

14. HEARING PANEL REPORT ON THE PROPOSED PUBLIC PLACES BYLAW



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| General Manager responsible: | General Manager, Strategy and Planning, DDI 941-8281 |
| Officer responsible: | Programme Manager – Strong Communities |
| Author: | Public Places Bylaw Hearing Panel |

PURPOSE OF REPORT

1. This is a report of the Public Places Bylaw Hearing Panel. It summarises the submissions received on the proposed Public Places Bylaw and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed bylaw (with the recommended changes highlighted) is **attached** to this report.
2. This report recommends the adoption of the Christchurch City Council Public Places Bylaw 2008, as **attached**.

EXECUTIVE SUMMARY

3. On 28 February 2008, the Council adopted the proposed Public Places Bylaw for consultation. Submissions on the proposed Bylaw were open between 15 March and 16 April. Sixteen submissions were received. Seven people requested to be heard by the Hearing Panel in support of their submissions.¹ The hearings were held on 28 April. The panel deliberated on 29 April. The panel was chaired by Councillor Sue Wells, and the panel members were Deputy Mayor Councillor Norm Withers, Councillor Ngaire Button and Councillor Mike Wall.
4. The proposed Bylaw's purpose was to balance the different needs and preferences of our community in relation to public places, in order to balance private use with public use. The Bylaw, as proposed:
 - required anyone wanting to undertake a commercial activity² or to create an obstruction in a public place to get permission from the Council
 - enabled the Council to declare Special Use Areas to prohibit or allow activities in specific areas
 - prevented people from temporarily residing or sleeping in public places, unless the area had been set aside for camping or parking a motorhome or caravan, and
 - prevented barbed, razor or electrified wire from being used in fencing in a way that could endanger public safety.
5. 16 submissions were received:
 - seven from individuals³
 - three from residents' associations/neighbourhood groups⁴
 - four from organisations⁵
 - two from community boards⁶.

¹ Seven requested to be heard, though two did not attend on the day of hearings. One person who appeared had not made a submission, but wanted to speak to the hearing panel, and did so. Overall, six people/groups addressed the hearing panel.

² Commercial activities include: selling, hiring, or displaying for sale; advertising goods, services or events; busking and street performing; and any other activity undertaken for payment or reward

³ Stephen Luke, Chris Currie, Cliff Stevenson, Nigel Spence, Carole Stevens, Murray Allison and Brian Sandle

⁴ Cracroft, Ferrymead and Inner City West

⁵ New Zealand Motor Caravan Association, New Zealand Prostitutes Collective, Youth and Cultural Development, and the Advertising Standards Authority

⁶ Burwood Pegasus and Fendalton Waimairi

6. Overall, most written submissions (six) commented on the temporarily residing or sleeping in a public place clause. All were opposed to the clause. Five submissions commented on the commercial activities clause, two in relation to street prostitution, two in relation to the content of advertising signage, and one in relation to busking. Several submissions commented on minor aspects of the Bylaw, including one submitter in relation to the amenity aspects of barbed, razor and electrified wire, one submitter suggesting more specific information on penalties and fines, and another suggesting Special Use Areas being declared both for certain times, as well as certain places. A further submission suggested a new clause to control issues arising from party buses dropping patrons off in central city residential areas.
7. Five people appeared in support of their submissions at the hearings, all representing groups or organisations. One person appeared, though they had not made a submission.⁷ Those who appeared in support of their submissions largely reiterated their written submissions.
8. A summary of the written submissions received on the proposed Bylaw, followed by a summary of matters raised in oral submissions (not already covered by written submissions), and a detailed outline of the changes to the Bylaw recommended by the Hearing Panel can be found in the 'background' section of this report.

SUMMARY OF CHANGES TO THE BYLAW

9. The Hearing Panel deliberated on the issues raised in submissions, and as a result, made several changes to the Bylaw now being recommended to the Council. The most significant of these was removing the clause on temporarily residing or sleeping in a public place.
10. The panel, on the basis of information presented in submissions, is of the opinion that, rather than banning temporarily residing in public places, and allowing it in designated areas, a more appropriate approach is to allow it, unless a particular problem is identified. If a problem is identified, temporarily residing could then be prohibited in that particular problem area. The Bylaw already allows the Council to declare Special Use Areas, allowing or prohibiting an activity in a particular area, by Council resolution, so no further changes to the Bylaw were required to facilitate this new approach, other than deleting the temporarily residing clause.
11. A further change that has been made to the Bylaw, as proposed, is an administrative tidy-up to the revocations. The proposed Bylaw revoked part 3 of the Banks Peninsula District Council Public Places and Signs Bylaw 2004, which covers public places. However, part 4 of the Bylaw, which covers signs, also contains some clauses that can be covered by operational policies under the new Public Places Bylaw (particularly those relating to signboards). These parts of the BPDC Bylaw are now included in the revocations section of the revised Bylaw.⁸ The remaining clauses of part 4 of the Bylaw will continue in force, as the Banks Peninsula District Plan does not provide adequate coverage – these being remote and rural sign provisions.
12. A small number of other changes were recommended by the panel. These can be found in the background section of this report (under the heading "Changes to the Bylaw recommended by the Hearing Panel") and are highlighted in the **attached** bylaw.

LEGAL CONSIDERATIONS

13. The Special Consultative Procedure⁹ took place from 15 March to 16 April 2008. The consultation documents were sent directly to a range of groups, organisations and individuals, as well as public notices appearing in relevant newspapers, and the consultation documents being made available at service centres, Council libraries and on the internet. Additionally, information sessions were held around the district for interested people to drop-in and talk to staff. Submissions were open from 15 March to 16 April and hearings were held on 28 April, which were open to the public.

⁷ Sugra the Juggler

⁸ Clauses 4.2, 4.3, 4.4, 4.10, 4.11 and 4.12 of the BPDC Public Places and Signs Bylaw 2004

⁹ Section 83 of the Local Government Act 2002

14. A bylaw hearing panel has no decision-making powers, but can make recommendations to the Council, in accordance with its delegation for that purpose, after considering written and oral submissions.¹⁰ The Council can then accept or reject those recommendations, as it sees fit, bearing in mind that the Local Government Act requires views presented during consultation to be given “due consideration in decision-making”.¹¹ The Council, as final decision-maker, must be in as good a position as the hearing panel in terms of being fully aware of the content of the written submissions, and from the report on the oral submissions. As the Special Consultative Procedure was used for this consultation, the Council cannot introduce anything new into the bylaw that has not arisen out of a submission made during consultation.
15. Section 157 of the Local Government Act 2002 requires that the Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. A recommendations has been made to this effect.
16. It is appropriate to resolve that the Bylaw will come into effect on 1 July 2008, which is the date by which two of the bylaws being revoked by the new Bylaw would automatically expire.

HEARING PANEL RECOMMENDATIONS

The Hearing Panel recommends that the Council:

- (a) Resolve to adopt the Christchurch City Council Public Places Bylaw 2008, as amended **(attached)**.
- (b) Give public notice as soon as practicable, that the Christchurch City Council Public Places Bylaw has been adopted by Council, that it comes into effect on 1 July 2008, and that copies of the bylaw will be made available.
- (c) Send copies of the Bylaw to those people or organisations that made submissions, and sends a letter to those to whom the consultation notification was initially sent, advising them of the outcome.
- (d) Consider the inclusion of a requirement to comply with Advertising Standards Authority guidance and rulings in the revised operational policy on signboards.

¹⁰ Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated

¹¹ Section 82(1)(e). This is also supported by the Council’s Consultation Policy, which states: “we will receive presented views with an open mind and will give those views due consideration when making a decision”.

BACKGROUND

17. Below is a summary of the written submissions received on the proposed Bylaw, followed by a summary of matters raised in oral submissions (not already covered by written submissions), followed by a detailed outline of the changes to the Bylaw recommended by the Hearing Panel.

SUMMARY OF SUBMISSIONS

18. The submissions were largely focussed on:
- temporarily residing or sleeping in public places (6)
 - commercial activities and operational policies (street trading policy) - street prostitution (2)
 - commercial activities - content of advertising/signs (2)
 - commercial activities - busking (1)
 - barbed, razor and electrified wire (1)
 - offences and penalties - fines (1)
 - Special Use Areas (1)
 - a new clause proposal - party buses (1).

TEMPORARILY RESIDING OR SLEEPING IN PUBLIC PLACES

19. The submissions on this matter all argued that a blanket ban was excessive. Many commented on the positive aspects of motorhoming and caravanning – both as a holiday activity and as a contribution to the local economy. Many submitters did not see motorhoming and caravanning as a problem, and suggested that Banks Peninsula, in particular, had a lot to offer motorhome and caravan enthusiasts.
20. A number of submissions talked about certified self-contained vehicles, and that these create less of a problem than other vehicles. Many referred to the concept of “freedom camping” – which has different definitions, but is essentially the ability to freely stay overnight anywhere.
21. One submitter drew on his experience in Europe and suggested that the Council install coin-operated pillars where self-contained vehicles could dump their waste, pick up fresh water, and connect to electrical power, as well as providing a safe place to park overnight. These type of facilities are common in Europe and the submitter believed they could be valuable here, suggesting that Christchurch could lead the way in this area.
22. Some suggested alternative approaches to the clause in the proposed Bylaw, such as:
- allowing a stay of no more than 3 or 4 days in any one place
 - allowing a stay of up to two nights in any one location in any one month
 - limiting the ban to urban areas
 - only banning it where a particular issue is identified as a problem.
23. A number of submitters also raised concerns about how the existing proposal would be enforced, suggesting that it would be difficult and expensive to enforce, and that this might bring the bylaw into disrepute.
24. Chris Currie appeared at the hearing on behalf of the Cracroft Residents’ Association and as an individual. He largely reiterated his written submissions, emphasising that three questions needed to be asked of the clause: is it necessary, is it enforceable, is it seen to be enforced? Mr Currie argued that the clause failed on all counts. He suggested that in order to ban the free use of campervans or motorhomes in public places, evidence was required to demonstrate that there was a problem that needed to be controlled, and if Council was to consider moving ahead with the ban, more consultation was needed.

Hearing Panel response

25. The Hearing Panel considered the issues raised in submissions, all of which opposed the clause, and recommends that Council remove the clause from the Bylaw. The suggestion that temporarily residing in a public place should only be banned where a problem is seen to exist was taken on board. The Special Use Areas clause in the Bylaw would allow temporarily residing to be prohibited from a specific area, by Council resolution.

COMMERCIAL ACTIVITIES AND OPERATIONAL POLICIES (STREET TRADING POLICY) - STREET PROSTITUTION

26. Two organisations raised concerns about the requirement for those undertaking commercial activities in a public places to seek permission from the Council. In particular, the provision of sexual services by street based sex workers (SBSWs), and the existing Street Trading Policy. The concerns were raised by the New Zealand Prostitutes' Collective (which advocates for the rights, health and wellbeing of sex workers) and Youth and Cultural Development (which is funded by the Ministry of Health and Child Youth and Family to work with people aged under 18 who are at risk of or actively involved in the sex industry in Christchurch).
27. Both submissions raised concerns at the concept of the Council requiring SBSWs to seek a permit for working on the streets (ie undertaking a commercial activity in a public place). They strongly argued that such a system should not be applied to SBSWs, and gave detailed information as to why this is the case, in their view.
28. The main concerns raised by the Prostitutes' Collective and Youth and Cultural Development were:
 - inconsistencies between what the bylaw would require and what the Prostitution Reform Act covers – eg safeguarding the human rights of sex workers and promoting the welfare and occupational health and safety of sex workers
 - that SBSWs may not comply with any requirement to seek and hold a permit, for a variety of reasons including:
 - the record created by SBSWs applying for or holding a permit becoming a matter of public record
 - some SBSWs work as SBSWs because they are in a vulnerable position. Many may not be capable of applying for such a permit
 - that the current Street Trading Policy requires people to pay market rents for the land they use.
 - that enforcing such a requirement will be very difficult, for a number of reasons, including:
 - identifying SBSWs from other people in the street. Many SBSWs do not fit the stereotype of what a prostitute might look like. Many SBSWs, especially those under 18, hang around in groups for safety, and are more likely to be wearing a hoody, than wearing fishnets and a short skirt
 - proving that they are undertaking a commercial activity in a public place would be legally difficult.
 - the negative aspects of attempting to regulate this behaviour, including:
 - it may drive the SBSW industry underground, reducing the safety of those involved and increasing their vulnerability to exploitation, particularly those aged under 18.
 - requiring SBSWs to seek a permit could expose the Council to legal action under the Prostitution Reform Act, as:
 - the Act allows people under 18 to provide sexual services, but prohibits anyone from facilitating, assisting, receiving money or contracting people under 18 to engage in sexual services
 - denying a permit to those under 18 would be inconsistent with the Act; allowing permits for those under 18 could expose the Council to legal action for facilitating or receiving money in conjunction with sexual services offered or provided by those aged under 18.
 - the question of who would enforce such a requirement, namely:
 - if it were the Police, this would damage the relationships that have been developed since the Prostitution Reform Act came into force – changing the Police from protector to prosecutor. SBSWs have slowly been building trust in the Police, so that they can ask for help, should something happen to them on the street. If the Police were to enforce the requirement for a permit, this may push SBSWs into the shadows, reducing their safety and increasing their vulnerability.

29. The Prostitutes' Collective argued that the Council, under the Local Government Act, has to show that there is a significant problem, and that a bylaw is the most appropriate tool for dealing with any problems. They believe that the problems along Manchester Street can be dealt with in other ways, such as increased rubbish bins and re-opening the public toilets. They have asked the Council for more rubbish bins and to re-open the public toilets in the past, and ask that the Council reconsiders their request. They believe that if these nuisance-type issues are taken away, the only arguments that remain are moral, and they believe this is not sufficient grounds to regulate through the Local Government Act, and may be contrary to the Prostitution Reform Act.
30. Anni Watkin and Hannah appeared on behalf of Youth and Cultural Development. They largely reiterated their written submission, arguing that if the Council was proposing to require street based sex workers to seek or hold a permit, there were a wide range of issues this would create, all of which would contribute to reducing the safety of under 18 year old SBSWs. They argued that it needed to be made clear that SBSWs would not be covered by the new Bylaw or any operational policies made under it.
31. Anna Reed appeared on behalf of New Zealand Prostitutes Collective. She largely reiterated her written submission, arguing that a lot of the issues commonly attributed to SBSWs were caused by patrons of central city bars, and she reiterated concerns about the negative effect any attempt to regulate SBSWs would have on the workers' safety. She asked that the Council make it clear that SBSWs were exempt from the requirement to seek a permit for undertaking a commercial activity in a public place.

Hearing Panel response

32. The panel does not agree that it is necessary to explicitly exempt SBSWs from coverage under the commercial activity clause of the Bylaw. If SBSWs were to be covered by the Bylaw, an operational policy could be developed specifically outlining appropriate matters.

COMMERCIAL ACTIVITIES - CONTENT OF ADVERTISING/SIGNS

33. Two submissions (one from an individual and one from an organisation) made submissions on the content of advertising, asking that any approvals for advertising be considered in relation to Advertising Standards. Both submissions refer to controlling the content of billboards, referring to Auckland's bylaw, suggesting that the Christchurch City Council's Bylaw should require advertising to comply with the Advertising Standards Authority rulings.

Hearing Panel response

34. The proposed Bylaw does not cover billboards, or replicate anything already covered by the City Plan. It does not cover signage/advertising *per se*, but requires anyone undertaking a commercial activity in public places (eg advertising) or causing an obstruction in public places (eg via a signboard) to obtain the permission of the Council.
35. The issue of approving the content of signage, or compliance with Advertising Standards Authority rulings, could potentially be covered by an operational policy covering approvals or conditions for signboards on the street.
36. The panel has recommended that staff look into this as part of the upcoming review of the signboards policy.

COMMERCIAL ACTIVITIES – BUSKING

37. One individual submitter raised concerns about the current enforcement of busking conditions, in particular, the involvement of children and animals, and the requirement to move on after one hour.
38. The submitter believed the bylaw would require all buskers to seek permission from the Council and that this would provide an opportunity to reiterate these conditions.

Hearing Panel response

39. The proposed Bylaw requires buskers to seek permission in all areas, except for the carried-over Special Use Areas, namely, parts of Cathedral Square, City Mall and Worcester Boulevard.¹² The operational policy for buskers contains conditions as described by the submitter, which apply even in the areas where no approval is required for busking, ie, the busking Special Use Areas. The concerns raised by the submitter will be brought to the attention of the Inspections and Enforcement Unit.

BARBED, RAZOR AND ELECTRIFIED WIRE

40. One individual submitter raised concerns about the clause covering barbed, razor and electrified wire, suggesting that the Bylaw be extended to have such wire out of sight (believing it to be unsightly or otherwise offensive), and that if a complaint is made, the Bylaw should require its removal.

Hearing Panel response

41. The bylaw-making power the proposed clause is made under allows a bylaw to be made to protect health and safety. There is a power to make a bylaw to avoid nuisance in a public place; however, concerns relating to amenity do not constitute a nuisance. Additionally, the bylaw covers activities or structures in public places, not on private land.

OFFENCES AND PENALTIES – FINES

42. One individual submitter raised concerns about the reference in the Bylaw for a breach of the Bylaw being a fine of up to \$20,000, suggesting that lower limits for breaches should be specified, with the fines increasing in relation to the seriousness of the offence.

Hearing Panel response

43. The penalty for a breach of a bylaw is specified in the Local Government Act 2002 and constitutes a maximum fine of \$20,000. The fine is not an instant fine, but is applicable on summary conviction, following a successful prosecution. The Judge would decide on the appropriate level of the fine – it is not a matter the Council can specify or control.

SPECIAL USE AREAS

44. One individual submitter suggested that Special Use Areas should be for both certain times, as well as certain places.

Hearing Panel response

45. The proposed Bylaw states that Special Use Areas may be set aside to allow or prohibit certain activities. It also states that the Council may declare a Special Use Area "on any conditions the Council thinks fit". The conditions could relate to the times during which an activity can or cannot take place.

A NEW CLAUSE PROPOSAL - PARTY BUSES

46. An inner-city neighbourhood group has suggested that a new clause should be added to the Bylaw to address the matter of "party buses" dropping off a bus-load of drunken people near their inner city residential area. The group has suggested that the clause be along the lines of:

"that after 9pm at night, any bus carrying passengers that have visited liquor outlets, shall only unload their passengers on Colombo Street outside the Bus Xchange."

¹² Refer to clause 13(3) and the Explanatory Note (Special Use Areas) of the proposed Bylaw.

47. Mr Bellis appeared at the hearing to represent the Inner City West Neighbourhood Association. He brought along a letter by a member of the Neighbourhood Association to the Police, and the subsequent reply from the local Police Area Commander (Gary Knowles). The letter reiterated concerns about the negative effects of party buses dropping people off in residential areas close to the CBD. The Police response indicated that this was a problem that the Police were investigating and trying to manage on an ongoing basis.

Hearing Panel response

48. The panel asked that the letter is referred to the Council's District Licensing Authority staff for consideration and action, as appropriate. Additionally, Mr Bellis was informed that a review of the Council's Alcohol Policy and Liquor Control Bylaw are scheduled for later this year, and that this would provide an opportunity to look for solutions to the problems faced by the residents he represented. It is not possible to include a new clause in the Bylaw at this time.¹³

OTHER MATTERS RAISED IN ORAL SUBMISSIONS (NOT COVERED ABOVE)

49. Sugra the Juggler did not make a written submission, but attended to hear others, and, due to several people failing to appear for their appointments, was given time to speak to the panel. He indicated that he had been a juggler and performer in Christchurch for over 20 years and had no specific concerns with the Bylaw, other than the clause on temporarily residing or sleeping in a public place, and that this was "restrictive thinking", and that we needed "a more expansive approach".
50. Mr WP Wright, a member of the Ferrymead Residents' Group, expanded on his very brief written submission, and went into some detail on the history of his dispute with Ferrymead Historic Park, in particular, the effect of the vibrations from the trams/trains in the Park on the structure of his house, referring to an agreement from 1973 that he believed had not been upheld by the Trust operating the Park.

Hearing Panel response

51. Mr Wright was informed that this was perhaps not the appropriate venue for addressing his concerns, and some documents he provided are to be forwarded on to the Chief Executive for consideration.

CHANGES TO THE BYLAW RECOMMENDED BY THE HEARING PANEL

Clause 2 – interpretation

52. The definitions for 'caravan' and 'motorhome' were removed due to the deletion of the clause they were contained in (temporarily residing in a public place – see comments below).

Clause 4 – exclusions

53. A new subclause was added – "All permits and other approvals issued under any of the bylaws revoked by this bylaw continue in force" – to make it clear that existing permits or approvals continue, and do not need to be reapplied for when the new bylaw comes into effect.

Clause 13 – Special Use Areas

54. The clause was simplified by deleting the examples it contained and modernising some of the wording. The effect of the clause has not altered to that consulted on.

¹³ This is because the Local Government Act requires a local council to undertake an analysis of the problem, identify whether it is a significant problem that requires regulation, and if so, that a bylaw is the most appropriate tool to manage the issues. As the concept of a clause on party buses was raised through submissions, none of this work has yet been done, additionally, no consultation on the proposal has been undertaken. Therefore, it is not possible at this stage to add a new clause to the proposed Bylaw.

Clause 14 – temporarily residing or sleeping in a public place

55. The clause was deleted. The clause, as consulted on, prohibited temporarily residing in a public place in a motorhome, caravan or tent, unless the area had specifically be set aside as allowing such activity.
56. As a result of submissions received, Councillors were of the opinion that banning such activity everywhere and allowing it in designated areas was the opposite of the right approach. Instead, it was seen as more appropriate to allow it anywhere, and to ban it in designated areas where it was seen to create a problem.
57. To this end, the clause was removed. The ability to designate areas banning temporarily residing or sleeping in a public place in problem areas can be achieved through the existing clause on special use areas. Such an area can be declared by Council resolution.

Clause 17 – Revocations – and the Explanatory Note – section on Banks Peninsula District Council Public Places and Signs Bylaw

58. The Banks Peninsula District Council Public Places and Signs Bylaw 2004 covers bylaw administration (part 1), liquor control (part 2), public places (part 3) and signs (part 4).
59. When the proposed Public Places Bylaw 2008 was drafted, it revoked part 3 (public places), but left the remainder of the BPDC Bylaw intact. However, there is some overlap of clauses in part 4 (signs) with the proposed Public Places Bylaw 2008 (in particular, signs in public places).
60. Part 4 of the BPDC covers signs in public places (such as signboards) as well as signs on private land. In the Christchurch City area, matters relating to signage on private land are covered by the City Plan; however, the BPDC District Plan does not cover these matters, so those parts of the Bylaw must continue in force in order to ensure coverage.
61. To this end, the revocations clause of the proposed Bylaw has been altered, as has the explanation in the Explanatory Note. Now, all of part 3, as well as clauses 4.2, 4.3, 4.4, 4.10, 4.11 and 4.12 will be revoked. The rest of the BPDC Bylaw continues in force, until such time as it is reviewed.¹⁴

Explanatory Note – section on behavioural matters

62. The panel removed the section on behavioural matters, as it was relevant to the nuisance behaviour clauses that were removed as a result of the review of the bylaws and was no longer relevant.

OTHER MATTERS CONSIDERED BY THE HEARING PANEL

63. The matter raised by Mr Wright regarding Ferrymead (above) has been referred to the CEO.
64. The matter of party buses (above, raised by Bruce Bellis of the Inner City West Neighbourhood Association) will be referred to the Council's Liquor Licensing Inspectors for investigation and consideration, as well as to the Council's Nuisances in Public Places Working Party.
65. The comments relating to the enforcement of busking conditions (made by Nigel Spence) in Worcester Boulevard will be referred to the Inspections and Enforcement Unit of the Council.

¹⁴ The Bylaw must be reviewed by December 2009.