


9. MISUSE OF DRUGS (CLASSIFICATION OF BZP) AMENDMENT BILL



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Chris Gilbert, Legal Services Manager
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PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Council that it makes a submission in support of the proposed changes to the Misuse of Drugs Act.

EXECUTIVE SUMMARY

2. In 2005 the Council investigated whether it could take steps to control where NOS/party pill shops were sited, and to control the sale of the products sold in those shops. The Council was advised that it could not take any steps, so instead resolved "*as a result of continuing community concerns regarding the use of NOS and party pills the Christchurch City Council:*
 - *Record its extreme concern regarding the practice of businesses selling such mind altering gases and substances.*
 - *Encourage Central Government to urgently adopt the supplementary order paper relating to NOS and party pills that is currently being considered by Parliament's Health Select Committee.*
 - *Request the Ministry of Health and OSH to strictly enforce all current laws to ensure the legal operation of existing shops selling such products, and their patrons."*
3. The Misuse of Drugs (Classification of BZP) Amendment Bill seeks to make it illegal to possess and use, sell, supply, import, export or manufacture benzyloperazine (BZP), phenylpiperazine, and related substances. The closing date for submissions on the Bill is 12 October 2007.
4. Given the Council's views in 2005, it would be appropriate to support the Government in making this amendment to the Act.

FINANCIAL IMPLICATIONS

5. None

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

6. Not applicable

LEGAL CONSIDERATIONS

7. None

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

8. Yes

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

9. No

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

10. Yes – alignment with the Safe City and Healthy City community outcomes.

CONSULTATION FULFILMENT

11. No external consultation has been carried out but the Strategy and Planning group recommended to the Legal Services Unit that the Council may wish to submit on this Bill.

STAFF RECOMMENDATION

It is recommended that the Council approve the attached submission to be sent to the Health Select Committee

BACKGROUND (THE ISSUES)

12. In 2005 the Council considered a legal opinion from the Legal Services Manager relating to NOS shops and party pills. The legal opinion was in the response to the request of the Riccarton/Wigram Community Board dated 8 March 2005 and the resolution of the Council dated 7 April 2005:

“That as a result of concerns raised from within our communities relating to the recent and ongoing proliferation of the so called “NOS Shops” in Christchurch, Council requests:

- That staff thoroughly investigate all current Council bylaws with the aim of controlling the siting of these shops and the sale of the products sold.*
- That staff thoroughly investigate all government statutes with the aim of producing a new bylaw to control the siting of these shops and the products sold.”*

This opinion examines possible options available to the Council to regulate retail outlets, “NOS Bars”, which sell “party pills” and NOS containers.

This report examines whether Council can make bylaws to regulate the sale and consumption of legal substances and discusses what other options exist to address this issue.

ADVICE:

My advice is that Council cannot make bylaws addressing this problem for the following reasons:

4. Existing Central Government statute law and Christchurch City Bylaws do not prohibit the sale and consumption of these products. The sale of the NOS, when prescribed, is legal. Party pills can be legally sold unless they contain a prescription medicine or controlled drug.
5. The Local Government Act 2002 requires that before Council embarks on any attempt to regulate these products it needs to be certain that the products are causing a nuisance, that they are harmful, and that it has the legal power to regulate them.
6. Enforcement of the bylaw would be extremely difficult for reasons explained below.
7. There are existing laws available for other agencies to control the sale and abuse of NOS and party pills. Any shortcoming are shortly to be addressed by central Government making greater effort to enforce the laws and reviewing their effectiveness.
8. My advice is that it would be extremely difficult and probably futile to prohibit the retail sale of NOS and the sale possession and consumption of party pills by a new Bylaw. Any attempt would not be effective and could be subject to a successful challenge.
9. The City Plan is not available as a public order control mechanism.
10. The Council may want to consider less interventionist measures such as education.
11. The regulation of the sales of such products is clearly most suited to central Government.”

13. On 2 June 2005, the Council resolved:

“1. That a Council seminar be held to allow Councillors to be briefed on current enforcement practices.

2. That, as a result of continuing community concerns regarding the use of NOS and party pills the Christchurch City Council:

- Record its extreme concern regarding the practice of businesses selling such mind altering gases and substances.
- Encourage Central Government to urgently adopt the supplementary order paper relating to NOS and party pills that is currently being considered by Parliament’s Health Select Committee.
- Request the Ministry of Health and OSH to strictly enforce all current laws to ensure the legal operation of existing shops selling such products, and their patrons.”

14. The Council’s concerns and submissions to central government may be one of the factors that lead to the introduction of this Bill and the Council should therefore support the Bill.