

6. PUBLIC STREETS ENCLOSURES POLICY AND FEES CHARGED

Manager responsible:	Chief Executive
Officer responsible:	Transport and Greenspace Manager
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PURPOSE OF REPORT

1. The purpose of this report is to “*report back to Council, together with an updated valuation report from a registered valuer engaged by the Council*” as resolved by the Council at its meeting on 3 August 2006, to enable the Council to consider the resolutions passed on 20 December 2005 based upon the Public Street Enclosures and Fees Subcommittee report dated 15 December and resolve whether to reaffirm the adoption of those resolutions.

ASSOCIATED DOCUMENTS TO BE CONSIDERED IN CONJUNCTION WITH THIS REPORT

2. The following associated documents are attached to this report:
 - Valuation report dated 10 August 2006 obtained by the Council from Mr R O Chapman (registered valuer) of FordBaker Valuation.
 - Revised guidelines and policy recommended by the Subcommittee.
 - Report of the Public Streets Enclosures and Fees Subcommittee and attachments thereto submitted to the Council meeting held on 3 August 2006.

EXECUTIVE SUMMARY

2. Having read and listened to the submissions made at the Council meeting on 3 August 2006, having considered the Council’s valuation advice and having compared rental rates for other uses of public space within Christchurch, it is the view of Council officers that the application of the current methodology and percentage rates therein result in a rental that is fair and reasonable for the city including the Strip, as reflected in the Subcommittee recommendations adopted by the Council on 20 December 2005.
3. It sets a strong precedent that the majority of licensed bar, restaurant and café owners within Christchurch accept both the current policy and fee charging methodology.

FINANCIAL AND LEGAL CONSIDERATIONS

4. The current budgeted rent from the 80 plus licences throughout the city is \$232,000. Any plus or minus adjustment of the percentage used to calculate rentals will have a subsequent flow on effect.
5. As this review and associated consultation commenced prior to the inclusion of Banks Peninsula it is considered that any resolutions made in respect of this matter should apply to the former Christchurch City area only. It is proposed that the previous Banks Peninsula policy remain in effect for that area until a review including consultation is undertaken, but that this should not give rise to revisiting any policy decision made for the “city” from this current process.

STAFF RECOMMENDATIONS

It is recommended:

1. That the following recommendations of the Public Streets Enclosures Policy and Fees Subcommittee and subsequent resolutions adopted by the Council on 20 December 2005 concerning this matter be confirmed, subject to the amendments set out below in clauses 2, 3, 4 and 5 of the staff recommendations:
 - (a) *That the Council retain the current fee charging methodology, as set out in the attached report previously submitted to the Council on 15 September 2005.*

- (b) That the current prescriptive Public Streets Enclosures Policy be revoked, and replaced with the revised policy attached, to allow staff more flexibility in issuing and monitoring licences for the occupation of public streets and other public spaces for such purposes.
 - (c) That all tenants occupying public streets and other public spaces be required to pay the full rental due in accordance with the Council's charging policy.
 - (d) That all occupiers who have erected tables, chairs and other street furniture on public streets and other public spaces be required to enter into the Council's standard licence for the occupancy of the affected spaces.
 - (e) That the Corporate Support Manager and Transport and Greenspace Manager be severally delegated power to:
 - (i) Institute enforcement proceedings where an occupier refuses to accept the fees and other conditions applicable in respect of the subject site within the terms of the Council's policy, and have those fees and conditions documented in a licence.
 - (ii) Institute enforcement proceedings where a licensee fails to meet the terms and conditions of their existing licence.
 - (iii) Terminate the occupancy of the subject site or sites, in either of the circumstances referred to in (i) and (ii) above.
2. That recommendations 3-6 below apply to the former Christchurch City area, as defined prior to the inclusion of Banks Peninsula.
3. That the current fee charging methodology described in the below table be retained.

Leased Area	Rental Calculation (per annum plus GST)	
0m ² - 30 m ²	30% of Prime Rental Rate for	0m ² - 30 m ²
31m ² - 60m ²	30% of Prime Rental Rate for Plus 26% of Prime Rental Rate for	0m ² - 30 m ² 31m ² - 60m ²
61m ² - 99m ²	30% of Prime Rental Rate for Plus 26% of Prime Rental Rate for Plus 20% of Prime Rental Rate for	0m ² - 30 m ² 31m ² - 60m ² 61m ² - 99m ²
Over 100m ²	30% of Prime Rental Rate for Plus 26% of Prime Rental Rate for Plus 20% of Prime Rental Rate for Plus 15% of Prime Rental Rate for	0m ² - 30 m ² 31m ² - 60m ² 61m ² - 99m ² 100m ² or over

4. That the definition of the Prime Rental Rate be confirmed to mean:
- "The Prime Rental Rate" means the prime rental rate that would be payable by an independent third party for the area which is within five metres of the front inside ground floor area of the premises leased or owned by the licensee for the licensee's business. For the purposes of this definition the "front" shall be deemed to be that part of the premises leased or owned by the licensee for the licensee's business which adjoins of faces onto the licensed area.*
5. That the future standard tables and chairs licence agreement reflect the above rental formula, the new policy, guidelines and current practices.
6. That for the sake of clarity:
- (a) As there is no recommended change to the charging policy, clause 1(c) above apply for the full period from expiry of previous licences to when new licences are entered into as outlined in (b) below.
 - (b) The new licences provided for in clause 1(d) above be entered into no later than 1 November 2006.

BACKGROUND ON PUBLIC STREETS ENCLOSURES POLICY AND FEES CHARGED

7. Following the Public Street Enclosures and Fees Subcommittee report to the Council on 20 December 2005 and subsequent resolutions of the Council concerning the Public Streets Enclosure Policy and the fees charged, a group of bar owners from the Strip (the submitters) commenced Court action over the process followed by the Council at its meeting on 20 December 2005.
8. Submitters withdrew their Court action on the understanding that the Council would contribute \$20,000 to their legal costs to date and that the Council would reconsider the Subcommittee report, and they would be given a further opportunity to make submissions to the Council on those matters they considered relevant to the Public Streets Enclosures Policy and the fees charged.
9. These submissions have been made and the Council resolved that the submissions be referred to officers for report back to the Council, together with an updated valuation report from a registered valuer engaged by the Council.
10. It is apparent that there is a high level of agreement regarding the proposed changes to the Public Streets Enclosures Policy and therefore no reason to revisit this issue. Accordingly the sole outstanding issue is the level of rent. There is no dispute in using the current methodology for calculating the rent. However there are variables in the methodology such as the Prime Rental Rate and the percentage to be applied.
11. Richard Chapman's valuation report is presented in conjunction with this staff report and he has supplied advice on the best rental rate to be used when applying the methodology and comments on the best percentage to be used.
12. The current tiered percentage methodology is well justified and takes into account some well recognised and sound valuation methodology that provides for variation to the size and depth of the premises.
13. In addition we believe that the current methodology and percentages used for calculation of rentals, which is again supported and recommended by our valuer, results in a fair and reasonable rent for occupiers of public space (footpath/legal road).
14. The submitters argue that a flat percentage rate should be used for rent calculation. Councillors are reminded that valuers representing the Council and the bar owners on the Strip agreed to the percentage rates in 1998 and subsequent to this agreement licences were signed. Using the submitters' suggested 17.5% flat rate and using their example of the 62m² Liquidity occupies as a basis calculates to a rental of \$5,425 plus GST per annum as opposed to the current rental of \$8,600 plus GST per annum.

COMPARABLE USES AND INCOME

15. After consultation with the Council's Parking Unit it is suggested that an outdoor area such as Liquidity could accommodate three car parks with an annual net return of \$2,000-\$3,000 per annum per car park, in other words \$6,000-\$9,000 net per annum.
16. The sites could be tendered on the same basis as the food stall sites in Cathedral Square. These sites occupy around 12m² and return up to \$7,500 plus GST per annum for a seven day occupancy with restrictions on the actual time of day each site can be occupied.
17. It is not suggested that any of these alternative uses are implemented but we believe comparing rental rates for use of public spaces in Christchurch is the best way of determining the appropriate level of rent for other public spaces in Christchurch.