is likely to involve selective decisions by the Police based on available resources, public opinion or other negotiations that leads to an acceptable compromise between prostitutes and their clients. It is not apparent that the Bill will lead to absolute and permanent movement of prostitution from specified places. The prostitutes themselves, enforcement authorities and local communities may also be willing to achieve a level of activity and behaviour that is within tolerable limits.

(3) Secondly, displacement is not an inevitable consequence of spatial regulation. If the new location does not have the same opportunities or advantages as the previous one, diffusion of the problem is just as likely. The concentration of street prostitution is likely to be related to the accessibility and reputation of the area to prostitutes and their clients. Alternate areas are less likely to be lucrative and any such displacement is unlikely to be sustained. It is more likely that the displacement would be to another established street prostitution area where the activity is less restricted.

(4) Thirdly, displacement could be a positive consequence especially if the problem shifts to an area that is more likely to tolerate the activity and reduce community tensions. This could be away from residential areas or to other established street prostitution areas. Displacement away from residential areas is likely to result in lower social impacts and even offer an added reason for street workers to move indoors or leave the industry altogether.

(5) Council submits that displacement to less sensitive areas is also unlikely to automatically result in safety concerns or exploitation. Such displacement does not constrain the ability of the Police or NGOs to offer support or protection. The work remains legal and displacement does not affect any other rights street workers are entitled to under the law.

5.3 Difficulty in enforcement and questionable effectiveness

(1) There are a number of different strands to this argument. Firstly it is arguable that already scarce Police resources will be used to interpret, detect and enforce the provisions of the Bill. Secondly, it is arguable that legislation itself is a blunt tool to address a complex social issue and could be counterproductive. Thirdly, it is also arguable that there are sufficient existing provisions that deal with the generated effects of prostitution such as public littering and disorder provisions which make the Bill redundant. The further issue of displacement has been addressed above.

5.3.1 Application and Enforcement

(1) It is submitted that scarce police resources and difficulties in applying the provisions of the Bill are not major shortcomings of the Bill. The interpretation of legislation and its
application in real world situations always pose challenges and agencies such as the Police are well used to dealing with. The Bill also borrows definitions from existing legislation which makes this criticism somewhat insincere. It is also submitted that the effective use of scarce Police resources is not an overwhelming barrier to legislation as the Police and other public authorities constantly deal with assigning resources based on priority and situational need.

5.3.2 Effectiveness of Legislation

(1) Council accepts that street prostitution is a complex social problem that needs a multi-faceted solution. Legal sanctions have never proved to be a panacea for social problems. Nor has legislation been sufficient to control street prostitution in the past. Nevertheless, it also seems that a completely legalised regime has fared little better in protecting the workers and seems to have disadvantaged local communities even more.

(2) It is apparent that legislation can never be relied upon to offer a complete solution to any social problem. It is equally untrue to say that legislation can have no part to play in an effective solution. Council agrees with comment from the UK that states:7

"According to the Home Office, the legal regulation of prostitution does not aim to eradicate prostitution, but "attempts to prevent the serious nuisance to the public caused when prostitutes ply their trade in the streets"

(3) There is no reason to hold this Bill to an unrealistic standard and expect it to effectively remove prostitution from specified areas. Our statute books would be very empty indeed if the complete elimination of a problem was the yardstick with which effectiveness was measured. A holistic approach however must include both support and deterrents. People may completely ignore the law, as they do other laws, and as they have done throughout the history of the oldest profession. However, the deterrence provided by the Bill is likely to curb the excesses of behaviour detailed in 3.2(4) above that has resulted from a completely unregulated street prostitution sector. The operation of the PRROS group outlined in 3.2(6) above also suggests that reduction of activity and its effects are possible under a deterrence model.

(4) Although desirable, it may not be likely that restrictions on street prostitution would see a natural movement of street workers to indoor private settings. The PLRC found that street work could either be through choice or circumstance, and due to a number of factors there is little movement between street and indoor managed sectors of the industry.8 It is also not apparent that street workers would want assistance or voluntarily exit the industry.9 The Bill however offers an approach through legal sanctions to provide an added reason to exit the industry or more importantly manage street prostitution and mitigate its negative effects on communities.

(5) In its Review of Street Based Prostitution in Manukau City, the Ministry of Justice commented that legislation has been ineffective in dealing with street prostitution in the past and recommends a multi-agency co-ordinated approach such as the Ipswich Street Prostitution Strategy in the UK.10 The Council notes that a key aspect of the Ipswich Strategy was an enforcement approach of zero tolerance towards kerb crawlers and an escalating enforcement approach towards prostitutes. The New Zealand legal situation

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8 PLRC Report, above n1, 117.
9 Ibid, 70.
10 Ministry of Justice Review, Above n6, para 72.
however does not allow for this. Council submits that the Ipswich Strategy proves Council’s contention that an effective solution needs both support and deterrence.

(6) It has also been argued that legislation to restrict street prostitution could be counterproductive as it would reverse the sense of trust built up between the Police and street workers as a result of legalisation. Council submits that this is neither inevitable nor a marked departure from the current situation. Firstly, a spatial restriction maintains the legality of street prostitution and the protections of the law in other areas. Secondly it is not apparent that decriminalisation has in fact improved the relationship between Police and sex workers as a general rule. While discussing whether decriminalisation had improved the health and safety of sex workers, the PLRC report noted that:11

“There is conflicting evidence on whether violence is reported more often since decriminalisation, but clearly there is still a marked reluctance amongst sex workers to follow through on complaints”

(7) The report also cites another earlier study which showed that women were more likely to report adverse events using informal friendships and work relationships rather than Police or other helpful professionals.12

5.3.3 Availability of existing legislative provisions

(1) Council accepts that some existing legislative provisions deal with the generated effects of street prostitution. For instance public littering, nuisance and offensive behaviour legislation may address some of the complaints.

(2) Council submits however it is unreasonable to expect the Police to detect or deal with minor nuisance behaviour while limiting their ability to address the ostensible cause of the behaviour. Matters such as disorderly behaviour and littering are rarely pursued by the Police in isolation. Expecting Police to be on site to detect an enforce laws against the disposal of dangerous litter or faecal matter as it happens is both unreasonable and unrealistic.

(3) Restrictions on alcohol in public places are one of many examples of the legitimacy of legislation that specifically targets the source of anticipated disorder. If it is accepted that street prostitution creates an environment for anti-social behaviour, then it seems important to address the cause as well as the symptoms

5.4 Compatibility with the purpose and intent of the PRA

(1) The PRA specifically took the focus away from the moral aspects of the activity and focused on the Health and Human Rights aspects. Under section 3, the purposes of the PRA were to create a framework that:

• safeguards the human rights of sex workers and protects them from exploitation; and
• promotes the welfare, occupational health, and safety of sex workers; and
• is conducive to public health; and
• prohibits the use in prostitution of persons under 18.

(2) Council submits that the PRA has failed to achieve its purposes and is furthermore incapable of achieving its purposes in the current form in relation to the street prostitution sector. Street workers are much more likely than other sex workers to experience violence,

11 PLRC Report, above n1, 58
12 Ibid.
threats of violence, to have been raped, had money stolen from them or been held somewhere against their will. The PLRC report also makes the point that decriminalisation has not led to better access to health services for street workers and maintained social marginalisation.

(3) The PLRC acknowledged that:  

“the purpose of the PRA, particularly in terms of promoting the welfare and occupational health and safety of sex workers, cannot be fully realised in the street-based sector. The Committee recognises the danger street work poses to sex workers, and acknowledges the concern and upset it causes communities. Therefore, the Committee considers street-based sex workers should be encouraged to either move to a safer, indoor setting, or leave sex work altogether”.

(4) Council submits that the acknowledgement that the benefits PRA is unable to be realised in the street sector is significant and agrees with the committee that street workers must be encouraged to move indoors or leave the industry altogether. The Council however differs from the committee on the means and submits that an approach that depends solely on the goodwill of street workers without deterrents is naïve and doomed to fail.

(5) Encouragement without deterrent will not work because many don’t want to leave the sector or the industry or may even find it offensive to be offered any assistance in this regard.

(6) While maintaining that street workers must be encouraged to move indoors or leave the industry altogether, the PLRC report also states that only 17.6% of sex workers remained in the industry because of not having a realistic alternative. This suggests that a large proportion of the sex workers actively choose their profession and many don’t want or need interventions to help them exit the industry. The Crime and Justice Research Centre report that informed the PLRC report also quotes the New Zealand Prostitutes Collective that it was potentially offensive to discuss with sex workers how they should exit the industry as it’s a right and they don’t need rescuing.

(7) Council submits that the desirable outcome of moving street workers indoors or out of the industry and the reality that they mostly do not wish to do so voluntarily and would be offended in being approached and encouraged to do so are incompatible. Without additional tools to remedy the current situation the stated goal of moving sex workers away from the street sector seems unattainable. In the meantime local communities are asked to endure a sector that can neither be regulated nor realise the anticipated benefits of law reform in the first place.

(8) Council submits the Bill has the potential of remediying this situation by providing a crucial legal tool and either an additional reason to leave the street sector or at least modify behaviour to gain the tolerance of local communities.

5.4.1 Underage Prostitution

(1) The PRA’s purpose of promoting the human rights of sex workers and protecting them from exploitation naturally extends to protecting young people from being used or engaged

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13 Ibid, 123.
14 Ibid, 131.
15 Ibid, 68.
16 Ibid, 70.
17 Ibid, 70.
in prostitution. The PRA treats persons under the age of 18 involved in sex work as victims. Sections 20-22 of the PRA make it an offence to facilitate or receive payment for the commercial sexual services of a person under the age of 18, or to arrange for or receive sexual services from a person under 18.

(2) The 2005 report by the PLRC estimated that there were approximately 200 sex workers in the country under the age of 18 and 60% were located in the street sector. The CSOM report states that 56% of street based workers entered the industry when they were under the age of 18. As the street sector is the main point of entry for underage prostitutes, an unregulated street sector effectively fails to achieve the purpose of the PRA in prohibiting the use in prostitution of persons under the age of 18.

5.4.2 Liability of underage persons

(1) The PRA avoids criminalising a person less than 18 years of age for providing commercial sexual services, but in general young people are not protected against offence provisions across general legislation. Council submits that the Bill is consistent with the purposes of the PRA. In the case of an offence under clause 12 of the Bill, a young person caught offending will not be criminalised for providing commercial sexual services, but rather for providing them in breach of a bylaw regulating the location in which such services may be provided. Similarly, a young person prosecuted for an offence under clause 14 will not be prosecuted for providing commercial sexual services, but for failing to stop when required to do so for failing to provide information sought by a constable.

(2) Where an offender is a child (under 14 years) or a young person (between 14 and 17 years), the provisions and protections of the Children, Young Persons and Their Families Act 1989 continues to apply. Pursuant to section 272(1) of that Act no proceedings for an offence of the type set out in the Bill may be instituted against a child under the Summary Proceedings Act. A young person may be charged under the Bill but must be brought before the Youth court rather than the District Court and dealt with under the provisions of the Children, Young Persons and Their Families Act 1989. If a young person is charged with an offence under the Bill, the raft of protection measures under the Children, Young Persons and Their Families Act will apply. Further limitations will apply to the powers of arrest set out in clauses 13 and 14(6) of the Bill pursuant to section 214(1) of the Children, Young Persons and Their Families Act 1989.

(3) Council submits that the provisions of the Children, Young Persons and Their Families Act 1989 make it extremely unlikely that a young person would be arrested pursuant to the provisions of the Bill. If a young person were to be arrested for an offence, he or she would come before the Youth court, where almost inevitably a family group conference would be held in the first instance. Therefore the Bill does not impact unreasonably on children or young persons and does not criminalise persons under the age of 18 for the provision of commercial sexual services, except where those services are provided in a specified place identified in a bylaw. The resultant offence would be a breach of the regulatory provision as to location, or failing to comply with a constable’s lawful requirements. This is arguably no different that prosecuting a person under 18 for obstructing an inspector under section 29 of the PRA.

5.4.3 Improvement on the PRA

(1) The street sector is currently unregulated and there is no legal provision to achieve the much desired result of moving street sex workers indoors or out of the industry or even to

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18 Ibid, 101
19 Ibid, 102
address any underlying problems that may prove a barrier to exiting the industry. The Bill however offers an improvement to the current situation by providing an opportunity to address the underlying reasons for street workers.

(2) Although the Bill specifies a monetary fine for breach, an informant is able to seek leave of the Court to withdraw an information before conviction, or in the case of a guilty plea before sentencing, if the defendant has completed a Police diversion programme under section 36 of the Summary Proceedings Act 1957. This gives an opportunity for some agreed course of action such as vocational training, drug courses etc to be undertaken in return for the information to be withdrawn.

5.5 Need to address related issues of issues of social disorder and urban degradation rather than the symptom

(1) The PLRC’s report acknowledged the concerns of Manukau but went on to note that:20

“The issues in Manukau are not limited to prostitution. The Committee heard from Police that family violence and issues stemming from abuse of alcohol are major problems in the area, as well as other impacts of urban decay and lack of investment”.

(2) In its Review of Street Based Prostitution in Manukau City, the Ministry of Justice reflected the PLRC’s conclusion and stated that:21

“There is a tendency for many of the problems facing the community to be attributed solely to the presence of street-based prostitution….several interviewees also discussed the degraded condition of the physical environment as a contributing factor to the presence of street-based prostitution, crime and fear of crime, and the antisocial behaviour occurring in Manurewa and Hunter’s Corner.”

(3) The PLRC and the Ministry goes on to propose a variety of non-legislative solutions including increased cleaning, rubbish facilities, urban renewal and 24 hour toilets.

(4) Council reiterates that many non-legislative measures have been put in place with limited impact on the problems associated with street prostitution. Many of the social disorder issues such as alcohol abuse and family violence are being addressed by a combination of Government, NGOs and local authorities. The existence and contribution of other related issues that contribute to social order however does not provide a sufficient reason not to specifically address street prostitution.

(5) Council acknowledges that urban renewal is an important social objective and assists in the look and feel of a neighbourhood. Street prostitution and its related effects however reverse the impact and sustainability of urban renewal and contribute to urban decay. Increased private investment in neighbourhoods is also less likely in areas of street prostitution due to both the reputation of the area and the effects of street prostitution which contribute to general feelings of being unsafe. Street prostitution is one of a range of issues including graffiti, substance abuse and disorder that signify an area may be vulnerable to crime and general decline. Unlike street prostitution however public authorities have the ability to curb other direct causes of disorder, while street prostitution remains unregulated.

20 Ibid, 124.
21 Ministry of Justice Review, Above n6, paras 36-38.
5.6 **Consistency with BORA**

(1) The Bill is prima facie inconsistent with the right to freedom of expression\(^{22}\), freedom of peaceful assembly\(^{23}\), freedom of association\(^{24}\) and freedom of movement\(^{25}\). However these rights are not absolute and they may be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society\(^{26}\).

(2) In its advice to the Ministry of Justice on Manukau’s 2005 Bill, the Ministry of Justice noted that:\(^{27}\)

“The section 5 enquiry is essentially two-fold; whether the provision serves an important and significant objective, and there is a rational and proportional connection between the provision and objective.”

(3) Council agrees with this test for section 5 and submits that the Bill fulfils this test. The Bill as a whole seeks to address an unintended consequence of the PRA and achieve its purported objectives. Its main objective is to achieve a fair balance between the rights of local communities and rights of street workers.

(4) The Bill also provides the essential deterrence that is needed in any holistic approach to the problems associated with street prostitution. It is therefore rational as a holistic approach needs both deterrence and support. It is proportionate as it is targeted to specific problem areas and otherwise maintains the ability of street workers to carry out their business under the general law. Council also submits that the limitations on rights are reasonable and consistent with similar restrictions that apply to other commercial activities in public spaces. The powers are also desirable to promote the safety and security of the affected communities in Manukau.

6.0 **Conclusion**

(1) Council and the communities affected by street prostitution in Manukau remain concerned about the harm that street prostitution and its effects causes to people’s sense of safety, return on investment and the pride in local communities. What’s more baffling is that it is universally acknowledged that the current legal situation is incapable of providing the anticipated trade-off in benefits to the street sex workers themselves.

(2) Council firmly believes the Bill promotes a balanced, fair and effective tool to improve the current situation and reduce the harmful effects of street prostitution in local communities. Like every piece of legislation, the Bill does not offer a complete solution to a complex problem, but it does provide an essential ingredient in a complete solution.

(3) We thank you for the opportunity to provide this submission.

(4) Council would like an opportunity to appear before the Committee to speak to its submission if the opportunity presents itself prior to the dissolution of Council on the 1st of November 2010. In the alternate, the Auckland Council will inherit the responsibility for the

\(^{22}\) New Zealand Bill of Rights Act 1990, section 14

\(^{23}\) New Zealand Bill of Rights Act 1990, section 16

\(^{24}\) New Zealand Bill of Rights Act 1990, section 17

\(^{25}\) New Zealand Bill of Rights Act 1990, section 18

\(^{26}\) New Zealand Bill of Rights Act 1990, section 5

\(^{27}\) Ministry of Justice, Advice to Attorney General on the Manukau City Council (Control of Street Prostitution) Bill, 6 December 2005, para 11.
Bill and is also likely to want to address the Committee on this Bill after the 1st of November 2010.

(5) To arrange a hearing please contact Manoj Ragupathy, Senior Policy Advisor on (09) 262 5440.

Len Brown
Mayor of Manukau