

## 15. PUBLIC PLACES BYLAW REVIEW 2007

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941-8017
<b>Officer responsible:</b>	Programme Manager Strong Communities
<b>Authors:</b>	Terence Moody and Teena Caygill

### PURPOSE OF REPORT

1. The purpose of this is to report on a review of the existing three bylaws relating to public places, and to seek agreement that a bylaw is the most appropriate way of addressing potential problems relating to public places, and that a draft Public Places Bylaw be prepared for the Council's further consideration.

### EXECUTIVE SUMMARY

2. In this report, Councillors are being asked to consider whether a bylaw is the most appropriate way of addressing any potential problems relating to public places.<sup>3</sup> The report does not address the specific policies or provisions of any proposed bylaw; rather it is focussed on the first step of identifying whether a bylaw is the appropriate mechanism to use. If agreed to by the Council, a further report on the scope, and detail of a proposed bylaw will be presented to the Council for consideration.
3. The following bylaws have been considered as part of this review:
  - Christchurch City Council Public Places and Signs Bylaw 2003;
  - Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1972 (adopted in 1996); and
  - BPDC Public Places and Signs Bylaw 2004 (part 3 only).
4. The Local Government Act 2002 requires the first two of these bylaws to be reviewed by 30 June 2008.<sup>4</sup> The third, the BPDC Public Places and Signs Bylaw, does not need to be reviewed yet,<sup>5</sup> but, due to the amalgamation of the BPDC with the Christchurch City Council, and the need to align the legislation across the new jurisdiction, it is appropriate to review the relevant parts of it now.
5. A review of these bylaws is timely, as they were made prior to the introduction of significant pieces of legislation, including the Resource Management Act 1991 and the Building Act 2004, and before the development of the Christchurch City and Banks Peninsula District Plans. Parts of the bylaws also reflect situations that were relevant when the bylaws were made, but may not be relevant now.
6. 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 and through bylaws. 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, should not deal with matters that unnecessarily restrict individual freedoms,<sup>6</sup> should not cover matters that are insignificant in effect or magnitude, and should not deal with matters that can be more appropriately dealt with by other tools at the Council's disposal. Additionally, the practical enforcement of any bylaw is an important consideration.<sup>7</sup>
7. A clause by clause analysis table comparing the three existing public places bylaws is at Attachment 3. The table lists the existing clauses of the bylaws and contains recommendations on whether the matters covered in each of the clauses should be continued or should be removed in any bylaw going forward.

<sup>3</sup> This is required by section 155 of the Local Government Act 2002

<sup>4</sup> 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.

<sup>5</sup> As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

<sup>6</sup> 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))

<sup>7</sup> 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.

8. This report concludes that there are a range of issues that warrant the existence of a public places bylaw, and the areas that appear significant enough to warrant coverage in a possible new public places bylaw are:
- regulating to manage commercial activities in public places
  - regulating to manage obstructions in public places
  - allowing the Council to declare Special Use Areas for certain purposes (which would otherwise be contrary to the provisions of the bylaw)
  - regulating to prevent people temporarily residing in public places, unless temporarily residing is specifically allowed
  - regulating some aspects of building and construction near or over public places.
9. A range of other existing clauses that no longer meet the test for inclusion in a public places bylaw are not recommended for inclusion in a new public places bylaw. These are also described in the clause by clause analysis table at Attachment 3.

#### **FINANCIAL IMPLICATIONS**

10. Inspection and enforcement activity for any potential new bylaw arising from this review is likely be 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.

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

11. The budgets for the Regulatory Services group of activities in Our Community Plan 2006-2016 make general provision for the enforcement of bylaws.<sup>8</sup>

#### **LEGAL CONSIDERATIONS**

12. Section 145 of the Local Government Act 2002<sup>9</sup> provides general bylaw-making powers for local authorities for the purposes of:
- (a) *protecting the public from nuisance*<sup>10</sup>
  - (b) *protecting, promoting, and maintaining public health and safety*
  - (c) *minimising the potential for offensive behaviour in public places*<sup>11</sup>

Section 146 states specific bylaw-making powers of local authorities, including section 146(a)(vi), trading in public places.

13. Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974<sup>12</sup> to be reviewed by 30 June 2008. Reviews must be carried out in accordance with the 2002 Act. Relevant parts of the Act include section 155, which requires that the Council is satisfied that a bylaw is necessary, and that it is the most appropriate way of addressing the perceived problems (which this report addresses); Section 77, which sets out the requirements in relation to decisions, in particular, identifying options and assessing them; and Section 83, which sets out the Special Consultative Procedure, outlining the consultation process, including notification, submissions, hearings, etc (which will be the subject of a separate report).

---

<sup>8</sup> Our Community Plan 2006-2016, Volume 1, page 149

<sup>9</sup> The Local Government Act 1974 also has a range of bylaw making powers covering specific things, for example, waste water, that are still in force.

<sup>10</sup> "Nuisance" in section 145 may encompass more than just nuisance in a legal sense (being actionable public or private nuisance). It should be noted however, that the existence of an actionable public nuisance depends on the presence of two essential elements. First, there must be infliction of damage in the form of an appreciable interference with a common right of the public, and second, the interference must be unreasonable. (Laws of New Zealand, Commentary).

<sup>11</sup> It should be noted that "offensive behaviour" is controllable under bylaw, not merely that some person is personally alleged to be "offensive" to some other persons.

<sup>12</sup> Other than a bylaw coming under section 293.

14. Section 155 of the Local Government Act 2002 sets out the matters that must be considered to decide whether a bylaw is appropriate, as follows:
- (1) *A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
  - (2) *If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*
    - (a) *is the most appropriate form of bylaw; and*
    - (b) *gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
  - (3) *No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*
15. Councillors are being asked in this report to consider Section 155(1) - whether a bylaw is the most appropriate way of addressing any potential problems relating to public places.<sup>13</sup> This means that the Council must be able to show that the bylaw coverage being considered serves an important and significant objective, that there is a rational connection between the provision and objective, and that it cannot be met in any other way that interferes less with the right or freedom affected. The bylaw must meet a pressing and substantial concern.
16. If the Council determines that a bylaw is the most appropriate way of addressing issues relating to public places, a subsequent report would then address a draft bylaw. This further report would also cover the remaining matters of Section 155, relating to the form of the bylaw and compliance with the New Zealand Bill of Rights Act. This would be accompanied by a statement of proposal and a summary of the information, and would ask the Council to decide on the submissions period and the appointment of a hearings panel. These requirements are all contained in the Special Consultative Procedure, outlined in Section 83 of the Local Government Act 2002.

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

17. Yes, as above (also see the clause-by-clause analysis table at Attachment 3).
18. This section 155 analysis follows the guidance in the Council *Decision making guide*,<sup>14</sup> as well as the Local Government New Zealand guide on regulation and enforcement<sup>15</sup>. These guides 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.
19. Additional guidance can be found in the Code of Good Regulatory Practice<sup>16</sup> which suggests that deliberation should be given to the following when considering regulating:
- transparency, by defining the nature and extent of the problem and evaluating the need for action
  - efficiency, by adopting only regulations for which the costs to society are justified by the benefits
  - clarity, in making things as simple as possible, to use plain language where possible, and keeping discretion to a minimum
  - effectiveness, to ensure the regulation can be complied with and enforced at the lowest possible cost
  - equity, in that regulation should be fair and treat those affected equitably.

<sup>13</sup> Most bylaws deal largely with one theme/subject matter and, as a result, the section 155 considerations may be relatively simple. However, the three public places bylaws under review cover a wide range of issues and have many clauses. It is considered more appropriate, in this instance, if Council first considers and resolves on section 155(1) (reviewing the existing bylaws and whether there is a need for a bylaw to address the various public places issues), and then considers the remaining parts of s.155, covering what may be in a possible new bylaw. This process will provide a more informed process and result that would be less open to any legal challenges.

<sup>14</sup> Manual produced to assist staff to meet the requirements of the Local Government Act 2002 particularly sections 76 and 77.

<sup>15</sup> *Knowhow Guide To The Regulatory and Enforcement Provisions of the Local Government Act 2002*, LGNZ, no date

<sup>16</sup> Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

## ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

20. 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.<sup>17</sup>
21. 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.<sup>18</sup>
22. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.<sup>19</sup>

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

23. Section 145 of the Local Government Act 2002 allows local authorities to make bylaws for protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and/or minimising the potential for offensive behaviour in public places. Section 146 of the Act states the specific bylaw-making powers of local authorities, including section 146(a)(vi), making bylaws regulating trading in public places.. The proposed bylaw would allow the management of public places in order to balance the various different, and sometimes competing, uses for which public places may be used. 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

24. A number of adopted Council strategies are particularly relevant when considering the use of public places.
25. 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... the 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".<sup>20</sup> Additionally, the 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."<sup>21</sup>
26. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "the Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau".<sup>22</sup> A person with a disability is a person with "a physical, intellectual, sensory, or age-related disability or mental illness (or combination of these) who faces barriers in the social and physical environment that prevent them from fully participating and contributing to community life".<sup>23</sup> Goal 4.1 of the Policy states that the Council will endeavour to: "design, construct, [and] maintain footpaths, crossings, paved areas and streets in ways which facilitate their safe and practical use" and 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, for example, cars parked across entrance ways and sandwich boards on footpaths)".<sup>24</sup>

---

<sup>17</sup> Our Community Plan 2006-2016, Volume 1, p.60

<sup>18</sup> Our Community Plan 2006-2016, Volume 1, p.61

<sup>19</sup> Our Community Plan 2006-2016, Volume 1, p.64

<sup>20</sup> <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

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

<sup>22</sup> Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

<sup>23</sup> Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

<sup>24</sup> Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

27. The *Central City Strategy*, which aims to ensure “a vibrant, fun, exciting, safe and sustainable heart of Christchurch” aims to:
- promote recreational and physical activities by improving open spaces and creating a walkable city
  - build a secure environment by increasing activity, improving visibility, and reducing risk for pedestrians and residents
  - enhance arts and entertainment options by increasing the range of attractions, spaces to socialise, and places to dine and recreate
  - improve transit options that will increase accessibility for a broader range of citizens
  - enhance streetscapes thereby creating a walkable city
  - build civic and cultural spaces that expand the range opportunities for people to socialise and interact.<sup>25</sup>
28. Additionally, two of the objectives of Stage II of the Strategy list “reviewing signs in Central City” as actions that will contribute to achieving the objectives of the Strategy.<sup>26</sup> The Strategy also aims to “enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City...”<sup>27</sup> and the number of pedestrians in the Central City is listed as a measurable sign of achievement in a number of the objectives.<sup>28</sup> These all relate to aspects of the coverage of the public places bylaws.
29. The *Safer Christchurch Strategy* aims to reduce the incidence of injury in our community, among other things. One of the ways of measuring the success of the Strategy is “pedestrians, cyclists, motorists and people with disabilities can move safely around our city”.<sup>29</sup>
30. The Council also has a number of policies that relate to the commercial use of public places, 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 Nov 1990)
  - Street Trading Policy (16 Dec 1999)
  - Banks Peninsula District Council Stalls/Market Policy (adopted Nov 1992).

### **Do the recommendations align with the Council’s strategies?**

31. Yes, as above (also see the clause-by-clause analysis table at Attachment 3).

### **CONSULTATION FULFILMENT**

32. A seminar was presented to interested Councillors and Community Board members 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 has commenced through Mahaanui Kurataiao.

<sup>25</sup> Central City Strategy, stage II, , pp 53-53, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

<sup>26</sup> Central City Strategy, stage II, , p. 31 & p. 33, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

<sup>27</sup> 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](http://www.ccc.govt.nz/CentralCity/Strategy/DevelopmentOfCentralCityStrategyStageOne_Feb2001.pdf)

<sup>28</sup> Central City Strategy, stage II, , pp 48-51, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

<sup>29</sup> Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

33. If the Council determines that a bylaw should be developed to address issues relating to public places, the views expressed in the consultation with Mahaanui Kurataiao will be considered in the development of the options for a new bylaw and in the development of the draft bylaw, which will be considered by the Council in a subsequent report.
34. Once a proposed bylaw, if such is considered to be required, is adopted by the Council, then as part of the Special Consultative Procedure, stakeholder groups that may have an interest in the matters covered will be given the opportunity to make submissions and to be heard before the hearings panel, if they so wish. These include, amongst other groups, 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**

35. Under the Local Government Act 2002, section 155(1), the Council needs to formally resolve that a bylaw is the most appropriate way to deal with the problems identified. The conclusion reached in the background section below is that a public places bylaw is the most appropriate way to deal with those issues that have some significance and which the Council is empowered to legislate for under the Local Government Act 2002.
36. The Local Government Act 2002 states local governments' purpose as being "to promote the social, economic, environmental, and cultural well-being of communities, in the present and into the future".<sup>30</sup> The proposed public places bylaw would allow the management of public places in such a way as to balance the various different, and sometimes competing, uses for which public places may be used. Such a bylaw would codify the Council's power to manage the use of public places, by allowing for approvals to be given, subject to conditions, including setting fees and charges.

It is recommended that the Council:

- (a) Resolve that under section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the potential problems relating to public places identified in this report, and that a bylaw is required to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.
- (b) Agree that a draft public places bylaw be prepared for consideration by Council, the purpose of which would be to manage public places in such a way as to balance the various different, and sometimes competing, uses for which public places may be used.
- (c) Agree that the draft bylaw will generally 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.
- (d) Agree that a range of other issues that are currently in the three public places bylaws no longer need to be covered in a new bylaw going forward.

---

<sup>30</sup> Local Government Act 2002, section 10(b)

## BACKGROUND (THE ISSUES)

### DISCUSSION

37. 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 1972 (adopted in 1996); and
  - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
38. Public places are areas that are open to or used by the public, and which are under the control of the Council, including areas such as roads, streets, footpaths, courts, alleys, pedestrian malls, roadways, cycle tracks, lanes, accessways, thoroughfares, squares, reserves, parks, domains, beaches, the foreshore and recreational grounds. This includes areas owned by the Council and areas that the Council has a responsibility to manage.
39. The three existing bylaws generally cover: the use of public places; special 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 crossings; access on hillside sites; and miscellaneous provisions. A summary of these clauses can be found at Attachment 1.
40. The bylaws comprise a collection of relatively diverse matters that may occur in public places. 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
41. 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
  - may no longer present a significant issue that needs to be controlled via bylaw
  - may no longer be cost-effective or possible to enforce.
42. In general, it is accepted that the control of public places should not deal with matters that unnecessarily restrict individual freedoms<sup>31</sup> or are insignificant in effect. Nor should controls apply to matters that are covered by national legislation. There should be provisions, however, that manage the use of public spaces in such a way as to balance the various different, and sometimes competing, uses for which they may be used. To this end, the bylaw should make provision to enable the Council, as the body controlling the public place on behalf of the community, to control such activities and to issue consents, where appropriate, subject to conditions appropriate to each case or class of cases.
43. This review of the existing coverage of the three public places-related bylaws has not revealed any new issues that would need to be added to any consolidated public places bylaw.
44. In order to gauge the extent of any perceived problem, data from complaints made to the Council has been analysed, together with information relating to any enforcement action taken. Data is available in relation to the Christchurch City Public Places and Signs Bylaw, but unfortunately no data is available in relation to the two bylaws that were administered by the Banks Peninsula District Council.

---

<sup>31</sup> Section 155(3) of the Local Government Act 2002 states that *No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990*

45. Data from the City Council's Inspections and Enforcement Unit shows that between May 2003 and January 2007, 832 complaints or requests for service were received in relation to matters covered by Christchurch City Public Places and Signs Bylaw, compared with a total of 12,439 complaints overall. This gives some indication of the extent of any perceived problems in relation to public places. A more detailed breakdown is set out in the tables in Attachment 2.
46. This paper has been developed using the best available information on the number of cases that have been drawn to the attention of the Council in relation to issues arising from each of the clauses. It appears that in relation to some clauses, there is no evidence that any complaints or actions have occurred, while in relation to others, there are questions regarding the extent or seriousness of the problem, and in still others, no evidence that the clauses were originally developed considering the means of reasonable enforcement. Evidence of complaints is not the only information that has been taken into account, but it is useful as an indication of public interest and enforcement activity.
47. The two main issues to be covered by a public places bylaw intended to manage public places to allow a balance between the various different, and sometimes competing, uses for which public places may be used, are the regulation of commercial activities in public places, and the prevention or management of obstructions in public places. The sections below cover these two main issues, followed by some analysis of other aspects contained within the current public places bylaws.

### ***Regulating commercial activities in public places***

48. The use of public space by commercial activities may restrict or negatively effect the public's use of such spaces. Commercial use includes not only trading in public places (such as market stalls), but also the advertising of goods and services (such as signage), and the use of public places for commercial activities (such as landing hot air balloons). Other examples of commercial activities include displaying signboards on footpaths; the placement of outdoor seating or seating enclosures, (such as at cafés and restaurants); promotional activities (such as giveaways being handed out); the operation of stalls, stands and mobile shops; displaying goods for sale in public places (such as on tables outside shops); the storage or delivery of goods to commercial premises; and possibly busking and street performing.<sup>32</sup> Not all of these commercial activities in public places will need to be controlled through a bylaw, but some may.
49. The Council currently permits the commercial use of public places for matters such as advertising (e.g. advertising on bus shelters), and the occupation of public spaces for the sale of food and alcohol (e.g. restaurants and cafés). The Council, as owner of the land, can give consent for activities, subject to conditions appropriate to each case or class of cases. These situations require different controls, and specific policies have been developed to manage them. As well as policies, the Council has contracts with those occupying the land for commercial reasons.
50. The current bylaws have a variety of clauses relating to specific commercial activities, such as "hawkers and keepers of mobile or travelling shops" or "trading in public places" or "display of goods in public places". Most of the clauses generally state that nobody can undertake [the relevant activity] without the permission of the Council, and under such conditions as the Council may require. It would be appropriate to consolidate these clauses as part of this review process. This would achieve the purpose of allowing commercial activities in public places, provided that such activities are undertaken within certain boundaries set by the Council, on the basis of established policy where such exists, or on a case by case basis. This would allow the Council discretion and flexibility to protect the public from nuisance; to protect, promote, and maintain public health and safety; and to minimise the potential for offensive behaviour in relation to commercial activities in public places.<sup>33</sup> It would also allow the Council to control trading in public places.<sup>34</sup> Such a bylaw would allow the Council discretion to set fees to recover the costs of providing related approvals.

<sup>32</sup> There is some debate as to whether busking or street performing is considered "commercial". If a monetary reward or other benefit is solicited then it may well be, but if not, then there appears to be no "commercial" element.

<sup>33</sup> Section 145 of the Local Government Act 2002 allows territorial authorities to make bylaws for protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and/or minimising the potential for offensive behaviour in public places.

<sup>34</sup> The power to create bylaws to regulate trading in public places is contained in section 146(a)(vi) of the Local Government Act.



### ***Preventing or managing obstructions in public places***

51. Activities, structures or other things that obstruct public places can potentially compromise or prevent people from using public spaces, and may present safety concerns (particularly for people with mobility or disability concerns). For example, placing or storing goods in a thoroughfare, building a structure over a footpath, or undertaking works and blocking a footpath or road may all prevent other uses of the public space, and may create safety concerns.
52. The Council currently has a range of ways of dealing with such situations, other than through the existing bylaw provisions, such as through the use of strategies and policies. Christchurch City Council's Pedestrian Strategy "A Step in the Right Direction", aims to encourage walking by creating a pedestrian-friendly environment, where "all pedestrians are able to move about freely and with confidence".<sup>35</sup> Another example is the Christchurch City Council Public Street Enclosures Policy, which has been developed to guide Council decision-making in relation to the use of public space for outdoor dining, and states: "The Council, as landowner, needs to consider the private, commercial benefits and balance the environmental and community benefits...".<sup>36</sup> The policy also states that: "Enforcement action will be taken against any business who occupies public space without a licence or against any licensee who does not comply with this policy."<sup>37</sup> A further example of Council management of potential obstructions is the requirement for a Temporary Traffic Management Plan where works, structures or objects could negatively impact on normal pedestrian, cycle and traffic routes.<sup>38</sup> The Council also has the previously mentioned Equity and Access for People with Disabilities Policy, and preventing or managing obstructions in public places is an important element of the policy.<sup>39</sup>
53. Although the Council has a range of policy and strategic tools that have already been developed to deal with specific and common situations, a generic clause relating to obstruction of public places, to protect public health and safety, is recommended for inclusion in a new public places bylaw. As with the regulation of commercial activities in public places, existing bylaws coverage is specific and repetitive, and multiple clauses could be combined to have the same effect in a revised bylaw.

### ***Declaration of special use areas***

54. The existing Christchurch City Council public places bylaw has a clause entitled "special use areas", where Council may declare any public place or part of a public place as set aside for a special use, such as for public meetings, rallies, entertainment, public speaking, or exhibitions of art,<sup>40</sup> which would otherwise be contrary to the provisions of the bylaw. This may be useful in the future and is recommended for retention, to allow the Council the flexibility to declare public places special use areas.

### ***Temporarily residing in public places***

55. Residing on roads or other public places by camping, caravanning, or in motorhomes is currently covered by all three of the bylaws, in various forms, and is also covered to some degree under Traffic and Parking bylaws. There were five complaints relating to temporarily residing in vehicles in relation to the Christchurch City Public Places and Signs Bylaw between May 2003 and January 2007, which suggests it is not a significant issue within the Christchurch city area.<sup>41</sup> Transit, which has responsibility for State Highways, has no record of complaints in relation to such activities on State Highway 75 to Akaroa or other highways in the area. As previously mentioned, no data is available relating to enforcement activity undertaken by the Banks Peninsula District Council. It is difficult to know if this is a common problem in terms of complaints, and if there is a problem, what the problem is in relation to public places (eg is it reducing amenity values, waste or pollution concerns, traffic or other concerns?).

---

<sup>35</sup> <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

<sup>36</sup> Public Street Enclosures Policy, <http://www.ccc.govt.nz/policy/publicstreetenclosures.pdf>, p.1

<sup>37</sup> Public Street Enclosures Policy, <http://www.ccc.govt.nz/policy/publicstreetenclosures.pdf>, p.4

<sup>38</sup> As the Road Controlling Authority for city streets, the Council can require Temporary Traffic Management Plans to be developed while work is carried out on legal roads (including footpaths and berms). Situations when a plan is required include the placement of a shipping container/skip on the street or when building a temporary structure on a footpath/road. A Temporary Traffic Management Plan is a written document detailing how traffic such as pedestrians, vehicles and cyclists would be managed. Transit New Zealand is the Road Controlling Authority for all state highways.

<sup>39</sup> 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 - Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

<sup>40</sup> CCC Public Places and Signs Bylaw 2003, clause 14.

<sup>41</sup> See the attached table of complaints received by the CCC Inspections and Enforcement team.

56. West Coast Councils have worked together to develop a regional visitor strategy, and it covers self-contained vehicles, which are vehicles designed to “completely meet the ablutionary and sanitary needs of the occupants (including water for drinking and cooking) for a minimum of three days without requiring any external services or discharging any waste”. There is a New Zealand Standard for self-contained motorhomes<sup>42</sup>, and vehicles can be warranted/certified. Some jurisdictions, such as those making up the West Coast area, only allow “free camping” by certified self-contained units, to address waste and pollution concerns.
57. It would be possible to include a clause in a public places bylaw prohibiting camping, caravanning or parking a motorhome for the purposes of temporarily residing in it, in any public place, other than those public places where it is specifically allowed. This would cover concerns about such vehicles or activities in the Akaroa urban area, for example, but would also allow the Council to declare that certain areas could be used, for example, for “free camping”, subject to certain conditions, such as certification to the New Zealand Standard. A separate provision may need to be prepared relating to camping, which is a different situation. Another legal tool is the issuing of Trespass Notices, which can be issued for public places that are not legal roads<sup>43</sup>.

### ***Regulating some aspects of building and construction near or over public places***

58. There are a number of minor and specific issues relating to building and construction near or over public places which may need to be covered in a public places bylaw. These relate to barbed wire; vehicle crossings; and access on hillside sites. They might need to be covered in a public places bylaw as the Local Government Act may not give adequate powers to manage the issues or to impose appropriate conditions, fees or charges.
59. The current clause on barbed wire prohibits its use within certain distances of a public place. This is to protect the public’s safety, while allowing barbed wire to be used in certain situations, such as security fencing. The restrictions on use are one metre from a boundary with a public place (such as a footpath) and at least two and a half metres off the ground.
59. Section 215-223 of the Local Government Act 2002 allows local governments to seek a District Court order to require the removal of a fence, structure or vegetation in relation to a property, where it is intended to injure a person or to conceal illegal activities. This has generally been used in relation to removing fortifications or fences around gang premises. Although such provision exists, the intention to injure and the engagement in illegal activities may not be relevant to many scenarios involving security fencing, such as around a commercial yard.
60. There seems to be some utility in a clause to protect health and safety from the dangerous use of barbed wire in fencing adjacent to a public place. Other local governments in New Zealand have retained similar clauses to cover both barbed wire and electrified wire, and perhaps razor wire. These restrict the use of the wires within one metre of a boundary with public places, and within two-three metres of the ground near a public place. If such a clause was included in a new public places bylaw, it would only apply to urban areas, as in rural areas barbed wire fencing is common to fence stock and the likelihood of injury to pedestrians, for example, would be much reduced.
61. The current coverage of vehicle crossings in two of the bylaws<sup>44</sup> relates to the construction of crossings over a footpath or water channels, and requires a permit to be obtained from the Council before such a crossing can be constructed. Although there is some coverage of such constructions under section 357 of the Local Government Act 1974, it may not allow the Council to impose conditions, fees or charges, whereas the bylaw clause does.

---

<sup>42</sup> NZS 5465:2001, the New Zealand Standard for Self Containment of Motor Caravans and Caravans, is administered by the Ministry for the Environment. A self-contained vehicle is defined as: “a vehicle designed to completely meet the ablutionary and sanitary needs of the occupants (including water for drinking and cooking) for a minimum of three days without requiring any external services or discharging any waste.”

<sup>43</sup> Legal road is defined in section 315 of the Local Government Act 1974.

<sup>44</sup> Clause 52 of the CCC Public Places and Signs Bylaw 2003 and Clause 3.7 of the BPDC Public Places Bylaw 2004

62. Similarly, the current coverage in two of the bylaws<sup>45</sup> of the access on hillside sites clause states that the cost of forming a suitable vehicular accessway to a property is the responsibility of the property owner, and requires it to be of a certain standard. As with the vehicle crossings clause outlined above, a bylaw clause may be required to ensure that the responsibility is placed on the land owner, and to ensure that the access is of a certain standard. The bylaw clause allows the Council to impose conditions on the accessway.

### ***Street performing and busking***

61. The status of busking and street performing, and whether this constitutes trade or should be considered a non-commercial activity was foreshadowed earlier. If it involves some benefit being sought then it can probably be considered a commercial activity, and it will be captured by the commercial activity clause above. If not, further questions arise.
62. A busker can be defined as “any person who plays, acts, sings, or performs and solicits any donation or monetary reward”.<sup>46</sup> The Council has an existing policy, the Busking Conditions Policy, which requires buskers to have a licence. This is consistent with current bylaws.
63. If busking or street performing is not done for the purposes of soliciting a donation or reward, then it may not be considered a commercial activity, but may be considered a form of artistic expression, in which case, the New Zealand Bill of Rights Act must be taken into account, which states that “Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”.<sup>47</sup> Section 155(3) of the Local Government Act states that “no bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990...”. Guidance on interpreting the Bill of Rights Act suggests that if legislation prevents the dissemination of certain forms of expression, or requires a person to obtain approval before participating in some form of expressive activity, it may be seen to limit the freedom of expression.<sup>48</sup>

### ***Miscellaneous provisions in existing public places bylaws***

64. The main clauses that are recommended for inclusion in a new public places bylaw have been canvassed above; below are a collection of clauses that are in the current bylaws, but which are not recommended for inclusion in a new public places bylaw. Some examples are described below. All of the clauses are covered in detail in the clause-by-clause analysis table at Appendix 3.
65. There are a number of clauses in the existing public places bylaws which:
- are of unknown origin or applicability
  - no longer have any obvious utility in the current context
  - have been overtaken by legislative developments
  - may not be practical to enforce
  - may be more appropriately dealt with via policy or some other tool
  - may be more appropriately addressed in another bylaw.
66. Some examples of these include verandahs over footpaths, property numbering, preventing nuisance and the collection of donations, covered below.

---

<sup>45</sup> Clause 54 of the CCC Public Places and Signs Bylaw 2003 and Clause 3.8 of the BPDC Public Places Bylaw 2004

<sup>46</sup> Christchurch City Council Public Places and Signs Bylaw 2003

<sup>47</sup> Section 14, New Zealand Bill of Rights Act 1990

<sup>48</sup> The Handbook of the New Zealand Bill of Rights Act 1990, Ministry of Justice, August 2004.

### *Verandahs and signs (signs visible from public places and signboards)*

67. The Local Government Act 1974 allows local governments to enter into agreements for the leasing of the airspace above footpaths and roads, provided that vehicles and pedestrians are not obstructed.<sup>49</sup> This allows the Council to grant consents and place restrictions on any proposed structures over the airspace above public places, such as verandahs over footpaths. Restrictions on verandahs and signage are covered in the current public places bylaws. In the case of Christchurch, verandahs and some signage are now covered by the City Plan<sup>50</sup>; while signage is covered by the Banks Peninsula District Plan<sup>51</sup>, but verandahs are not. It may be that verandahs are not a problem in the Banks Peninsula area (as if they were a problem, they presumably would have been covered in the District Plan). If this is the case, there may be no need for a clause covering either verandahs or signage in a revised bylaw, as the relevant issues are adequately covered in City or District Plans. The case of signboards<sup>52</sup> however, is slightly different to other forms of signage, as they can obstruct pedestrians along footpaths. This could be covered in a bylaw, through either commercial activity provisions<sup>53</sup> or obstruction provisions. There is an existing CCC policy for signboards.<sup>54</sup>
68. Part three of the Banks Peninsula Public Places and Signs Bylaw 2004, which covers public places, is, as previously mentioned, being included as part of this review. Part four of the Bylaw covers signs, but it not part of this review. Instead, it will continue to exist in parallel to any new public places bylaw, until such time as it is reviewed (due in 2009).

### *Numbers of properties to be displayed*

69. One of the bylaws being reviewed contains a provision relating to property numbering. There seems to be some interest in ensuring that central city businesses display street numbers. However, a survey done by the Council in 2004 found that, of 734 premises surveyed within the central city, 557 (76%) were displaying a property number. A letter was sent to the 24% that were not displaying a number, and a follow-up visit six weeks later showed that more than 50% of those businesses were now displaying numbers. If this continues to be an issue, it could perhaps be dealt with via another survey/communication activity, rather than via a bylaw, as it is in businesses' interests to be easily locatable. In terms of RAPID (Rural Address Property Identification) numbers, again, this could be dealt with via a survey/communication activity, as it is in property owners' interests to display RAPID numbers, as they are used by emergency services to locate properties.

### *Nuisance provisions (damage, fire, litter, etc)*

70. There are a number of clauses in the current public places bylaws that relate to preventing nuisance, many of which duplicate coverage in the Summary Offences Act. This includes things such as lighting fires in public places,<sup>55</sup> damaging things<sup>56</sup> in public places<sup>57</sup> and skateboarding or other potentially reckless behaviour that may endanger the safety of others.<sup>58</sup> As these are covered by the Summary Offences Act, they do not need to be duplicated in a bylaw. Another minor duplication relates to littering. Littering is covered by the Litter Act 1979 and does not need to be duplicated in a bylaw.<sup>59</sup>

---

<sup>49</sup> Local Government Act 1974, section 341, lease of airspace or subsoil of roads

<sup>50</sup> For example, Christchurch City Plan, Volume 3: Part 10, Heritage and Amenities: 3.4, Development standards: 3.4.7, Verandah related displays and 3.7.8, Verandah related displays and Volume 3: Part 10 Heritage and Amenities: 3.6, Assessment matters for resource consents: 3.6.2, Assessment matters, (h) Verandah related displays and advertisement (signs) are also covered by Volume three, Part 10 Heritage and Amenities

<sup>51</sup> Chapter 34 – Signs, and appendix XII – Guidelines for signage

<sup>52</sup> Signboards are freestanding signs, usually placed on footpaths or walkways

<sup>53</sup> Advertising is a commercial activity

<sup>54</sup> <http://www.ccc.govt.nz/Policy/Signboards.asp>

<sup>55</sup> Section 36 of the Summary Offences Act 1981 (light fires in a public place), and Section 11(b) of the Summary Offences Act 1981 (setting fire to vegetation in a public place).

<sup>56</sup> "Damage" includes destruction, removal, pollution, defacement, interference and disfiguration, and "things" covers natural features, vegetation, gardens, buildings, structures, statues, etc

<sup>57</sup> Section 11 of the Summary Offences Act 1981 (wilful damage)

<sup>58</sup> Section 13 of the Summary Offences Act 1981 (Things endangering safety)

<sup>59</sup> Council Officers can be designated Litter Wardens under the Litter Act 1979, which empowers them to enforce the provisions of the Act.

*Seeking donations (appeals, raffles, collections)*

71. On the seeking of donations or other fundraising activities, again, the question of whether such activities create a nuisance serious enough to justify inclusion in a public places bylaw needs to be considered. If such a clause would prohibit activity, unless a licence was obtained, the cost and practicality of issuing permits or licences would need to be considered, as would the question of enforcement. Additionally, this activity is valued by the voluntary and community sector, including local clubs, schools, etc.
72. The test of appropriateness for inclusion in a bylaw sets a high bar. The bylaw coverage being considered must serve an important and significant objective; there must be a rational connection between the provision and objective; the need should not be able to be met in any other way that interferes less with the right or freedom affected; the bylaw must meet a pressing and substantial concern; and the bylaw must be enforceable.

**CONCLUSIONS**

73. Councillors are being asked in this report to consider whether a bylaw is the most appropriate way of addressing any potential problems relating to public places.<sup>60</sup> This report reaches the conclusion that a public places bylaw is the most appropriate way to deal with those issues that have some significance and which Council is empowered to legislate for under the Local Government Act 2002. Such a bylaw is required to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.
74. The areas in the three existing public places bylaws that appear significant enough to warrant coverage in a possible new public places bylaw and that meet the tests for what should appropriately be covered in a bylaw are:
  - regulating to manage commercial activities in public places
  - regulating to manage obstructions in public places
  - allowing the Council to declare Special Use Areas for certain purposes (which would otherwise be contrary to the provisions of the bylaw)
  - regulating to prevent people temporarily residing in public places, unless temporarily residing is specifically allowed
  - regulating some aspects of building and construction near or over public places.
75. The clauses in the three existing public places bylaws that appear to be covered by legislation or are no longer required for other reasons include:
  - playing of games
  - posterpasting/graffiti/tagging/etching
  - lighting fires in public place
  - setting fire to vegetation in public place
  - damage to public places
  - depositing rubbish or litter
  - substance abuse
  - stormwater flowing over public places
  - sound from advertising
  - use of vehicle operating a loud speaker
  - use of construction machinery
  - signs visible from public places
  - verandahs
  - canopies, sunblinds and awnings
  - buskers licence
  - appeals, raffles, collections
  - distribution of advertising material
  - numbers of properties to be displayed
76. The attached clause by clause analysis table at Attachment 3 contains more detail on why these clauses are no longer considered necessary, and on all clauses in the three bylaws under review.

---

<sup>60</sup> This is required by section 155 of the Local Government Act 2002