

PART TWO

4. PROPOSED CHRISTCHURCH CITY PUBLIC PLACES BYLAW 2008

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PURPOSE OF REPORT

1. To outline the background and options relating to the review of the public places bylaws and to recommend that the Planning and Regulatory Committee adopt and recommend the attached draft Public Places Bylaw to the Council.

EXECUTIVE SUMMARY

2. The Local Government Act 2002 requires many of our bylaws to be reviewed in order to determine that they are still necessary, that they are appropriate and that they meet the purpose they were designed for. This report forms part of the review of the three public places bylaws. The bylaws are:
 - the Christchurch City Council Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
3. On 13 December 2007, the Council considered a report seeking agreement that a bylaw was the most appropriate way of addressing potential problems relating to public places,⁹ and agreed that a draft public places bylaw should be prepared for further consideration. The Council agreed that the new public places bylaw would cover the regulation of:
 - commercial activities in public places
 - obstructions in public places
 - Council declaring public places Special Use Areas
 - temporarily residing in public places
 - some aspects of building and construction near or over public places
 - other issues that may arise during further analysis.
4. Councillors added the following list of matters to be covered in the bylaw:
 - playing of games¹⁰
 - poster pasting/graffiti/tagging/etching
 - damage to public places
 - depositing rubbish or litter
 - substance abuse.
5. The Council also recommended that a city-wide alcohol ban in public places be investigated by staff.
6. This report outlines the options¹¹ for the draft new public places bylaw:
 - Option one: Status quo, retain the three bylaws
 - Option two: Revoke the three bylaws and create a consolidated bylaw
 - Option three: Revoke the three bylaws and create a consolidated, rationalised and modernised public places bylaw.

⁹ This is required under s.155(1) of the Local Government Act 2002

¹⁰ "Playing at games" as used in the current bylaws covers any games (such as ball games) as well using bicycles, motorised scooters, skateboards, roller skates and roller blades.

¹¹ This is required under s.77 of the Local Government Act 2002

7. The recommended option is option three. A draft bylaw has been prepared for Councillors' consideration, rationalising and modernising the three bylaws, and amalgamating them into a single, new bylaw (Attachment 2). This option will best meet the requirement in section 155(2) of the Local Government Act (at a broad, overall level), that the bylaw, which the Council has determined is required, will be in the most appropriate form.
8. The purpose of the new bylaw would be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used, and to provide for reasonable controls to protect health and safety, to protect the public from nuisance, and to regulate trade in public places.¹²
9. Existing bylaw clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.
10. Many of the existing clauses in the bylaws do not meet the above tests, and they were recommended for removal in the last report to the Council on this issue. However, Councillors have requested that a number of the behavioural clauses remain in the new bylaw.
11. Advice from the Legal Services Unit and the Inspections and Enforcement Unit suggests that behavioural clauses are very difficult for local authorities to enforce, as the only tool available for enforcement under the particular bylaw-making powers is prosecution.¹³ Taking a prosecution requires a high level of proof, which can be difficult for behavioural issues. The minor nature of some behavioural matters also makes the cost of taking a prosecution disproportionate to the harm being caused. A further factor is the likely age of offenders (who may have to be prosecuted through the Youth Court). Additionally, it is often difficult to establish the identity of the offender.
12. Behavioural clauses in bylaws are very difficult for local authorities to enforce. For example, the Council has not taken a prosecution under the existing graffiti clauses (which have been in public places bylaws for over two decades) for the above and other reasons, even though graffiti is clearly a problem. There are more effective tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act, which the Police enforce.
13. Including clauses that cannot easily be enforced within the bylaw may lessen the credibility of other clauses in the bylaw, may falsely raise public expectations and may divert the focus away from practical solutions to address such issues.
14. The question before Councillors is not whether an issue (for example, graffiti) is a problem, the question is whether a bylaw is an *appropriate or effective tool* for managing the issue.¹⁴ This report suggests that there are other tools that are more appropriate than a bylaw to address matters such as playing at games, graffiti, damage, littering and substance abuse in public places. Additionally, the new public places bylaw is intended to regulate *lawful* activities. The behavioural matters recommended for inclusion at the 13 December Council meeting are already unlawful due to their coverage under the Summary Offences Act.
15. These matters are covered in more detail in the background section of this report, and in the attached clause by clause analysis

¹² Local Government Act 2002 – Powers of territorial authorities to make bylaws - Section 145(a) to protect the public from nuisance; Section 145(b) protecting, promoting and maintaining public health and safety; and Section 146(a)(vi) [regulating] trading in public places.

¹³ Parliament has not yet introduced any infringement offences in relation to these matters.

¹⁴ Section 155(1) of the Local Government Act requires local authorities to consider whether a bylaw is the “most appropriate way of addressing the perceived problem”.

16. If the Council adopts the attached draft bylaw, it will go out for public consultation in accordance with the Special Consultative Procedure outlined in sections 83 and 86 of the Local Government Act 2002.

FINANCIAL IMPLICATIONS

17. It is not anticipated that the adoption of the bylaw, as proposed, would significantly impact on enforcement demands, and indeed may be more cost effective, as the bylaw reduces the scope of the Council's enforcement activities. Provision could be made to recover the costs of providing licenses or approvals in relation to the use of public places (for example, commercial activities using public space), should the Council so wish.
18. Adding to the range of matters covered by the bylaw could substantially increase the budget required for enforcement activities (monitoring, investigation, evidence collection, taking prosecutions, etc), as well as putting a strain on the small Inspections and Enforcement Unit. The Unit has a range of statutory inspection and enforcement responsibilities under a range of Acts.¹⁵

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

19. The budgets for the Regulatory Services group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.¹⁶

LEGAL CONSIDERATIONS

20. The following bylaws have been considered as part of this review:
- the Christchurch City Council Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
21. The Local Government Act 2002 requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008.¹⁷ The first two of the bylaws fit into this category. However, the third, the BPDC Public Places and Signs Bylaw, was made under the Local Government Act 2002 and does not need to be reviewed until 2009.¹⁸ Due to the amalgamation of the BPDC with the CCC, and the need to align the legislation across the new jurisdiction, it is appropriate to review relevant parts of the BPDC Public Places and Signs Bylaw now, in conjunction with the review of the other public places bylaws.
22. The Local Government Act 2002 allows local authorities to make bylaws to cover certain things or situations. Section 145 of the Act covers general bylaw-making powers. These allow local authorities to make bylaws for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places. Section 146 of the Act contains specific bylaw-making powers. Of relevance to this report, is section 146(a)(vi), which allows local authorities to make bylaws for the purpose of regulating trade in public places.¹⁹ The proposed public places bylaw covers aspects of all of these, except minimising offensive behaviour.
23. Offensive behaviour is covered by the Summary Offences Act. For example, the Act covers: offences against public order; offences against persons or property (such as graffiti); intimidation, obstruction and hindering police; indecency; loitering and trespass; and offences relating to nuisances. The Local Government Act does not allow for the issuing of infringement notices (instant fines), so the only option for enforcement by the Council for breaches of the bylaw is to prosecute. It is hard to argue that the cost of taking such a case to Court, given the unlikelihood of a conviction, are in the ratepayers' interest, particularly when the Police already have the power to deal with these matters under the Summary Offences Act.²⁰

¹⁵ For example, the small team of eleven managed over 3,500 complaints last year across a of range of legislation.

¹⁶ Our Community Plan 2006-2016, Volume 1, page 149.

¹⁷ Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974, in force at 1 July 2003, to be reviewed within five years.

¹⁸ As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

¹⁹ Section 146(a)(vi), trading in public places.

²⁰ Although the power in the Local Government Act relates not just to regulating offensive behaviour, but to "minimising the potential" for offensive behaviour, the current bylaw wording for most of these behavioural issues is almost the same as the wording used in the Summary Offences Act.

24. The Local Government Act requires local authorities to determine whether a bylaw is the most appropriate way of addressing the perceived problems (section 155(1) of the Act). This was canvassed in the previous report to Councillors on this issue. In that report, it was decided that a bylaw was the most appropriate way of addressing potential problems relating to public places. The appropriateness of bylaws as a tool for addressing the issues that have been raised will be covered later in this report.
25. Section 155(2) and 155(3) relate to whether the proposed bylaw is in an appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act. A bylaw cannot be made if it is inconsistent with the Bill of Rights Act. The Bill of Rights Act sets the minimum standards to which public decision making must conform.²¹ Relevant parts of the Bill of Rights in relation to the public places bylaw include the right to freedom of expression, freedom of peaceful assembly, freedom of association, freedom of movement and freedom from discrimination.²²
26. The Legal Services Unit considers that the form of the bylaw, as proposed, is the most appropriate form, and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
27. This report also covers matters relating to section 77 of the Local Government Act. Section 77 relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the Council's capacity. The options analysis forms the second part of this report.
28. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Local Government Act 2002. If the Council agrees to adopt the attached draft bylaw, it is required to appoint a hearings panel, to agree to a submission closing date, and to agree to the draft Statement of Proposal and Summary of Information for consultation.
29. Section 81 of the Local Government Act requires local authorities to establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes. Initial discussions have taken place with the Ngai Tahu runanga Mahaanui Kurataiao (MKT). However, due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development, and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the bylaw review during the Special Consultative Procedure.

Have you considered the legal implications of the issue under consideration?

30. Yes, as above.
31. A clause by clause analysis of the existing bylaws was provided to Councillors on 13 December 2007, and an updated version is attached to this report.
32. The clause by clause analysis compares the current clauses across the three bylaws, and contains advice on whether a clause should be included in the new draft bylaw.²³ The clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.

²¹ Ministry of Justice, *The Guidelines on the New Zealand Bill of Rights Act 1990: A Guide to the Rights and Freedoms in the Bill of Rights Act for the Public Sector*

²² Sections, 14, 16, 17, 18 and 19 of the New Zealand Bill of Rights Act 1990.

²³ The Council Decision-making Guide, as well as the Local Government New Zealand guide on regulation and enforcement, require taking into account: the identification of the problems being addressed; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

33. Any regulation, including bylaws, should consider the Ministry of Economic Development's Code of Good Regulatory Practice, which suggests that the following should be considered:
- *efficiency* by adopting only regulation for which the costs to society are justified by the benefits, regulation at the lowest cost, taking into account alternatives
 - *effectiveness* to ensure regulation can be complied with and enforced, at the lowest possible cost
 - *transparency* by defining the nature and extent of the problem and evaluating the need for action
 - *clarity* by making things as simple as possible, using plain language where possible, and keeping discretion to a minimum
 - *fairness and equity* any obligations or standards should be imposed impartially and consistently.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

34. The LTCCP's strong communities strategic directions section prioritises: providing accessible and welcoming public buildings, spaces and facilities; providing parks, public buildings, and other facilities that are accessible, safe, welcoming and enjoyable to use; working with partners to reduce crime, help people avoid injury and help people feel safer; providing and supporting a range of arts, festivals and events; and protecting and promoting the heritage character and history of the city.²⁴
35. The LTCCP's healthy environment strategic directions section prioritises: providing a variety of safe, accessible and welcoming local parks, open spaces and waterways; providing street landscapes and open spaces that enhance the character of the city; and protecting and enhancing significant areas of open spaces within the metropolitan area.²⁵
36. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.²⁶

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

37. The bylaw would be consistent with the commitment in the Community Plan, volume 1, page 145: *Legislative requirements are enforced to ensure the safety and health of people.*

ALIGNMENT WITH STRATEGIES

38. A number of adopted Council strategies are particularly relevant when considering the use of public places.
39. The Christchurch *Central City Revitalisation Strategy* aims to develop a "vibrant, fun, exciting, safe and sustainable heart of Christchurch...".²⁷ Two of the priorities of the Strategy are "enhancing our public spaces" and "growing our businesses". The Strategy also aims to "enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City..."²⁸ and the number of pedestrians in the Central City is listed as a measurable sign of achievement in a number of the objectives.²⁹
40. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services.³⁰ One of the ways of measuring the success of the Strategy is that "pedestrians, cyclists, motorists and people with disabilities can move safely around our city".³¹

²⁴ Our Community Plan 2006-2016, Volume 1, p.60

²⁵ Our Community Plan 2006-2016, Volume 1, p.61

²⁶ Our Community Plan 2006-2016, Volume 1, p.64

²⁷ <http://www.ccc.govt.nz/CentralCity/>

²⁸ Central City Strategy, Revitalising the Heart of Our City - Stage I, Objective F, p. 13,

http://www.ccc.govt.nz/CentralCity/Strategy/DevelopmentOfCentralCityStrategyStageOne_Feb2001.pdf

²⁹ Central City Strategy, stage II, , pp 48-51, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

³⁰ <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

³¹ Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

41. The *Pedestrian Strategy for Christchurch, February 2001*, states: "The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation... Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence".³² Additionally, Council recently signed the International Charter for Walking, which supports the "universal rights of people to be able to walk safely and to enjoy high quality public spaces, anywhere and at any time."³³
42. The *Christchurch Cycling Strategy* states: "The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch's sustainable transport mix".³⁴
43. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau".³⁵ Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed (this includes... sandwich boards on footpaths)".³⁶
44. These five strategies touch on aspects of what a proposed public places bylaw would be developed to manage – that is, a balance between the different activities the community may wish to use public places for. The proposed bylaw would provide for reasonable controls to protect health and safety, to protect the public from nuisance, and to regulate trade in public places.
45. The Council also has a number of policies that are relevant to public places, in particular, the commercial use of public spaces, as follows:
 - Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
 - Stall Site Licensing Policy (adopted 20 September 1995)
 - Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
 - Busking Conditions (adopted 27 August 1997)
 - Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
 - Signboards in Public Places (adopted 22 July 1998)
 - Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
 - Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
 - Victoria Square and Victoria Square Amphitheatre - Use Of (26 November 1990)
 - Street Trading Policy (16 December 1999)
 - Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).
46. The proposed bylaw would be complemented by operational policies (such as those above), which would align with the relevant strategies for managing public spaces. These policies will need to be reviewed and updated to ensure they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

Do the recommendations align with the Council's strategies?

47. Yes, as above

³² <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

³³ Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21st Century

³⁴ <http://www.ccc.govt.nz/cycling/future/>

³⁵ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

³⁶ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

CONSULTATION FULFILMENT

48. A Council seminar was held in May 2007. The Bylaw Review Sub-Committee considered the public places bylaw review in August 2007, enabling the inclusion of Community Board members' views. Consultation with the Ngai Tahu runanga commenced on October 2007 through Mahaanui Kurataiao.
49. Informal discussions on the current and future coverage of the public places bylaws were undertaken with the New Zealand Police and with the Central City Business Association.
50. If the draft bylaw is adopted by the Council, stakeholder groups will be given the opportunity to make a submission as part of the Special Consultative Procedure. They can also be heard before the hearings panel, if they so wish. Stakeholder groups include, but are not limited to, retailers, event management companies/festival organisers, disability associations, the Chamber of Commerce, and all residents' groups. The Ngai Tahu runanga will have a further opportunity to express their views on the proposed bylaw through this Special Consultative Procedure process.

STAFF RECOMMENDATION

It is recommended that the Planning and Regulatory Committee adopt and recommend to the Council:

- (a) That the attached draft bylaw is the most appropriate way to address problems in public places; is in the most appropriate form; and does not give rise to any implications under the New Zealand Bill of Rights Act 1990 [sections 155(1), 155(2) and 155(3) of the Local Government Act 2002].
- (b) That the draft bylaw will be made to protect the public from nuisance in public places; to maintain health and safety in public places; and to regulate trade in public places [sections 145(a), 145(b) and 146(a)(vi) of the Local Government Act 2002].
- (c) That the purpose of the draft bylaw will be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.
- (d) That the attached draft bylaw be adopted for consultation.
- (e) The composition of a Hearings Panel.

BACKGROUND (THE ISSUES)

51. This review covered the three public places bylaws:
 - the CCC Public Places and Signs Bylaw 2003;
 - the BPDC Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part three only).
52. The bylaws currently comprise a collection of relatively diverse matters that may occur in public places, including: the use of public places; hawkers and keepers of mobile or travelling shops; itinerant traders; stands and stalls; signs visible from public places; nuisance in public places, damage to public places; use of barbed wire; discharge of stormwater or wastes; stormwater drains through footpaths; vehicle crossing; access on hillside sites; and miscellaneous provisions.
53. It is timely to review these bylaws as:
 - the Local Government Act 2002 requires them to be reviewed
 - the amalgamation of Banks Peninsula District Council with the Christchurch City Council means that legislation made under the two jurisdictions is gradually being amalgamated.
54. Some of the clauses contained in the existing public places bylaws:
 - reflect matters that were significant in the past, but are no longer relevant
 - are now covered by national legislation, by city and district plans, or by other bylaws
 - may not comply with the Code of Good Regulatory Practice
 - may not comply with the New Zealand Bill of Rights Act 1990
 - may not fall within current bylaw making powers of the Local Government Act
 - may no longer present a significant issue that needs to be controlled via bylaw
 - may not be possible or practical to enforce.
55. In general, it is accepted that Council control of public places via a bylaw should not:
 - apply to matters that are covered adequately by other legislation
 - deal with matters that unnecessarily restrict individual freedoms³⁷
 - cover matters that are insignificant in effect or magnitude
 - deal with matters that can be more appropriately dealt with by other tools at the Council's disposal
 - be impractical to enforce.³⁸
56. A clause by clause analysis of the bylaws is attached (Attachment 1), indicating which of the existing clauses in the three bylaws meet the above test for inclusion in a new public places bylaw.
57. The Council has at its disposal a number of different tools for managing or preventing potential or perceived issues, including through City or District Plans, through policies and strategies, through public education, through partnerships with other agencies, imposing conditions as the owner of public places (eg through contracts), and through bylaws.

³⁷ The New Zealand Bill of Rights Act must be taken into account in the making of bylaws - bylaws cannot be made that are inconsistent with the NZBORA (Local Government Act 2002, section 155(3))

³⁸ The Decision Making Guide (produced by CCC and Local Government New Zealand) requires taking into account the nature of the identified problems; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

58. Bylaws are an effective tool for regulating some matters (such as commercial activities in public places via licensing), but are an ineffective tool for regulating other matters (such as behaviour). The powers contained within the Local Government Act to enforce bylaws are limited, and in the case of the public places bylaw, the only tool available to enforce a breach of a bylaw offence is prosecution. Prosecution is not usually a viable option for behaviour-related matters, where often the offence is committed with little physical evidence or with little likelihood of establishing the identity of the offender (eg graffiti). An additional complication is that often those who are likely to breach behavioural bylaws are considered youths under the law,³⁹ and the cost of taking a prosecution is often disproportionate to the offence (eg playing at games). The Local Government Act requires the Council to determine whether a bylaw is an appropriate tool for addressing each issue. In the case of behavioural clauses, the clause by clause analysis demonstrates that it is not an appropriate or effective tool. Behavioural matters are covered in the Summary Offences Act, which is enforced by the Police. Police ultimately retain the power of arrest for uncooperative offenders and, unlike Council staff, maintain a 24 hour response capability.
59. As a result of the previous report provided to Councillors, it was decided that a bylaw was needed to prevent nuisance in public places, to maintain public health and safety in public places, and to regulate trade in public places. The aim of the bylaw would be to manage public places in such a way as to balance the various different, and sometimes competing, legal uses for which public places may be used.

BYLAW CONTENT

60. At the 13 December 2007 Council meeting, Councillors agreed that a draft bylaw should be prepared covering:
- commercial activities in public places
 - obstructions in public places
 - Council declaring public places Special Use Areas
 - temporarily residing in public places
 - some aspects of building and construction near or over public places.
 - other issues that may arise during further analysis.
61. Councillors added the following list of matters to be covered in the draft bylaw:
- playing of games
 - poster pasting/graffiti/tagging/etching
 - damage to public places
 - depositing rubbish or litter
 - substance abuse.

Building and construction near or over public places

62. The 13 December 2007 report to the Council suggested that clauses covering some aspects of building and construction near or over public places may be necessary. Further analysis has revealed that such clauses (vehicle crossings and access on hillside sites) may need to be included in a bylaw, but that they are more appropriately covered under a traffic and parking bylaw, rather than a public places bylaw. These clauses will be incorporated into the draft new traffic and parking bylaw, rather than the public places bylaw.⁴⁰

³⁹ Under the Children, Young People and their Families Act 1989, young people are those over 14 years of age, but under 17 years. The Youth Justice section in the Act has specific responsibilities for officers charging a youth with an offence (section 215). Such charges would be brought before a Youth Court (section 272), and a Youth justice Coordinator is required (section 245).

⁴⁰ The clause on restricting the use of barbed wire (as well as razor and electrified wire) from within certain distances of public places is still to be included in the proposed new bylaw. Just the clauses on vehicle crossings and access on hillside sites no longer need to be included in this bylaw.

Nuisance/behavioural clauses

63. The proposal to incorporate behavioural nuisance clauses (such as those addressing graffiti, skateboarding, littering, etc) into the bylaw does not meet the test in the Local Government Act, which requires local authorities to determine whether a bylaw is the *most appropriate* way of addressing perceived problems (section 155(1) of the Act). By not including these matters in the bylaw, the Council would not be saying that these are things are not problems, just that the bylaw is not the *most appropriate* way to address them.
64. A bylaw is not an appropriate (or effective) way of addressing the problem of nuisance behaviour as:
- the only option for enforcing the bylaw is to take a prosecution in the District Court (or the Youth Court, if the offender is a youth 14-17 yrs)
 - there is no power under the Local Government Act to issue infringement notices (instant fines)⁴¹ or to use other, less formal, legal tools than prosecution
 - having these clauses in the bylaw duplicates what is in the Summary Offences Act (which is enforced by the Police)
 - the public places bylaw is intended to regulate otherwise lawful activity, the behavioural matters are already unlawful (under the Summary Offences Act or the Litter Act)
 - many of these issues (such as substance abuse) are more appropriately handled by the Police, who have specialised training and other tools at their disposal, have the power to arrest, and have a 24 hour response capability
 - it can be difficult to establish the identity of the offender, and Council Enforcement Officers are empowered to ask for a person's name and address, but if the person refuses or gives fake or incorrect details, an Enforcement Officer can take no further action
 - Council staff have no ability to take action to stop the offender from committing the offence, as they have no powers of arrest, and physically intervening could be considered assault or put Council staff in danger
 - often by the time a complaint has been received, the offender has moved on, so the identity of the offender cannot be established
 - the minor nature of the offences is disproportionate to the cost of taking a prosecution and is therefore arguably not in the public interest.
65. Behavioural nuisance clauses have been in public places bylaws in Christchurch for over two decades and the Council has not taken any related prosecutions. There is no record of any prosecutions being taken by the Banks Peninsula District Council. As the only enforcement tool available under the Local Government Act is prosecution, and because these types of clauses are of a minor nature, they are not easily enforceable.

⁴¹ Infringement notices (instant fines) cannot be issued under the Local Government Act (under which a Public Places Bylaw would be made). Some bylaws allow infringement fines - it depends on the primary act under which the bylaw was made – eg some of our bylaws are made under the Dog Control Act, the Transport Act, etc, which all allow infringement notices to be issued in relation to the enforcement of bylaws.

Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Playing of games	<ul style="list-style-type: none"> As the clauses are currently worded, they prohibit anyone playing any game or skateboarding, in a way that could be considered reckless or dangerous, or which could cause damage or annoyance, in a public place. This currently covers all parks in Christchurch, where, for example, sports are regularly played, and all skate parks. Proving behaviour has been “reckless” or “dangerous” or that it “may cause damage or annoyance” can be difficult. If the behaviour was immediately dangerous, the Police would be called, as they have powers of arrest and could intervene.
CCC – clause 3	<ul style="list-style-type: none"> Since the development of the Washington Skate Park, complaints to the Council about skateboards have almost completely stopped. The Council also has a Skateboarding Strategy. There is no record of complaints about people “playing at games”.
BPDC – clause 3.2.1	<ul style="list-style-type: none"> There is no record of prosecutions being taken by the Councils. These issues are covered by the Summary Offences Act (sections 13 – things endangering safety - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000). The clause on special use areas could be used to prohibit an activity from a specific area – such as banning ball games in Cashel Mall to protect the safety of pedestrians. Skateboards, in-line skates and roller skates are defined as a "vehicle" under the Land Transport Act 1998 and the Police can issue infringement notices (instant fines). There is no record of prosecutions being taken by the Councils.
Poster pasting, graffiti, tagging, etching	<ul style="list-style-type: none"> Establishing the identity of the offender and proving they committed the offence in order to get a prosecution is difficult. These issues are covered by the Summary Offences Act and are enforced by the Police (sections 33 – Billsticking, defacing, etc – a fine not exceeding \$200). Charges could also be brought under section 11 – wilful damage (see below).
CCC – clause 4	
BPDC – clauses 3.3.2 – 3.3.3	<ul style="list-style-type: none"> Other non-regulatory approaches to graffiti may be more effective, such as the Council's Graffiti Hotline, working with spray can retailers, or working with schools, communities, etc, following guidance from the Ministry of Justice and Local Government New Zealand is the <i>Beat Graffiti</i> guide.
Damage to public places	<ul style="list-style-type: none"> There is no record of prosecutions being taken. Establishing the identity of the offender and proving they committed the offence in order to get a prosecution is difficult for behavioural matters. Damage to public places is covered by the Summary Offences Act (section 11 – wilful damage - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000).
BPDC - clause 3.3.2	<ul style="list-style-type: none"> Reports of damage are referred to the Police where appropriate.

Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Depositing rubbish or litter	<ul style="list-style-type: none"> • Traffic and Parking Wardens are delegated powers under the Litter Act. This allows them to issue infringement fines (tickets) to those caught littering. This is effective (though narrow in scope).
CCC – no coverage	<ul style="list-style-type: none"> • Having this in the bylaw would duplicate what is covered by the Litter Act (and the only tool would be prosecution).
BPDC - clause 3.2.1	<ul style="list-style-type: none"> • A non-regulatory option would be to provide more rubbish bins or recycling facilities in public places.
Substance abuse	<ul style="list-style-type: none"> • No record of the BPDC taking a prosecution. • Enforcement could put Council staff in danger and Council Enforcement Officers are not trained to deal with such matters.
CCC – no coverage	<ul style="list-style-type: none"> • There are more effective ways of managing substance abuse in public places, for example, engaging the Police, who are equipped to handle such issues.
BPDC - clause 3.2.1	

66. The Police are empowered to address the behavioural issues (above) and can do so more effectively, with better resources, training and enforcement tools, than the small Council enforcement team. The Council is working with the Police to help address some of these issues, for example, through the Graffiti Hotline, through Safer Christchurch, and through the Central City Revitalisation project.

67. There is no dispute that these types of behaviours are problematic; the question is whether a bylaw is an effective tool to deal with the problem. In this case, a bylaw is not an effective tool for addressing nuisance behaviours, for the above reasons. The purpose of the bylaw is to regulate “lawful” matters. These sorts of behavioural matters are already offences under other law, such as the Summary Offences Act.

68. If behavioural clauses are included within the bylaw to send a message about the appropriateness of behaviour, this may raise public expectations that the Council will enforce the bylaw, unintentionally setting the Council up for failure. Incorporating unenforceable clauses into the bylaw may tie up staff and Councillor time responding to complaints about why the Council is not enforcing its bylaws.

City-wide alcohol ban in public places

69. A recommendation was added to the previous report on the public places bylaw review, requesting that Council staff investigate the possibility of a city-wide alcohol ban in public places. This will be covered in a separate report to Council as part of the review of the liquor control bylaws, and potentially a wider review of the Council’s Alcohol Policy (relating to liquor licensing etc) in late 2008.

Display of goods / trading in a public place

70. A further issue that was raised at the last Council meeting on this issue, but did not result in a new recommendation, was the issue of street prostitution – that is, people soliciting for sex work in public places.

71. The Prostitution Reform Act 2003 changed very little in regard to legal controls over prostitution. Prostitution is legal, and has been for a considerable number of years. The Act has four main purposes:

- to safeguard the human rights of sex workers and protect them from exploitation
- to promote the welfare and occupational health and safety of sex workers
- to protect and promote public health for sex workers and their clients
- to prohibit persons under 18 years of age being involved in prostitution.

72. The bylaw-making powers under the Local Government Act 2002 that are relevant to the regulation of street prostitution include:
- trading in public places (s.146 (a)(vi))
 - protection from nuisance (s.145 (a))
 - minimising the potential for offensive behaviour (s.145(c)).⁴²
73. Prostitution can be regulated, but it cannot be prohibited. There are Bill of Rights and other implications in how it is regulated, for example, the regulation cannot be so difficult to comply with that it is, in effect, prohibitive. Bylaws in this area have been challenged in Court, including CCC's Brothels (Location and Signage) Bylaw 2004, which was, in part, successfully challenged in 2005.⁴³
74. One possibility is that street prostitution could be regulated as "trading" in a public place. A relevant clause in the existing bylaw gives the Council the power to issue licenses and set conditions for commercial activities in public places (including displaying goods for sale). Council could apply this to street prostitution. Such a requirement would have to focus on the behaviour concerned and explicitly describe the behaviour being regulated (otherwise it would be unenforceable).⁴⁴ The cost effectiveness of such an approach, including the likely success of enforcement and any prosecutions, is questionable. Licensing of street prostitutes would have to comply with the Prostitution Reform Act requirements, for example, the Act requires all sex workers to adopt safe sex practices.⁴⁵ A further issue is that if the Council licenses street prostitutes, such licensing could be seen by the public as an endorsement of the activity.
75. A further issue with regulating street prostitution via a bylaw, is that street prostitution predominantly occurs in the evening and early morning hours. Council enforcement staff do not work during these hours, and there could be considerable occupational safety issues (as well as large budgetary increases), were such a clause to be applied to street prostitution and enforced by Council staff. As mentioned previously, Council Enforcement Officers have no powers of arrest, and if an offender provides a fake or incorrect name and address, there is no further action that an Enforcement Officer can take.
76. There is little evidence that street prostitution creates a significant problem. Indeed, the Justice and Electoral Select Committee, tasked with considering the Prostitution Law Reform Bill, stated that "The extent of street soliciting in New Zealand is limited, both in the areas where it happens and the numbers of workers involved. Few submitters provided tangible evidence of actual harm caused by such activity".⁴⁶ For example, it was found that the problems occurring in the Manchester Street area (such as loud conversations; litter; using residents' gardens as toilets; and unsafe parking practices) were caused by patrons of the bars and other night activities in Manchester Street, not by street prostitutes.⁴⁷ These problems can be addressed by the Council through non-regulatory means, such as the provision of rubbish containers in the relevant areas; parking restrictions along the appropriate areas; the provision of public toilets; and increased street cleaning. Additionally, other issues, such as indecent exposure, were it to occur, can be dealt with under existing legislation administered and enforced by the Police.⁴⁸
77. A further report to Council on the prostitution-related matters will be prepared in late 2008, following the report of the Ministry of Justice's Prostitution Law Review Committee. The Committee will focus on whether the Act is achieving its prescribed purpose five years since it came into force. The Committee will provide its findings to the Minister of Justice by June 2008, and a report will be provided to Councillors in late 2008.

⁴² Note that both "nuisance" and "offensive behaviour" have particular meanings under the law. Because a person finds behaviour offensive or a nuisance, this does not necessarily mean that the behaviour would be considered offensive or a nuisance under the law.

⁴³ Willowford Family Trust v Christchurch City Council; 29 July 2005; Justice Panckhurst; High Court, Christchurch.

⁴⁴ The Prostitution Reform Act defines commercial sexual services as "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 or another person).

⁴⁵ Section 9 of the Prostitution Reform Act 2003, Sex workers and clients must adopt safer sex practices

⁴⁶ Prostitution Reform Bill, As reported from the Justice and Electoral Committee, 29 November 2002, p. 32

⁴⁷ Report by the Chairman of the Christchurch City Council Prostitution Reform Act Subcommittee, 22 April 2004

⁴⁸ For example, indecent exposure is an offence under the Summary Offences Act (s. 27)

THE OBJECTIVES

78. The objective of the bylaw is to provide for reasonable controls for the protection of health and safety, the avoidance of nuisance in public places, and to regulate trade in public places, to the extent that the controls fulfil the provisions of the Local Government 2002 and appropriate community outcomes. The purpose of the draft bylaw will be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.⁴⁹
79. This report outlines the options for a new public places bylaw, includes a draft new public places bylaw, and recommends that Council adopt the draft bylaw and agrees that consultation should be undertaken to seek community views on the draft.⁵⁰

THE OPTIONS

80. The options are:
- Option one: Status quo, retain the three bylaws
 - Option two: Revoke the three bylaws and create a consolidated bylaw
 - Option three: Revoke the three bylaws and create a consolidated, rationalised and modernised public places bylaw.
81. Option one, status quo, is not considered acceptable, as two of the three bylaws under consideration must be reviewed by 30 June 2008 under the requirements of section 158 of the Local Government Act 2002. Additionally, due to the amalgamation of the CCC and BPDC, it is sensible to combine this process with a review of the third bylaw, the BPDC public places bylaw, in order to introduce a single bylaw covering public places across the whole jurisdiction.
82. Option two, revoking the three bylaws and creating a consolidated bylaw would meet the review requirements of section 158 of the Local Government Act and address the amalgamation issues, but is not the preferred option, as consolidating the bylaws, but not rationalising and updating them could lead to a bylaw that may need further updating within a short time frame (which would have to undergo the full Special Consultative Procedure). In addition, this option is not likely to meet the tests of section 155 in the Local Government Act.⁵¹ Part of the purpose of the Local Government Act requirement to review bylaws, is to ensure that they are relevant and appropriate in the current context. As the attached clause by clause analysis shows, many of the existing clauses:
- reflect matters that were significant in the past, but are no longer relevant
 - are now covered by national legislation, by city and district plans, or by other bylaws
 - may not comply with the Code of Good Regulatory Practice
 - may not comply with the New Zealand Bill of Rights Act 1990
 - may not fall within current bylaw making powers
 - may no longer present a significant issue that needs to be controlled via bylaw
 - may not be cost-effective or possible to enforce.
83. Option three, revoking the three bylaws and creating a consolidated, rationalised and modernised public places bylaw, is the preferred option. This would meet the review requirements of section 158 of the Local Government Act, address the amalgamation issues and meet the tests, at a broad level, in section 155 of the Local Government Act.⁵² The key differences between this option and option two, are the rationalisation of the new bylaw, and its modernisation. Rationalising the bylaw would clarify and reduce the clauses, for example, by removing duplication and matters that are insignificant or are no longer relevant, and matters that cannot be enforced. Modernising the bylaw would update the language and style of the bylaw, so that it is easier to understand, and is more suitable now and into the future.

⁴⁹ The bylaw will regulate lawful matters – unlawful matters are already illegal due to their coverage under other legislation.

⁵⁰ The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

⁵¹ Section 155(1) requires that a local authority must “determine whether a bylaw is the most appropriate way of addressing the perceived problem”.

⁵² As above.

THE PREFERRED OPTION

84. Option three, revoking the existing three bylaws and creating a consolidated, rationalised and modernised public places bylaw is preferable.
85. Rationalisation of the bylaw would remove clauses that are already covered by national legislation, by city and district plans, or by other bylaws, and ensure that the bylaw no longer contains matters that are insignificant or no longer relevant in the current context, or that cannot be practically enforced. Additionally, only those matters that are lawful will be regulated by the bylaw.
86. The proposed new bylaw will contain less information than the current bylaws, as it will have a set of complementary operational/management policies which will sit outside the bylaw itself (such as the Public Streets Enclosures Policy and Fees Charged). The policies will contain the detail, such as forms, conditions, approvals, licenses, fees, etc. This will allow a greater degree of flexibility for managing these approvals. If the information were to be contained within the bylaw itself, rather than in a policy, any changes would have to undergo the full Special Consultative Procedure. Taking this approach to the bylaw results in a streamlined and simplified bylaw, with the much of the detail in operational/management policies. The policies already exist, but will need to be reviewed to ensure they align with the new bylaw.
87. This type of bylaw is written in simple, modern language. The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: “there is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people...”.⁵³ Additionally, the Ministry of Economic Development’s *Code of Good Regulatory Practice*, promotes the importance of clarity, arguing that regulation should use plain language where possible, in order to make things as simple as possible.⁵⁴

ASSESSMENT OF OPTIONS

The Preferred Option

88. The preferred option is to revoke the three bylaws and create a single, new, consolidated, rationalised and modernised public places bylaw.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • Only matters of significance will be regulated • Only matters that are enforceable will be regulated • Flexibility for policies to be altered (rather than having to alter the bylaw) • An easier to understand bylaw (modern plain English) • Flexibility to cover future applications (all activities covered, rather than specific activities) • Public expectations more likely to be met (realistic and enforceable clauses) 	<ul style="list-style-type: none"> • Initial need to review policies and keep them updated • People have to check with the Council before undertaking an activity – all activities covered, rather than specific activities (eg “commercial activities” generally are covered, rather than each specific commercial activity being listed) • Increased need for advertising/communications
Cultural	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific

⁵³ The Legislation Advisory Committee was established in 1986 to “help improve the quality of law-making by attempting to ensure legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation” www.justice.govt.nz/lac/who/index.html

⁵⁴ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997.

Environmental	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Economic	<ul style="list-style-type: none"> • Only matters of significance will be regulated • Flexibility for policies to be altered (rather than having to alter the bylaw) • Requirements more easily understood 	<ul style="list-style-type: none"> • Initial need to review policies and keep them updated • Some Council staff time – eg in preparation of advisory documents (may be similar to the current situation)

Extent to which community outcomes are achieved:

The community outcomes that this option would contribute to include:

- a **well governed city** by having a single, new, consolidated, rationalised and modernised public places bylaw, the requirements will be easier to understand than they are now. Increased understanding of the bylaw, both while it is being consulted on, and once it comes into force. Public expectations will be able to met in relation to enforcement.

Impact on the Council’s capacity and responsibilities:

Inspection and enforcement activity for the bylaw, as proposed, is likely be less than or similar to that required under current bylaws. Provision could be made to recover the costs of providing licenses or approvals in relation to public places, should the Council so wish.

Effects on Maori:

There will be no specific effect on Maori – consolidating, rationalising and modernising the three bylaws will make them easier to understand for everyone.

Consistency with existing Council policies:

Current policies relating to the management or access of public places include:

- Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
- Stall Site Licensing Policy (adopted 20 September 1995)
- Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
- Busking Conditions (adopted 27 August 1997)
- Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
- Signboards in Public Places (adopted 22 July 1998)
- Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
- Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
- Victoria Square and Victoria Square Amphitheatre - Use Of (adopted 26 November 1990)
- Street Trading Policy (16 December 1999)
- Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).

Additionally, the Council has existing arrangements, for example, a contract with Phantom Billstickers for poster-pasting and bollards, and an agreement relating to advertising on bus shelters with Adshell.

These policies will need to be reviewed and updated to ensure they align the with new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

Such policies, agreements or contracts would be complementary to the bylaw, and can be updated to respond to changing community needs, whereas if a greater of level of detail was contained within the bylaw, the bylaw itself would have to be updated, which must involve the Special Consultative Procedure.

Views and preferences of persons affected or likely to have an interest:

The Inspections and Enforcement Unit is strongly in favour of this option – preference for only those clauses that are easily enforceable to be included.

Further views would be obtained through the Special Consultative Procedure.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.

The amalgamation of the Banks Peninsula District Council and the Christchurch City Council requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.

Maintain the Status Quo (if not preferred option)

89. The status quo is not preferred as it would involve failing to comply with section 158 of the Local Government Act, which requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008. In addition, retaining the three separate bylaws, would fail to acknowledge or respond to the amalgamation of the BPDC with the CCC. A single bylaw is required to cover the whole district for which the Christchurch City Council has responsibility.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none">Existing bylaws may be known to some people - no new requirements to publicise	<ul style="list-style-type: none">Legal uncertainty as to the status and enforceability of the bylawsReputation of the Council tarnished by not meeting LGA requirementsReputation of the Council tarnished by failing to update bylaws as a result of the BPDC/CCC amalgamation in a timely fashionReputation of the Council tarnished by failure to enforce the unenforceable parts of the current bylaws
Cultural	<ul style="list-style-type: none">None specific	<ul style="list-style-type: none">None specific
Environmental	<ul style="list-style-type: none">None specific	<ul style="list-style-type: none">None specific
Economic	<ul style="list-style-type: none">Existing bylaws may be known to some businesses - no new requirements to learn	<ul style="list-style-type: none">Legal uncertainty as to the status and enforceability of the bylawsOpen to legal challenge

Extent to which community outcomes are achieved:

The community outcome of a **well governed city** would not be met, as the maintaining the current situation would be confusing and uncertain, and would not comply with the Local Government Act.

Impact on the Council's capacity and responsibilities:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create a uncertain legal environment, in which the legal status and enforceability of the bylaws would be questionable.

Effects on Maori:

There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.

Consistency with existing Council policies:

The Council has policies which currently cover a wide range of matters covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but without the bylaw to back them up, their status is uncertain.

Views and preferences of persons affected or likely to have an interest:

The Legal Services Unit does not support maintaining the status quo, nor does the Inspections and Enforcement Unit.

Other relevant matters:**At Least one Other Option (or an explanation of why another option has not been considered)**

90. The third option is to revoke the three bylaws and create a single, new, consolidated bylaw. This new bylaw would largely replicate the existing three bylaws, with some rationalisation where duplication exists. The clauses and language from the existing three bylaws would largely be carried over to the new bylaw.
91. This is not the preferred option as some of the language in the three bylaws does not follow the movement in New Zealand towards plain English legal drafting.⁵⁵ A further issue, is that there is a need to rationalise the three bylaws, as aspects of them:
 - may not fall within current bylaw making powers of the Local Government Act 2002
 - are now covered by other legislation or by city and district plans
 - no longer present a significant issue that needs to be controlled via bylaw
 - may no longer be cost-effective or possible to enforce.

⁵⁵ The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: "There is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people..." (2001)

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> not much change – easy to understand 	<ul style="list-style-type: none"> aspects of the current bylaw cannot be enforced (eg the behavioural nuisance clauses) public expectations unlikely to be met (unrealistic and unenforceable clauses) duplication in other laws (including city/district plans) is unnecessary and could be confusing the need for updating or altering may be more likely in the short term outmoded language may make the new bylaw harder to understand, now and into the future some coverage of the bylaw is prescriptive, providing less flexibility lack of flexibility may increase the need to update or alter the bylaw if it requires updating or altering, it will have to go through the full Special Consultative Procedure
Cultural	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> none specific
Environmental	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> none specific
Economic	<ul style="list-style-type: none"> not much change – easy to understand 	<ul style="list-style-type: none"> (as above for social)

Extent to which community outcomes are achieved:

This option would not contribute to a **well governed city**, as the language and coverage of the bylaw may be outmoded (and therefore hard to understand) and the bylaw will be less flexible than the preferred option, making it less useful and more expensive, as it may require frequent updating. A further issue is that aspects of the existing bylaws are unenforceable (therefore failing to meet public expectations), and carrying them over to the new bylaw is not good practice.

Impact on the Council's capacity and responsibilities:

The bylaw may require frequent updating due its lack of flexibility. Inspection and enforcement activity for a new bylaw is likely be similar to that required under current bylaws. Provision could be made to recover the costs of providing licenses or approvals, should the Council so wish.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

The Council has policies which currently cover a wide range of matters also covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but would have to align with the detail in the bylaw, which cannot be altered without undertaken the Special Consultative Procedure.

Views and preferences of persons affected or likely to have an interest:

The Inspections and Enforcement Unit does not support this option.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.