

Rotorua Lakes Council Prostitution Bylaw: Statement of Proposal

BACKGROUND

Rotorua Lakes Council (RLC) is empowered by the Prostitution Reform Act 2003 and the Local Government Act 2002 to make bylaws for the purposes of regulating the location of brothels and to regulate signage advertising commercial sexual services.

The RLC Prostitution Bylaw 2009 was seen as the most appropriate way of addressing the perceived problems in relation to commercial sexual services operating in Rotorua.

In particular, the RLC Prostitution Bylaw 2009 prohibits the establishment or operation of a brothel anywhere in the district outside the Rotorua CBD (as defined in the map). Further, consent will not be granted if the proposed location is within 100m of a sensitive site (e.g. school or church), within 100m of another brothel or at ground level.

With regard to signage, a sign may not be placed on any building or structure that advertises the availability of commercial sexual services, unless it is the name of a brothel or other commercial sex premises consented to by the Council.

WHY ARE WE CONSULTING

RLC's Prostitution Bylaw 2009 was reviewed in April 2019 public consultation was carried out between 23rd November 2018 and 25th January 2019. Council did not propose any changes to the 2009 Bylaw.

Feedback from this consultation identified different options from those initially considered and these options require further consultation. Consideration of the feedback received from the first round of consultation resulted in RLC recommending that a Prostitution Bylaw is the most effective way of addressing the location of brothels and other commercial sex premises in the District and the placement and establishment of signage relating thereto. Changes to the Prostitution Bylaw 2009 are recommended.

This consultation round is an opportunity for RLC to check with our communities regarding whether they think a Prostitution Bylaw is necessary, and if so, hear their feedback on which aspects should be included in a Bylaw 2020. A number of options are provided for consideration.

OPTIONS

Option A: Retain the Existing RLC Prostitution Bylaw 2009 with no changes meaning:

- Prohibiting the establishment or operation of a brothel anywhere in the district outside the permitted area (as defined in the attached map)
- Brothels not being located within 100m of a sensitive site (e.g. school or church), within 100m of another brothel, at ground level
- Requiring a consent and application fee for the establishment of a brothel

- Regulation over the content and establishment of signage relating to these brothels and commercial sex services
- Prohibiting soliciting or touting for commercial sexual premises or services in any public place
- Including a fine not exceeding \$20,000 for breaching the Bylaw

Option B –RLC’s recommended option: Adopting an RLC Prostitution Bylaw including:

- Adding the definition of ‘sensitive site(s)’ to ensure consistency across RLC regulatory mechanisms related to sensitive sites
- Adding ‘small owner-operated brothel’ (SOOB) to the definitions
- Altering the definition of ‘distance’ to ensure consistency in definitions across RLC policies
- Prohibiting the establishment or operation of a brothel anywhere in the district outside the permitted area (as defined in the attached map)
- Adding a clause that allows SOOBs to be located outside of the permitted area for brothels. This clarifies the intention that SOOBs should be treated like any other home-based business
- Prohibiting brothels (including SOOBs) from being located within 100m of a sensitive site (e.g. education facilities, marae or churches) and within 100m of another brothel.
- Prohibiting brothels from being at ground level within the permitted area ensuring that sexually challenging displays or activities do not occur in glazed shop fronts at the ground floor level. It also ensures shop fronts are active within the CBD within usual business hours
- Replacing the need for a ‘consent’ to the need for a ‘permit’ for the establishment of a brothel within the permitted area
- Removing the requirement for a (permit) application fee
- Regulation over the content and establishment of signage relating to these brothels and commercial sex services.
- Adding of the following words in bold to section 3.5 (b) to reflect advances in technology - offensive or sexually explicit images **(including video) or pictures** on signage
- Including that District Plan rules must also be met before signage will be approved by RLC
- Removing Section 4 titled ‘Soliciting and Touting’ and adding the following clause (3.9) to Section 3 -“No person may distribute written material advertising Commercial Sex Premises or Commercial Sexual Services, or verbally advertise a Commercial Sex Premises, in a Public Place within the Rotorua District”
- Adding a section entitled ‘Nuisance’ that allows the regulation of noise, disturbance and challenges to amenity and good order
- Including fine not exceeding \$20,000 for breaching the Bylaw

Option C: Option B with the following changes:

- Removing clause 3.9 prohibiting the written and verbal advertising of commercial sexual services or commercial sex premises in a public place within the Rotorua district
- Requiring a permit for both brothels and SOOBs
- Permitting brothels within the permitted area to locate on the ground floor
- Removing the section on Nuisance

Option D: Allow the current Bylaw to lapse, or revoke the current Bylaw meaning:

- There would be no restriction to the location of any brothels anywhere in the Rotorua district including:

- Position in relation to sensitive sites (schools, other educational establishments, churches, or other buildings habitually used for religious purposes)
- Proximity to other brothels or commercial sex premises
- Location of brothels on ground floor premises
- Controls on signage would be more generic through the District Plan Signage Rules and the Advertising Standards Authority code of Practice

Option E: Revoke the 2009 Bylaw or allow it to lapse AND insert required provisions into the District Plan, meaning:

This option is not recommended because:

- Of considerable resource engagement to include provisions in the District Plan that can more readily be addressed through a Bylaw
- Current provisions specifically related to prostitution within the recommended (option B) Prostitution Bylaw 2020 may not be suitable for the District Plan
- There is a timeliness issue as to how quickly relevant provisions could be included in the District Plan. The District Plan change process involves extensive public consultation, hearings and provides the potential for appeals



OPTION A

ROTORUA DISTRICT COUNCIL PROSTITUTION BYLAW 2020

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- 1. INTRODUCTION**
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- 3. SIGNS**
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- 5. BREACH OF BYLAW**

APPENDIX 1: “MAP SHOWING PERMITTED AREA WITHIN ROTORUA CBD”

1. INTRODUCTION

PURSUANT to the powers contained in the Local Government Act 2002, and the Prostitution Reform Act 2003 and their amendments and regulations, and of all and every other power and authority in that behalf enabling it, Rotorua District Council hereby resolves to make the following Bylaw.

1.1 SHORT TITLE

This Bylaw shall be known as “The Rotorua District Council Prostitution Bylaw 2009”.

1.2 COMMENCEMENT

This Bylaw shall come into force on and take effect on the 9th day of April 2009.

1.3 REVOCATION

The Rotorua District Council Prostitution Bylaw 2003 shall hereby be revoked.

1.4 OBJECTIVES

The objectives of this Bylaw include:

- The control of the location of Brothels and other Commercial Sex Premises in the District and the placement and establishment of signage relating thereto.
- The prohibition of soliciting or touting for commercial sexual services.

1.5 INTERPRETATION

In this bylaw:

brothel means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

commercial sex premises

- (a) means premises used or intended to be used primarily for exposing, selling, or hiring goods or services related to sexual behaviour; and
- (b) to avoid any doubt includes brothels, strip clubs, strip bars, rap parlours, peep shows, lap dancing bars, massage parlours, escort agencies, adult bookshops, adult video shops, adult cinemas, sex shops; but
- (c) does not include hospitals, healthcare services, chemists, community welfare facilities, or premises where therapeutic massage is offered;
- (d) does not include a residential dwelling, located within any of the residential zones as defined in the Rotorua District Plan, from which no more than two sex workers are providing commercial sexual services.

commercial sexual services means sexual services that –

- (a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and
- (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services of another person);

Council means the Rotorua District Council

distance means the measurement taken from the ground floor entrance of one premise along the footpath to the ground floor entrance of another premise

permitted area means that part of the Central Business District of the City of Rotorua as depicted on map comprising Appendix 1 of this Bylaw.

public place means a place that –

- (a) is open to, or being used by, the public, whether admission is free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or reject a person from that place; and
- (b) includes any aircraft, hovercraft, ship, ferry or other vessel, train or vehicle carrying or available to carry passengers for reward;

Rotorua CBD means the area as outlined in Appendix 1 to this Bylaw;

sign means any word, figure, image, poster, advertising device or appliance, or thing of a similar advertising nature intended principally to attract attention, whether it is placed on or affixed to any land or building or incorporated within the design of any building, and which is visible from a public place.

2. LOCATION OF BROTHELS

- 2.1 No person may establish or operate a brothel anywhere in the district outside the permitted area of the Rotorua CBD as defined in the map comprising Appendix 1 of this Bylaw.
- 2.2 No person may establish or operate a brothel within the Rotorua CBD without first having obtained a consent for that brothel from the Council.
- 2.3 An application for a consent for a brothel must be in writing and be accompanied by an application fee \$500 or such other fee as the Council may determine using the special consultative procedure.
- 2.4 The Council must not grant a consent for a brothel that will be located:
 - (a) 100 metres or less from any school, other educational establishment, church, or other building habitually used for religious purposes; or
 - (b) 100 metres or less from any other brothel or commercial sex premises.
 - (c) at ground level (for the purposes of this clause a brothel is located at ground level if any part of the premises other than a staircase or entrance foyer is located at ground level).
- 2.5 The Council may decline to grant a consent for a brothel where the Council considers that the brothel would significantly detract from the existing character of the street on which, or the area in which, the brothel would be located.
- 2.6 The Council may grant a consent for a brothel for a period set out in the licence not exceeding 5 years.
- 2.7 Clause 3.2 does not apply to any brothel that, on the day this bylaw comes into force:
 - (a) holds any resource consents required under an operative or proposed district plan, or a certificate of compliance under the Resource Management Act 1991, or has existing use rights under that Act; and
 - (b) is operated by a person who holds a current certificate issued under section 35 of the Prostitution Reform Act 2003.

3. SIGNS

- 3.1 Subject to clause 3.2, no person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of the availability of commercial sexual services.
- 3.2 No person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of a brothel or other commercial sex premises unless –
 - (a) In respect of a brothel, the brothel holds a consent under clause 2.6 or it is a brothel to which clause 2.7 applies; and
 - (b) The sign is located on the premises comprising that brothel or other commercial sex premises; and
 - (c) The sign only contains the name of that brothel or other commercial sex premises; and
 - (d) The person has obtained written approval for the sign from the Council.
- 3.3 An application for an approval for a sign must be in writing and be accompanied by a fee of \$200, or such other fee as the Council may determine using the special consultative procedure.
- 3.4 Subject to clause 3.5, the council may grant an approval for a sign on such terms and conditions as it thinks fit. When considering whether or not to grant or refuse an approval, the Council may have regard to the size of the sign and the cumulative effect of the sign in its environment.
- 3.5 Council will not grant an approval for a sign if one or more of the following applies:
 - (a) the sign contains neon lighting; or
 - (b) the sign contains offensive or sexually explicit words; or
 - (c) there is already another sign in relation to the brothel or commercial sex premises.
- 3.6 The Council may by written notice served on the owner or operator of any brothel or other commercial sex premises require that owner or operator to remove or alter any sign that contravenes clause 3.1 or clause 3.2 within the time specified in the notice.
- 3.7 If the owner or operator of any brothel or other commercial sex premises has been served with a notice under clause 3.6, that owner or operator must comply with that notice within the time specified in the notice.
- 3.8 If the owner or operator fails to comply with the notice under clause 3.6, within the specified time, the Council may remove or alter the sign. The owner or operator is liable for the Council's cost in removing or altering the sign.

4. SOLICITING AND TOUTING

- 4.1 No person may in any public place invite or request any person to enter a brothel or other commercial sex premises or to engage in prostitution.
- 4.2 No person may in any public place tout for business or otherwise verbally advertise on behalf of a brothel or other commercial sex premises.
- 4.3 No person may distribute in any public place any handbills, writings or pictures that have the primary purpose, whether explicitly or implicitly, of advertising, identifying, or informing the public of any brothel or other commercial sex premises or the availability of commercial sexual services.

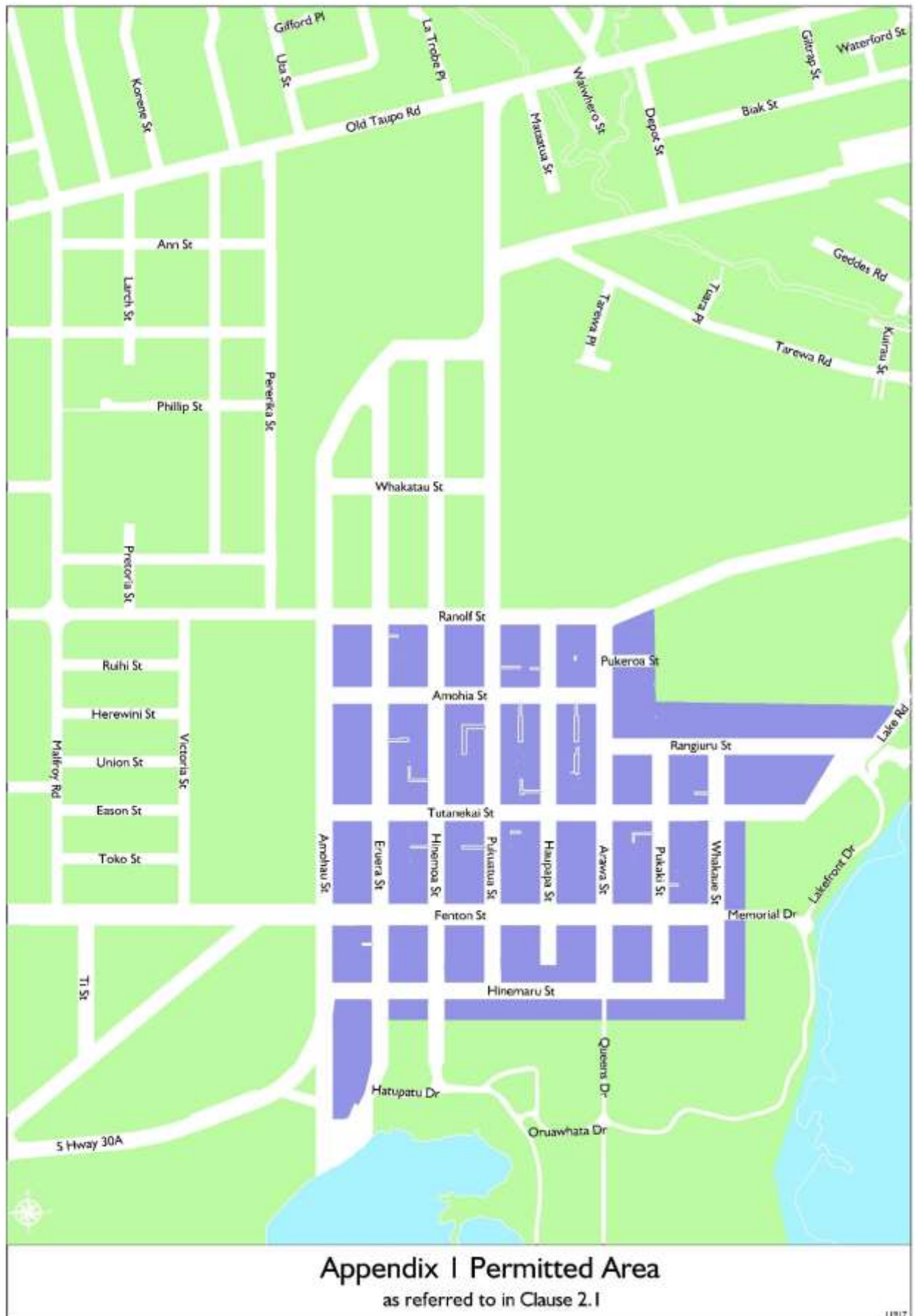
5. BREACH OF BYLAW

- 5.1 Every person who breaches this bylaw commits an offence and is liable on summary conviction to the penalty set out in section 242(4) of the Local Government Act 2002 being a fine not exceeding \$20,000.

The Common Seal of the
ROTORUA DISTRICT COUNCIL
was hereunto affixed in
the presence of:

_____ Mayor

_____ Chief Executive





OPTION B

ROTORUA DISTRICT COUNCIL PROSTITUTION BYLAW 2020

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4. NUISANCE

5. BREACH OF BYLAW

APPENDIX 1: "MAP SHOWING PERMITTED AREA WITHIN ROTORUA CBD"

1. INTRODUCTION

PURSUANT to the powers contained in the Local Government Act 2002, and the Prostitution Reform Act 2003 and their amendments and regulations, and of all and every other power and authority in that behalf enabling it, Rotorua District Council hereby resolves to make the following Bylaw.

1.1 SHORT TITLE

This Bylaw shall be known as “The Rotorua District Council Prostitution Bylaw 2020”.

1.2 COMMENCEMENT

This Bylaw shall come into force on and take effect on the tbcth day of tbc 2020.

1.3 REVOCATION

The Rotorua District Council Prostitution Bylaw 2009 shall hereby be revoked.

1.4 OBJECTIVES

The objectives of this Bylaw include:

- The control of the location of Brothels and other Commercial Sex Premises in the District and the placement and establishment of signage relating thereto.
- The prohibition of soliciting for commercial sexual services.

1.5 INTERPRETATION

In this bylaw:

brothel means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

commercial sex premises

- (a) means premises used or intended to be used primarily for exposing, selling, or hiring goods or services related to sexual behaviour; and
- (b) to avoid any doubt includes brothels, strip clubs, strip bars, rap parlours, peep shows, lap dancing bars, massage parlours, escort agencies, adult bookshops, adult video shops, adult cinemas, sex shops; but
- (c) does not include hospitals, healthcare services, chemists, community welfare facilities, or premises where therapeutic massage is offered;
- (d) does not include a residential dwelling, located within any of the residential zones as defined in the Rotorua District Plan, from which no more than two sex workers are providing commercial sexual services.

commercial sexual services means sexual services that –

- (a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and
- (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services of another person);

Council means the Rotorua District Council

distance means the measurement taken from the boundary of one premise to the boundary of another.

home-based business within the Rotorua District Plan is defined as: any home arts crafts, professional, trade or consultancy business, other than Prohibited Activities, which is carried out by a resident or residents incidentally to the primary use of the site and complies with the following in all respects:

- (a) The performance standards for the Zone in which the business is located;
- (b) No more than one person living away from the site can be employed on site at any one time;
- (c) The business does not involve outdoor storage of goods, or waste materials;
- (d) The business does not involve the parking of heavy vehicles on site; and
- (e) No display or retail of goods for sale may take place from the site"

permitted area means that part of the Central Business District of the City of Rotorua as depicted on map comprising Appendix 1 of this Bylaw.

public place means a place that –

- (c) is open to, or being used by, the public, whether admission is free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or reject a person from that place; and
- (d) includes any aircraft, hovercraft, ship, ferry or other vessel, train or vehicle carrying or available to carry passengers for reward;

sensitive site means Education Facilities, Marae, churches, or other building habitually used for religious purposes:

Education Facilities means sites used primarily for education, such as pre-school, primary, secondary and tertiary institutions and institutes delivering educational services for groups such as people who are unemployed, youth, elderly or groups with special educational needs.

Marae means community meeting places or surrounds. Marae customarily means the open space in front of a meeting house upon which various ceremonial occasions are centred. For the purpose of this Bylaw, a Marae also consists of wharenui (Māori meeting house) and or wharekai/hall, together with the surrounding area of open ground. It includes buildings normally used in conjunction with the meeting house or hall, the whole being located on a defined parcel or parcels of land and administered by legally appointed trustees of a trust body for the common use or benefit of a defined group of Māori people

Rotorua CBD means the area as outlined in Appendix 1 to this Bylaw;

sign means any word, figure, image, poster, advertising device or appliance, or thing of a similar advertising nature intended principally to attract attention, whether it is placed on or affixed to any land or building or incorporated within the design of any building, and which is visible from a public place.

small owner-operated brothel means a brothel:

- (a) at which not more than four sex workers work; and
- (b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel.

Although up to four sex workers are allowed to operate from a SOOB, District Plan rules still apply. Resource consent would be required if more than 1 non-resident sex worker were to work from a SOOB.

2. LOCATION OF BROTHELS

- 2.1 No person may establish or operate a brothel anywhere in the district outside the permitted area of the Rotorua CBD as defined in the map comprising Appendix 1 of this Bylaw.

- 2.2 The location restrictions in clause 2.1 of this Bylaw do not apply to small owner-operated brothels.
- 2.3 No person may establish or operate a brothel within the Rotorua CBD without first having obtained a permit for that brothel from the Council.
- 2.4 An application for a permit for a brothel must be in writing
- 2.5 No brothel (including SOOBs) is permitted to be located:
 - (a) 100 metres or less from a sensitive site; or
 - (b) 100 metres or less from any other brothel or commercial sex premises.
- 2.6 No brothel within the permitted are may be located at ground level (for the purposes of this clause a brothel is located at ground level if any part of the premises other than a staircase or entrance foyer is located at ground level)
- 2.7 The Council may decline to grant a permit for a brothel where the Council considers that the brothel would significantly detract from the existing character of the street on which, or the area in which, the brothel would be located.
- 2.8 The Council may grant a permit for a brothel for a period set out in the licence not exceeding 5 years.
- 2.9 Clause 3.2 does not apply to any brothel that, on the day this bylaw comes into force:
 - (a) holds any resource consents required under an operative or proposed district plan, or a certificate of compliance under the Resource Management Act 1991, or has existing use rights under that Act; and
 - (b) is operated by a person who holds a current certificate issued under section 35 of the Prostitution Reform Act 2003.

3. ADVERTISING OF COMMERCIAL SEXUAL SERVICES AND COMMERCIAL SEX PREMISES

- 3.1 Subject to clause 3.2, no person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of the availability of commercial sexual services.
- 3.2 No person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of a brothel or other commercial sex premises unless –
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- 3.5 Council will not grant an approval for a sign if it does not meet District Plan rules or if one or more of the following applies:

- (a) the sign contains neon lighting; or
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- 3.9 No person may distribute written material advertising Commercial Sex Premises or Commercial Sexual Services, or verbally advertise a Commercial Sex Premises, in a Public Place within the Rotorua District.

4. NUISANCE

- 4.1 The activity shall not result in the opinion of an authorized officer, in a more than minor reduction of amenity and good order to the immediate community.

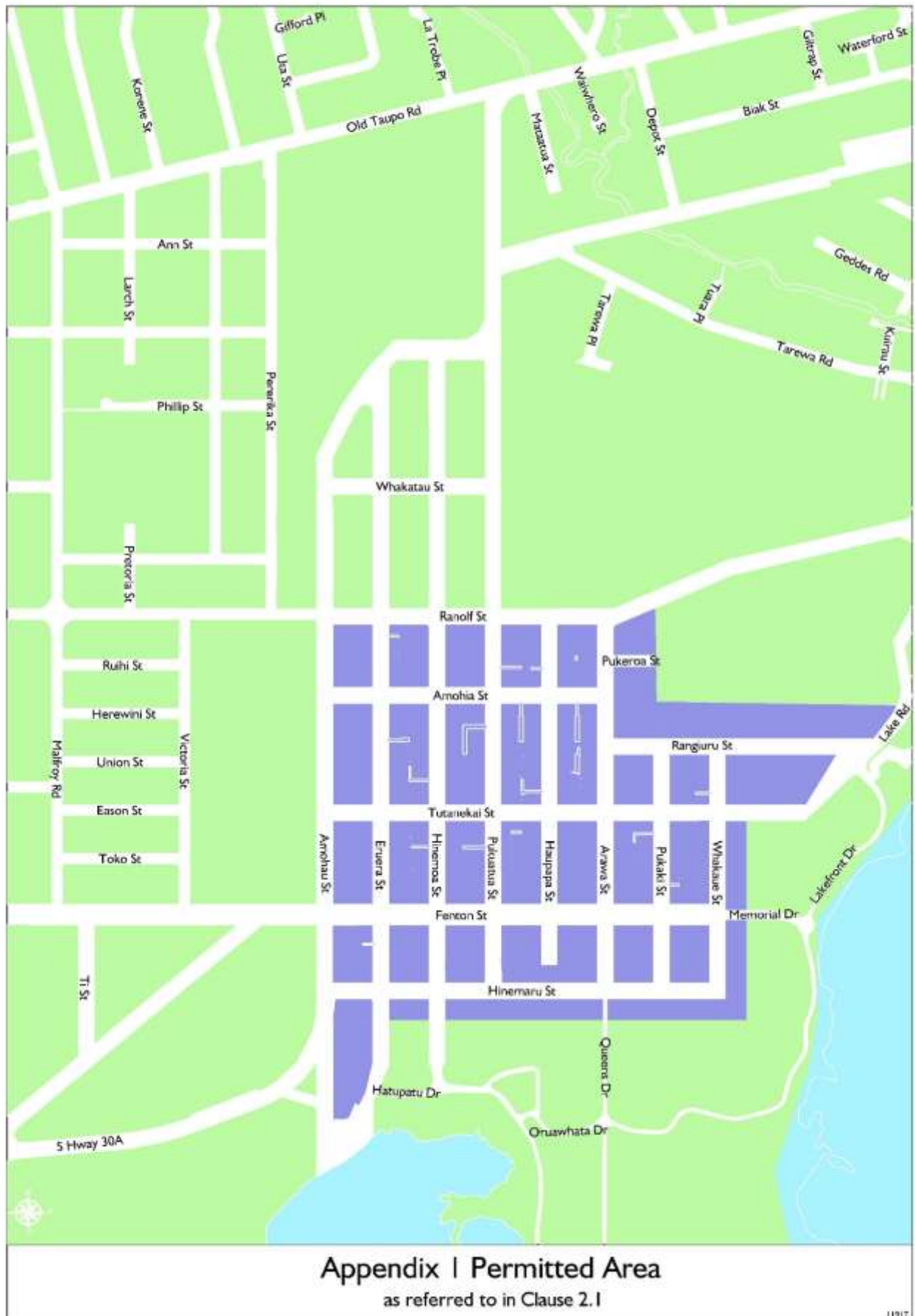
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OPTION C

ROTORUA DISTRICT COUNCIL PROSTITUTION BYLAW 2020

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- (a) The performance standards for the Zone in which the business is located;
- (b) No more than one person living away from the site can be employed on site at any one time;
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- 2.8 Clause 3.2 does not apply to any brothel that, on the day this bylaw comes into force:
 - (a) holds any resource consents required under an operative or proposed district plan, or a certificate of compliance under the Resource Management Act 1991, or has existing use rights under that Act; and
 - (b) is operated by a person who holds a current certificate issued under section 35 of the Prostitution Reform Act 2003.

3. ADVERTISING OF COMMERCIAL SEXUAL SERVICES AND COMMERCIAL SEX PREMISES

- 3.1 Subject to clause 3.2, no person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of the availability of commercial sexual services.
- 3.2 No person may place, or allow to remain in place on or in any building or structure in the district a sign that advertises or informs the public of a brothel or other commercial sex premises unless –
 - (a) In respect of a brothel, the brothel holds a consent under clause 2.6 or it is a brothel to which clause 2.7 applies; and
 - (b) The sign is located on the premises comprising that brothel or other commercial sex premises; and
 - (c) The sign only contains the name of that brothel or other commercial sex premises; and
 - (d) The person has obtained written approval for the sign from the Council.
- 3.3 An application for an approval for a sign must be in writing and be accompanied by a fee of \$200, or such other fee as the Council may determine using the special consultative procedure.
- 3.4 Subject to clause 3.5, the council may grant an approval for a sign on such terms and conditions as it thinks fit. When considering whether or not to grant or refuse an approval, the Council may have regard to the size of the sign and the cumulative effect of the sign in its environment.
- 3.5 Council will not grant an approval for a sign if it does not meet District Plan rules or one or more of the following applies:
 - (a) the sign contains neon lighting; or
 - (b) the sign contains offensive or sexually explicit words, images (including video) or pictures; or
 - (c) there is already another sign in relation to the brothel or commercial sex premises.

- 3.6 The Council may by written notice served on the owner or operator of any brothel or other commercial sex premises require that owner or operator to remove or alter any sign that contravenes clause 3.1 or clause 3.2 within the time specified in the notice.
- 3.7 If the owner or operator of any brothel or other commercial sex premises has been served with a notice under clause 3.6, that owner or operator must comply with that notice within the time specified in the notice.
- 3.8 If the owner or operator fails to comply with the notice under clause 3.6, within the specified time, the Council may remove or alter the sign. The owner or operator is liable for the Council's cost in removing or altering the sign.

4. BREACH OF BYLAW

- 4.1 Every person who breaches this bylaw commits an offence and is liable on summary conviction to the penalty set out in section 242(4) of the Local Government Act 2002 being a fine not exceeding \$20,000.

The Common Seal of the
ROTORUA DISTRICT COUNCIL
was hereunto affixed in
the presence of:

_____ Mayor

_____ Chief Executive

