

1. PRIORSFORD COURT – PETANQUE COURT

At its meeting on 3 April 2002, the Board adopted a procedural report on dealing with an application for a petanque court in Priorsford Court.

Following consultation with residents and receipt of an officer's report a special meeting was called to consider feedback and hear submissions from interested parties.

Because of the uniqueness of the proposal it was considered appropriate for the Board to consider the matter prior to submitting a report to the Council.

The following report was before the Board for consideration:

Officer responsible City Streets Manager	Author Brian Boddy, DDI 371 1013
Corporate Plan Output: Fendalton/Waimairi Community Board	

The purpose of this report is to advise the Community Board of the feedback to the petanque court publicity pamphlet (attached) distributed in April as requested by the Board. The Board's recommendation following receipt of this information shall then be referred to Council for a final decision.

Following the unauthorised start on the construction of a petanque court in the road reserve grass berm by some of the residents in Priorsford Court, a stop was put on the work by Council staff. The site was made safe by these residents as requested by the Council.

The Area Engineer later received a request from most of the residents in Priorsford Court on 27 February asking that he "approve of the request for the establishment of a petanque court as detailed in the attached plan". The "application" included a statement that "The cost to establish this community feature is being met by residents of Priorsford Court. i.e. NO COST TO THE COUNCIL. The Community Board needs to consider this request in the light of the precedent it would be setting for the establishment of recreational facilities on the road reserve between the kerb and the road reserve boundary.

The City Streets Unit's Safety Auditor advises the proposed location of the petanque court in the cul-de-sac is safe, but care will need be taken in the operation of it to make sure spectators do not stand on the carriageway.

At its meeting on 3 April 2002, the Community Board endorsed the proposed petanque court consultation pamphlet for circulation inviting comment, from the agreed area plan. There were 37 pamphlets distributed in the survey area and 24 responses were received.

Results from the survey area were as follows:

- Unconditionally for the proposal 9
- Conditionally against the proposal 3
- Unconditionally against the proposal 12

The residents with frontages to Priorsford Court have voted seven for (including one tenant) and one against, with the absentee owner advising that he will not support the proposed petanque court unless all Priorsford Court property owners unanimously support the proposal i.e. 7 for and 2 against.

Responses to the proposed work were also received from outside the survey area principally as a result of doorknocking/and a survey conducted by those opposed to the court. The summary of responses is as follows:

- Unconditionally for the proposal 2
- Conditionally against the proposal 22
- Unconditionally against the proposal 18

There was no conditional support of the proposal.

There was however a variety of feedback received which has been summarised below.

Those supporting the project feel it would:

- Enhance their community.
- Be a public facility to be used principally by the local residents.
- Improve community spirit.
- Demonstrate the Living Street concept.
- Provide residents with a reason to “live tall.”
- Be enjoyed by the young and old.

Those opposing the project feel it would:

- Give approval to criminal behaviour and create an undesirable precedent.
- Create a nuisance when used by animals as a toilet.
- Create a nuisance through the noise of the players and spectators.
- Be a traffic hazard if spectators stood on the road.
- Be a traffic hazard because it is too close to the intersection of Hawthornden Road.
- Waste public monies, as it is a novelty that will pass.
- Attract outsiders and undesirables who would disturb the peaceful neighbourhood.
- Be a health hazard with ill aimed bowls.
- Detract from the outlook of my property and deface the street.
- Reduce the financial value of my property.
- Increase traffic flows in the street.
- Deny the basic rights of property owners to enjoy their property.
- Create parking congestion.
- Divide the local residents/community.
- Give our children the message it is permissible to play in the street.

Many of the responses against a petanque court being constructed on a grass berm in a road reserve were conditional. They felt that petanque courts would be suitable in such areas as parks, or a person’s own back yard. Several felt that wherever a public petanque court was installed there should also be public toilets available close by.

The Legal Services Manager advises that:

The Local Government Act 1974 provides that all roads vest in the council of the district in which they are situated and are under the control of the council. This includes both the carriageway, berms and footpaths.

The Local Government Act 1974 gives the council a number of specific powers in relation to roads relating to construction, diversion, alteration and stopping. Section 357 provides that it is an offence for any person, not being authorised by the council, to encroach upon a road by making a work of any kind upon, over or under the road. Section 357 also provides that the council must not authorise or suffer any encroachment on a road if the encroachment would or might interfere with any right of the Crown or any person authorised to place any utility over or under the road.

Clearly, the implication of Section 357 is that it provides a power to the council to permit the erection of a structure, or in this case, a petanque court on a road.

The council’s powers in relation to roads have also been considered by the Courts over many years and as a general rule the Courts have held that an obstruction on a road, with the authority of the council, is lawful unless it is a “public nuisance” or interferes with individual rights.

As to whether a structure, or in this case an excavation, is a public nuisance, is a matter of fact to be decided by the council. The Courts have interpreted the phrase “public nuisance” as a obstruction which “...constitutes an appreciable interference with the traffic in the street...”, notwithstanding that the obstruction is in other ways beneficial to the public.

This is because with a road, every member of the public has the right to pass and repass on the road.

However, this right of the public to pass and repass is not absolute and is qualified by statutory provisions and also any permissions granted by the council in relation to structures, or in this case, excavations, on the road.

From the statutory provisions and case law, in my opinion the following propositions can be established with regard to the proposed petanque court:

- (a) The road where it is proposed to construct the petanque court is owned by the Council;*
- (b) The Council's primary function in relation to road is to facilitate public passage;*
- (c) The Council is empowered by Section 357 of the Local Government Act 1974 to authorise the construction of a petanque court on the road so long as that petanque court does not amount to a public nuisance;*
- (d) What constitutes a "public nuisance" is a question of fact to be decided upon by the Council. In general terms, the Courts have held that a public nuisance would be established where, in this case, proposed petanque court, would constitute an "appreciable interference" to the right of the public to pass along Priorsford Court.*

If the Council is of the view that the proposed petanque court would constitute a public nuisance, then the Council does not have the lawful authority to authorise the construction of the petanque court on the road;

- (e) In considering whether or not the petanque court constitutes a public nuisance, in my view the following factors are relevant:*
 - (i) The likely use of the berm where it is proposed to situate the petanque court is for pedestrian traffic, not vehicular traffic;*
 - (ii) The volume of pedestrian traffic likely to make use of that area of berm;*
 - (iii) Any alternative means of pedestrians being able to pass along the footpath adjacent to the proposed petanque court;*
 - (iv) Will the construction of the petanque court be likely to give rise to the gathering of persons on the formed footpath such as to create an obstruction for pedestrians walking along the footpath?*

*With regard to the last matter, if the Council reaches the view that that for practical purposes obstruction is not likely to occur, then the Council may go on to consider whether or not it should grant permission for the construction of the petanque court. The fact that the Council reaches the view that the petanque court would **not** cause a public nuisance does not mean the Council must grant permission. It has a discretion to do so.*

The survey results demonstrate that within the area defined by the Board, 63% of respondents are against the proposed petanque court. This proposal therefore lacks the majority support of the local community and should not proceed, as the living street concept should have the support of the community affected by any proposal for recreational facilities. The parties responsible for this unauthorised construction therefore need to be requested to restore the area to its former state within four weeks, if the Council resolves to decline the request. If the application is approved the responsibility for the maintenance shall rest with the Council although the petitioners have intimated that they would look after the maintenance of the petanque court in the same manner they have been looking after the maintenance of the Council's grass berms.

Officer's

Recommendation:

1. That the request for construction of the proposed court facility be declined.
2. That the respondents be advised that the site will be reinstated as a grass berm.
3. That the party responsible for the digging out of the grass berm be requested to reinstate the area at their cost within 28 days to the Council's satisfaction.

The Community Advocate comments:

"Apart from the unauthorised commencement of work on the proposed court, the initiative on the part of the community is one that could be supported. As was stated in the publicity pamphlet this proposal is in keeping with the "Living Streets" concept adopted recently by the Council.

An unfortunate aspect of the proposal however, is that it does not have the full support of the community in the particular area. This is a matter on which I have referred to previously, and which has resulted in some division among the residents in the community. It would seem unfortunate if decisions are to be made which could engender longer term incompatibility within the area.

The initiative of the residents to provide such a facility is one that should not necessarily be denied – albeit it should be in a location that **does** meet with overall support.

To me, the Board (and the Council) seems to have a number of particular options in dealing with the proposal viz.

1. To recommend to the Council that the request be declined, and the berm be restored at the applicant's costs.
2. To recommend to the Council that the request be approved, subject to any appropriate conditions.
3. To endorse the initiative but to invite the applicants to investigate an alternative site for a proposed facility which meets with the general approval of the community.”

The meeting, including parties to the application, agreed to rules of procedure as outlined by the Chairman and the Community Advocate, including the relaxation of standing orders covering the numbers of speakers under deputations to meetings.

Mr Warren Boyes (on behalf of the applicants) signalled that there could be up to seven speakers speaking in support of the application.

Mr Bruce McDowell (on behalf of the objectors) signalled that there would be four speakers speaking in opposition to the application.

The Chairman signalled that Councillor Ron Wright had sought and been granted speaking rights.

PARTIES IN SUPPORT OF THE APPLICATION

Mr Warren Boyes provided written information setting out material in support of the application.

He also tabled letters of support from eight residents of Christchurch and a schedule of support from 62 residents from Avonhead.

Mr Boyes, Mr Phillip Rotherham, Mr John Hynes and Ms Julie Millar spoke in support of the application highlighting several points including:

- A maximum number of six people would play petanque at any one time.
- Visual effects on the neighbourhood would be minimal.
- A pragmatic approach to a number of issues raised by the residents of Hawthornden Road.
- Main focus on safety aspects relative to the site (a satisfactory report submitted by John Smith, National Safety Manager, Fulton Hogan Group).
- Schedule of noise levels taken at a game of petanque on site showed decibel levels ranged from a low of 70 dBA to a high of 79 dBA. Background noise contributed (multiple vehicles passing at a given time and a motorised lawnmower) to the overall noise range variance of 70 dBA to 96 dBA.
- Lighting: A reading taken at 8.30pm on 6 April 2002 showed a light level of 5 lux (recreational bowls require 300 lux). Therefore, petanque court is not positioned to take advantage of existing street lighting.
- Estimation that recent property appraisals have shown an increase in property values for this area.
- The project epitomises the “Living Streets” philosophy in every sense, Priorsford Court being a most friendly and supportive neighbourhood.
- The site was selected because of lack of opportunities in immediate area.
- No complaints over a period of approximately 10 years concerning children/adults playing tennis and other activities within Priorsford Court.
- The decision to expand the survey flawed by some unsatisfactory distribution principles.
- The proposal had considerable support from the residents of Priorsford Court.

All speakers in turn responded to a number of questions from the Community Board.

PARTIES IN OPPOSITION TO THE APPLICATION

Councillor Ron Wright addressed the meeting expressing his disappointment at the current situation being allowed to arise. Such actions by the residents of Priorsford Court, without prior permission, could create a precedent which should not be permitted. He urged the Community Board to listen carefully to those in opposition and signalled support for the recommendation submitted by the Council's Area Engineer (Brian Boddy).

Mr Bruce McDowell backgrounded opposition to the proposal and invited Mr Ian Hodgetts to speak firstly to the joint written presentation. Mr McDowell, Mr Alasdair Palmer and Mr Dean Russ also spoke in opposition to the proposal. A number of written documents were circulated in support of the speakers delivery.

The opposing speakers highlighted several points including:

- The application should be declined on the grounds that it does not have the support of the nearest and most affected neighbours, or the wider community.
- Such a court should be constructed in a safer environment on one of the wide berms away from the road and street corner near the bottom of Priorsford Court, or in Hyde Park. However, in retrospect, the suggestion that Hyde Park was a suitable location was made without sufficient consideration of the views and objections that were now established from the wider community.
- A review of landscape-related effects concluded that views from several houses would be detrimentally affected especially during petanque playing activity and that the scale of space in this part of the street was insufficient to adequately accommodate the numbers of people and the likely activity associated with petanque.
- The proposed site was out of sight of most of the supporters whose residences are situated in Priorsford Court.
- The proposed site was nearer to some Hawthornden Road residents than many Priorsford Court residents.
- The proposed site was close to the corner and would therefore pose a safety hazard for children and other spectators.
- There could be increased traffic flow and difficulties in parking on the corner.
- Concern about the potential of accidents with spectators standing on the carriageway in the narrowest part of Priorsford Court.
- An adverse social impact.
- There are legal ramifications of a precedent being set.
- The community at large, including Hyde Park area are opposed to the proposal on the grounds that a public facility should not be promoted in this way particularly in a residential area.
- The proposal would turn a public street (a public amenity) into a recreation area.
- There is a park within 100 metres where a petanque court could be located.

All speakers in turn responded to general questions from Board members.

The meeting adjourned at 6.25pm and resumed at 6.32 pm.

Mr Brian Boddy (Area Engineer) addressed points raised in the officer's report and responded to questions from Community Board members.

Mr David Rolls (Council solicitor) also assisted the Board during the meeting.

Members discussed aspects of the proposal and, while the overall initiative was supported, some members spoke of the social concern in the community which would suggest that the request needed to be declined. The majority of members however indicated support for recommending approval to the Council but subject to an appropriate trial period being applied.

- Recommendation:**
1. (a) That the application from the residents for a petanque court in Priorsford Court be approved for a trial period of 12 months, and the environmental impact on the wider community be ascertained during this period.
 - (b) That if the Council does not confirm the retention of the petanque court after the trial period the residents be requested to reinstate the berm to the Council's satisfaction.
 2. That the Council clarify all aspects (including legal issues) of its berms policy to cover such matters as petanque courts constructed within grass berms.

Recommendation 1 (a) and (b) was put to the meeting and declared **carried** on division no 1 by 5 votes to 2, the voting being as follows:

For (5): Pat Harrow, Mark Kunnen, Yiyi Ku, Val Carter and the Chairman.

Against (2): Barbara Stewart and George Hampton.

The Chairman complimented all parties on their adherence to the rules of procedure for the meeting and the manner in which the submissions were made and received.