

1. PROPOSED ALCOHOL RESTRICTIONS IN PUBLIC PLACES BYLAW

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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to adopt for public consultation the proposed Alcohol Restrictions in Public Places Bylaw. This report contains an options analysis. It also contains a Statement of Proposal (including the proposed Bylaw) and Summary of Information (as required by sections 83 and 86 of the Local Government Act 2002).

EXECUTIVE SUMMARY

2. The Local Government Act 2002 (the Act) provides local councils with the power to make bylaws for 'liquor control purposes'. Such bylaws can help to reduce alcohol-related harm in our communities and provide an effective early intervention tool for the Police to manage or prevent alcohol-related harm.
3. Liquor control bylaws are a valuable tool, but their coverage is limited.¹ They can control the possession, consumption and carriage of alcohol in public places, and 'public places' is limited to land that is 'under the control' of the Council and that is open to the public, and includes any road, even if it is not under the control of the Council. Such bylaws cannot manage alcohol consumption on licensed premises or on private land, and they cannot regulate intoxication or any behaviour arising from it (such as vandalism or littering).
4. The Police have special powers under the Act to enforce liquor ban bylaws (unlike other Council bylaws, which the Police do not enforce) and Police support for the ban areas and their enforcement is important. A partnership approach with the Police was taken in the development of the proposed Bylaw.
5. Liquor control bylaws are not a complete solution to reducing alcohol-related harm but they are part of the puzzle. Such bylaws provide a local approach to addressing local problems and are most successful when they are part of a wider, multi-level approach to tackle alcohol issues. Other Council approaches underway currently include: the Safer Christchurch Strategy, the Alcohol Accord, the Transport Accord, recent funding for the Safe City Officer Programme and crime prevention cameras, Christchurch's designation as an International Safe City, the upcoming review of the Alcohol Policy (which relates to liquor licensing), and the ongoing work of the Liquor Licensing Team, working in conjunction with the Police and Community and Public Health to apply the Sale of Liquor Act 1989. Many other initiatives are happening at a national level. Together, these approaches work at different levels to complement each other and to address different aspects of alcohol-related harm in our communities.
6. This report contains an options analysis, with three options. Option one: status quo, retain the two existing bylaws; option two: revoke the bylaws and have no bylaw; or option three: revoke the bylaws and replace them with an updated bylaw. The preferred option is option three. This will provide a single bylaw to cover the whole district; allow improvements to be made to the operation and functionality of the bylaw itself; and update the ban areas to reflect the current context. This is covered in more detail in the options analysis section.
7. The proposed Alcohol Restrictions in Public Places Bylaw would revoke and replace our existing alcohol-related bylaws, which are:
 - (a) the Christchurch City Liquor Control Bylaw 2004; and
 - (b) part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004.

¹ Section 147 of the LGA02 specifies the bylaw-making power for bylaws for 'liquor control purposes', including the limits on that power.
Report of the Regulatory and Planning Committee to the Council meeting of 27 November 2008

8. The Act requires that these bylaws are reviewed by 1 July 2009 (Christchurch City Council bylaw) and 15 December 2009 (Banks Peninsula District Council bylaw). Due to the abolition and inclusion of Banks Peninsula District Council into Christchurch City Council and the need to align the legislation across the new jurisdiction, the two bylaws will be reviewed together (by 1 July 2009) and the proposed new Bylaw will revoke and replace both bylaws. Once the bylaws have been reviewed, they do not have to be reviewed again for ten years.² However, in the interim, if any new areas are identified where alcohol restrictions should be in place, an amendment can be made to the Bylaw. An amendment requires the same process as creating a bylaw ie a section 155 analysis and undertaking the Special Consultative Procedure.³
9. The existing bylaws and options for a new bylaw with updated ban areas were considered by the Alcohol Policy and Liquor Control Bylaw Subcommittee, which met seven times from July to September 2008. The Subcommittee had the same membership as the Regulatory and Planning Committee and its terms of reference were “*to work with staff to carry out the initial review of the Alcohol Policy and Liquor Control Bylaw, and consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems and make recommendations to the Regulatory and Planning Committee*”.⁴
10. The Subcommittee considered a number of potential areas for inclusion in the new bylaw. Of these potential areas, the Subcommittee advised staff not to go ahead with any further analysis or investigation into a ban along parts of the Summit Road; a ban in all parks; a ban across the whole city or district; a ban in the residential area around Ilam/University of Canterbury; and a ban in Lyttelton, for a variety of reasons.⁵ The Subcommittee advised staff to undertake a full s.155 analysis on the following ten areas to assess whether or not they should be included in the new bylaw, and this report covers these ten areas:
 - (a) Central City – existing ban
 - (b) Hagley Park – no existing ban
 - (c) South Colombo – existing ban
 - (d) New Brighton Mall and Marine Parade – no existing ban
 - (e) Northlands Mall and surrounds – no existing ban
 - (f) Merivale Mall and surrounds – no existing ban
 - (g) The Esplanade, Sumner – existing ban
 - (h) Jellie Park – no existing ban
 - (i) Spencer Park – existing ban
 - (j) Akaroa – existing ban.
11. In making a bylaw, the Act requires councils to consider whether or not a bylaw is the *most appropriate tool* to address any problems.⁶ In assessing the evidence to justify putting a liquor control bylaw in place, it is important to consider other solutions or tools, as well as the limitations of any data or evidence of problems. As well as difficulties in separating the impacts of changes to Police resourcing or targeted Police operations from changing crime trends, it is also difficult to separate data relating to alcohol generally, from data relating specifically to alcohol consumption *in public places*, which is what a bylaw could address. A further issue is that the nature of each potential ban area is different, and the evidence to justify seeking a ban in each area will therefore vary and may not be comparable.
12. The section 155 analysis for this bylaw is in two parts. The analysis on the bylaw as a whole is in the background section of this report, while the section 155 analysis for each of the ten areas under consideration is in a series of **attachments**. The ten area assessment attachments contain information on the proposed ban areas, including the nature and extent of any alcohol-related problems. A clause-by-clause analysis was also completed on the two existing bylaws, and new clauses have been drafted to provide appropriate controls in relation to the ban areas.

² Section 159 of the LGA02 – ‘Further reviews of bylaws every 10 years’

³ Section 156 of the LGA02 – ‘Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act’

⁴ 3 July 2008, Regulatory and Planning Committee minutes

⁵ Refer to Subcommittee agendas/reports and minutes for more information on why these areas were not considered appropriate for further investigation at this time.

⁶ This is referred to as a section 155 analysis and is required by s.155 of the LGA02.

13. Of the ten areas above that underwent a full section 155 analysis, the following areas are recommended for inclusion in the new Bylaw:

Alcohol Ban Area	Times, days or dates during which alcohol restrictions would apply	Existing or new ban area?	Change from existing area or times?
Central City	At all times	Existing	Change to area (now inclusive of the boundary roads and extended to the Avon River along Park Terrace)
Hagley Park	10pm–7am, seven days a week	New	-
South Colombo	At all times	Existing	No change
New Brighton Mall and Marine Parade	At all times	New	-
Northlands Mall and surrounds	Thursday, Friday and Saturday nights, from 9:00pm to 6:00am	New	-
Sumner Esplanade	From 7:00pm each Thursday until midnight each Sunday	Existing	Change to hours - currently ban finishes at 7pm on Sundays - extension proposed so ban finishes at midnight on Sundays
Jellie Park	At all times	New	-
Akaroa	New Year's Eve only	Existing	Change to area (now includes the lower part of Stanley Park)

14. The assessment of the Spencer Park New Year's Eve ban revealed that the current ban is of limited use, and there was no compelling evidence to continue it in the new Bylaw. The assessment of whether or not a new Alcohol Ban Area should be put in place in the Merivale Mall area concluded that a ban should be discarded at this stage, and other ways of addressing the identified problems should be explored in the interim.
15. In addition to the areas specified in the proposed Bylaw, the Bylaw also provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates. This approach could potentially be used to control problem areas during specific times, such as in the Ilam area during the University's Orientation Week. The proposed Bylaw specifies a number of matters the Council must consider before resolving that a Temporary Alcohol Ban Area is the best course of action (see paragraph 27 of the Legal Considerations section for more information on Temporary Alcohol Ban Areas, and also paragraphs 45-48 of the Background section).

FINANCIAL IMPLICATIONS

16. There are some cost implications for the provision of signage in ban areas and for ongoing publicity/public education about the ban areas.
17. The potential costs of signage for implementing the Bylaw will depend on the number of alcohol ban areas in the bylaw and how large they are; the number of signs needed in each of the areas; and the cost of the design, materials and installation of the signs. Signage is important for both compliance and enforcement of the Bylaw.
18. To give an indication of the cost of signs, in 2007 new replacement metal alcohol signs cost approximately \$85 per sign (not including installation). Some inquiries of other councils revealed that Wellington City Council had a budget of \$29,000 for implementing its new bylaw (signage, advertising and pamphlets) earlier this year, while Manukau City Council has an annual budget of \$20,000 for replacement liquor ban signs (where existing signs are vandalised or stolen).
19. As well as signage costs, there will be some ongoing costs for publicity/public education about the bans and their implications (whether via pamphlets or radio or newspaper advertisements). The different ban areas will require different publicity/public education approaches and these may be seasonal.

20. Indicative costs cannot be estimated at this stage, but will accompany the future report to Council on the adoption of the new bylaw (expected in May 2009, after consultation and hearings have taken place). The signs will be funded from the Transport & Greenspace Unit's signage budget.

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

21. The budgets for the Regulatory Services group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.⁷

LEGAL CONSIDERATIONS

22. The process in the Act for making, amending or revoking bylaws is the same, and is outlined in sections 83, 86, 155 and 156 of the Act. If the Council agrees to adopt the **attached** proposed Bylaw, it is required to approve the draft Statement of Proposal and Summary of Information for consultation, agree a submission closing date and should appoint a hearing panel to hear any oral submissions on the proposal.
23. Section 155 of the Act requires local authorities to determine that the proposed Bylaw:
- (a) is the most appropriate way of addressing the perceived problems
 - (b) is in an appropriate form
 - (c) is not inconsistent with the New Zealand Bill of Rights Act 1990.⁸

The Legal Services Unit considers that the form of the Bylaw, as proposed, is in the most appropriate form, and that the Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (see the section 155 analysis below).

24. The proposed Bylaw would be made under the bylaw-making power in section 147 of the Act. This allows a council to make a bylaw for "liquor control purposes". Without repeating the whole of those sections of the Act, section 147 essentially allows a council to make a bylaw prohibiting or otherwise regulating or controlling the consumption, possession and carriage of alcohol in public places, including in vehicles in public places. "Public places" in section 147 is confined to land that is under the control of the Council and open to the public, and includes any road, even if it is not under the control of the Council. The bylaw-making power in section 147 also explicitly exempts the transport of unopened bottles or containers of alcohol to or from licensed premises or private residences in an area covered by a bylaw made for liquor control purposes.
25. The Police are empowered by the Act to enforce the provisions of a bylaw made for liquor control purposes. This is different from all other bylaws, where enforcement is undertaken by warranted Council officers. Section 169 of the Act gives the Police powers of arrest, search and seizure in relation to enforcing liquor ban bylaws. Section 170 sets out the conditions applicable to the power of search in section 169.
26. The proposed Bylaw would revoke and replace the Christchurch City Council Liquor Control Bylaw 2004; and part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004. The Act requires that these bylaws are reviewed by 1 July 2009 (CCC bylaw) and 15 December 2009 (Banks Peninsula District Council bylaw).
27. The proposed Bylaw provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates. Section 151 of the Act and section 13 of the Bylaws Act 1910 make it clear that a bylaw may contain discretion. Section 13 of the Bylaws Act 1910 states "no bylaw shall be invalid because it... leaves any matter or thing to be determined... or prohibited from time to time in any particular case by the local authority making the bylaw...". The Council must be careful to ensure that any discretion left to the Council is not so great that it might be considered unreasonable (which could make the bylaw, or part of it, invalid). To ensure this is not the case, clause 5 of the proposed Bylaw specifies a number of matters the Council must consider before it imposes a temporary ban. The process used to explore whether or not to put a Temporary Alcohol Ban Area in place must also follow normal Council decision-making process, as set out in sections 77-82 of the Act.

⁷ Our Community Plan 2006-2016, Volume 1, page 149.

⁸ Relevant parts of the Bill of Rights in relation to the proposed Alcohol Free Public Places Bylaw may include the right to freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination and freedom from unreasonable search and seizure. Sections 14, 16, 17, 18, 19 and 21 of the New Zealand Bill of Rights Act 1990.

28. This report also covers matters relating to section 77 of the Local Government Act, which relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the council's capacity. The options analysis forms the second part of this report.
29. Section 81 of the Local Government Act requires local authorities to establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes. Whilst all attempts have been made to initiate discussions with Mahaanui Kurataiao (MKT), there has been no response to date. As a result, consultation with MKT will take place through the Special Consultative Procedure.

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

30. Yes, as above. Additionally, the section 155 analysis is covered in two ways throughout this report. Aspects relating to the proposed Bylaw as a whole are covered in the background section below, while aspects relating to the specific areas in which the Bylaw might apply are covered in the **attachments** to this report, with a separate attachment for each of the ten areas under consideration.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

31. The Alcohol Ban Areas put in place through the proposed Bylaw may contribute to perceptions of safety and have the potential to reduce alcohol-related harm. However, such restrictions are not a complete solution to alcohol-related issues, but they are part of a wider, multi-faceted approach to managing or reducing alcohol-related harm. The Bylaw would align with parts of the LTCCP.
32. The LTCCP's Strong Communities strategic directions section lists "working with partners to reduce crime, help people avoid injury and help people feel safer" as a priority.⁹ Relevant parts of the LTCCP include:
 - (a) A Safe City: We live free from crime, violence, abuse and injury. Rates of crime and injury decline.
 - (b) A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.
 - (c) A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.
 - (d) An Attractive and Well Designed City: Christchurch has a vibrant centre, attractive neighbourhoods and well-designed transport networks. Christchurch is attractive and well maintained.

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

33. The proposed 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.

⁹ Our Community Plan 2006-2016, Volume 1, p.60

ALIGNMENT WITH STRATEGIES

34. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City and for Christchurch to have excellent safety networks, support people and services.¹⁰
35. Though not a strategy, the Council policy *Alcohol-related Harm At Public Events - Policy To Reduce* is related to the intent of the proposed Bylaw. It requires effective joint planning between event organisers/promoters and key stakeholder groups (including the Police) to reduce alcohol-related harm and to care for people affected by alcohol, at outdoor events funded or approved by the Council.

Do the recommendations align with the Council's strategies?

36. Yes, as above.

CONSULTATION FULFILMENT

37. The Act gives the Police special powers in order to enforce bylaws made for liquor control purposes. Liquor control bylaws are unique in this regard. Police support for any liquor ban is essential to ensure its enforcement, and as such, its effectiveness. The Police nominated a staff member to the CCC project team working on the bylaw review. This provided a central point through which Police intelligence and advice was coordinated.
38. A Community Board seminar was held on 7 July 2008 to introduce members to the review and to seek information on alcohol-related issues in their communities. Some separate Community Board consultation was undertaken, where required, on some of the proposed ban areas.
39. As previously mentioned, a subcommittee was formed to consider the review as it progressed. The Alcohol Policy and Liquor Control Bylaw Subcommittee had the same membership as the Regulatory and Planning Committee and met seven times during the review and development of the bylaw, from July to September 2008. Staff assisting the Subcommittee have come from across a number of Council units, including the Strategy and Planning Group, Legal Services Unit, and the Liquor Licensing Team.
40. If the proposed Bylaw is adopted by the Council, it will then go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the Act). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

STAFF RECOMMENDATIONS

It is recommended that the Council, in relation to the proposed Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009, resolve:

- (a) That the attached proposed Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 meets the requirements of section 155 of the Local Government Act 2002.
- (b) That the attached Statement of Proposal (which includes the proposed Bylaw) and Summary of Information be adopted for consultation.
- (c) That public notice of the consultation be given in *The Press* and *Christchurch Star* newspapers and on the Council's website at the start of the consultation period, and that public notice of the proposal be given in the *Akaroa Mail* and other community newspapers distributed in the Christchurch district area, as close as possible to the start of the consultation period.
- (d) That the consultation documents be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website during the consultation period.
- (e) That the consultation period (within which written submissions may be made to the Council) be between 28 January 2009 and 2 March 2009.
- (f) That a hearings panel be appointed to hear submissions, deliberate on those submissions and to report back to the Council on the final form of the Bylaw.

¹⁰ <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

Councillor Broughton moved by way of amendment:

“That the residential area of Ilam and the University was not included as a possible alcohol ban area owing to the lack of support from police. This is an ongoing area for concern to Council owing to complaints, from residents and it could choose to address this issue in the future”.

Councillor Sally Buck seconded the motion.

The above motion when put to the meeting was declared **lost** on division number 1 by 6 votes to 1, the voting being as follows:

Against (6): Councillors Button, Buck, Reid, Shearing, Wall and Wells.

For (1): Councillor Broughton.

Councillor Buck moved an amendment to the above that:

“If through the submission process, submitters raise the issue of alcohol-related problems in areas other than the eight areas outlined in the alcohol ban bylaw, then these areas be reviewed by the Committee”.

Councillor Broughton seconded the motion.

The above motion when put to the meeting was declared **lost** on division no 2 by 5 votes to 2, the voting being as follows:

Against (5): Councillors Button, Reid, Shearing, Wall, and Wells.

For (2): Councillors Broughton and Buck.

COMMITTEE RECOMMENDATIONS

That the Council adopt staff recommendations (a)–(f) and the following additional recommendations:

- (g) That the Jellie Park alcohol ban area be extended to the entire park with the exception of the Jellie Park pool and sports complex.
- (h) That the Hagley Park and Environs alcohol ban area be extended to include the area to the north of the Avon River in Little Hagley Park, bounded by Carlton Mill Road.
- (i) That the New Brighton Mall, Marine Parade & Environs alcohol ban area be amended so that New Brighton Mall no longer includes the words “the river and Lonsdale Street”; and Marine Parade description be defined to include New Brighton Beach – “Marine Parade (from Beach Road to Bridge Street), and the beach alongside that section of Marine Parade (down to the mean low water spring level)”.

It was noted that:

- (a) The Committee **agreed** unanimously to congratulate the Police on their efforts to curb alcohol-related issues in Christchurch.
- (b) Staff will ensure that the proposed alcohol ban areas are clear and that all areas are accurate and that any changes will be considered by Council in November 2008.

BACKGROUND (THE ISSUES)

Section 155 analysis

41. Elements of the section 155 analysis¹¹ can be applied to the bylaw as a whole, while for some matters, the section 155 analysis needs to be undertaken on each individual area in which the bylaw might apply. This section of the report covers the bylaw as a whole, while the attachment for each of the areas under consideration contains the section 155 analysis for that specific area, particularly the nature and extent of any alcohol-related problems.

High level s.155 analysis – do we need a bylaw, is there a significant problem?

42. Christchurch, as with any other city in New Zealand, experiences the negative impacts of alcohol. These can impact widely on our communities. As mentioned previously in this report, liquor control bylaws are one tool of many to tackle alcohol-related harm. The Police indicate that these bylaws provide an effective early intervention tool to manage the potential downstream effects of alcohol consumption in public places, and are particularly useful for removing potential offenders or victims from hotspot areas, therefore preventing escalation.
43. Christchurch already has five areas in which liquor bans are in place. Police advice suggests that these bans are largely effective in these areas, and that removing the bans may well result in an increase in crime and injuries. Police crime statistics have been provided for both the existing areas and the proposed new areas in the attached area assessments. Some information has been included below on the limitations of such data.
44. Of the 73 territorial local authorities in New Zealand, all but ten have some form of liquor control bylaw. All sixteen of the metropolitan/city councils have some form of liquor control bylaw.

Temporary Alcohol Ban Areas

45. The proposed Bylaw provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates.
46. While the Act requires a section 155 analysis when developing a bylaw, no such analysis is specified for decisions made under a bylaw, such as a resolution putting temporary alcohol ban areas in place. Though a section 155 analysis is not required, the normal decision-making requirements under the Act apply (these are set out in sections 77-82 of the Act). Through applying normal local government decision-making requirements, the analysis required may well be similar to the first steps in a section 155 analysis, that is, establishing whether there is a significant problem, and if so, whether a bylaw/use of the bylaw discretionary power is the most appropriate way of addressing any identified problems.
47. In order to ensure appropriate matters are considered in relation to a resolution putting a Temporary Alcohol Ban Area in place, the proposed Bylaw sets out some criteria, including:
- (a) the nature of the expected event, including the number of people expected to attend; the history of the event; the area in which the event is being held;
 - (b) the nature and history of alcohol-related problems usually associated with the area;
 - (c) whether the Police support the proposed Temporary Alcohol Ban.

¹¹ Section 155 of the LGA02 requires local authorities to determine that the proposed bylaw: is the most appropriate way of addressing the perceived problems; is in an appropriate form; and is not inconsistent with the New Zealand Bill of Rights Act 1990

48. Additionally, and in relation to the latter parts of the section 155 analysis (relating to the New Zealand Bill of Rights Act 1990), some examination of the costs and benefits of restricting people's behaviour/rights should be undertaken. As such, the proposed Bylaw requires that the following be examined when considering a resolution:
- (a) whether the benefits to local residents and to the city would outweigh the restrictions the resolution would impose on local residents and other people, including those who may be attending any events, in the area covered by resolution.

Restrictions and exemptions

49. The restrictions in the proposed Bylaw that will apply in Alcohol Ban Areas are provided for in section 147 of the Act.¹² In addition to the exemptions that are also provided in section 147(3) of the Act (largely relating to transporting alcohol in or through ban areas), it is considered appropriate for further exemptions to be clearly specified in the Bylaw. The proposed new exemptions¹³ make it clear that where various situations exist that are covered by or associated with a licence issued under the Sale of Liquor Act 1989, the Bylaw would not apply. This is because the Sale of Liquor Act already places regulatory controls on areas or activities covered by such licenses that are aimed at "contributing to the reduction of liquor abuse".¹⁴

Police powers

50. Bylaws made under the Act for "liquor control purposes" give the Police the power to seize alcohol, to search people or vehicles (in certain situations), and to arrest people for breaching such bylaws. This gives the Police additional powers to those which they would normally have under other legislation, and as such, requires some consideration.
51. The Police enforce liquor ban bylaws all over New Zealand, and have organisational guidelines in place. After 2002, when the then new Local Government Act enabled councils to make bylaws for liquor control purposes for the first time, Police national guidance on enforcing such bylaws was provided to Officers, who were advised that: "The powers available to Police under these provisions must be exercised responsibly and discretion should be used where appropriate".¹⁵
52. An example of Police guidelines is contained in the 2005 article "Banning the Bottle", which contains an excerpt from Police guidance for enforcing the Auckland City bylaw. It states:

*Discretion is to be used at all times. If a person who is in breach of the ban complies with directions to either dispose of the liquor or move outside the prohibited area, then a warning is appropriate... [The Bylaw] is intended to police those who indicate by their conduct or demeanour that they are likely to intimidate others or lead to some form of disorder.*¹⁶

53. If there are any concerns about the way in which the Police are enforcing a liquor control bylaw, as with any Police conduct, these can be addressed through appropriate channels such as the Independent Police Conduct Authority. Additionally, concerns could be raised by defence counsel if charges were being brought. There is no known history of complaints about the way in which the Police are enforcing the current bylaws in the Christchurch City Council district.¹⁷

¹² As mentioned previously, these restrictions relate to "prohibiting or otherwise regulating or controlling" the consumption, bringing into or possession of alcohol in public places, including in vehicles in public places.

¹³ In both of the existing bylaws there are already some exclusions (as well as those in section 147), but they do not extend to all potential situations, which may give rise to some doubt as to whether or not the bylaw should apply (see paragraph 2 of the schedule to the CCC bylaw, and the definition of 'specified place' in the BPDC bylaw).

¹⁴ The purpose of the Sale of Liquor Act 1989 is "to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means".

¹⁵ New Zealand Police, *Ten-One*, No 249, 30 May 2002, p 15, cited in "Banning the bottle: Liquor bans in New Zealand", Grenfell M, Marriott-Lloyd P, Webb M, (2005).

¹⁶ Cited in "Banning the bottle: Liquor bans in New Zealand", Grenfell M, Marriott-Lloyd P, Webb M, (2005), p. 4-5

¹⁷ The Police advised that they do not have a record of complaints, and that there is no known history of complaints arising in relation to the current liquor ban areas. The issue was also discussed with the Canterbury Community Law Centre, and though they had cases in relation to young people who had breached the ban, they did not believe there was a significant problem in relation to the use of Police powers or discretion.

54. A more specific aspect of Police powers is the power provided in section 170(2) and (3) of the Act which, in practice, allows the Council to give the Police powers of immediate search when putting a temporary Alcohol Ban Area in place. If the Council wants to activate this provision, the resolution putting the temporary Alcohol Ban Area in place must state so, and the Council must then comply with section 170(3) of the Act, in terms of signage and public notice requirements.

Signage – enforcement and compliance

55. The Act largely remains silent on the issue of signage for bylaws made for liquor control purposes. The one exception is the power mentioned above, which is very specific and would only apply to temporary Alcohol Ban areas, where stated.
56. Therefore, signage is an operational issue. There are strong arguments that signage should be in place where practical, as without signage a person would not necessarily know that alcohol restrictions are in place. Signage is important for both enforcement (ie to manage the possibility of “not knowing” as a defence) and to encourage compliance (ie if people know there is a ban they are more likely to comply with it).

Under-age drinking

57. Bylaws made for “liquor control purposes” are sometimes implemented to address perceived problems of young people consuming alcohol; however, it should be noted that the Summary Offences Act 1981 makes it an offence for anyone under 18 years of age (who is unaccompanied by their parent or legal guardian), to drink alcohol in a public place, or have to alcohol in their possession in a public place.¹⁸ If a young person is found to be breaching this provision they can be issued with an infringement notice (instant fine) by the Police.

Other tools for addressing the problem

58. As with any bylaw review, other tools for addressing the problem should be examined. It may be that this type of bylaw is not the *most appropriate tool* for addressing the identified problem(s). The other tools available for addressing the problem(s) will be different for each of the ten areas that the Alcohol Policy and Liquor Control Bylaw Subcommittee agreed staff undertake further analysis on. The attachment for each area assessment contains information describing the problem(s) particular to each area, be it ‘boy racer’ activities, the combination of food, alcohol and entertainment venues creating a congregation point, youth drinking, etc.
59. Additionally, it should be acknowledged that the scope of the bylaw-making power provided in the Act is narrow (possession, consumption and carriage of alcohol, in public places, that are under the control of the Council, and open to the public) and therefore the use of the bylaw is limited by the bylaw-making power’s narrow scope.
60. As mentioned previously, there are many other initiatives underway in Christchurch to help to achieve the same outcomes sought by the proposed Bylaw (ie reducing alcohol-related harm, damage, disorder and crime and improving community safety). This type of bylaw should be thought of as a piece of the puzzle, not as a complete solution.
61. Other tools for addressing related problems may include:
- (a) increased compliance monitoring or enforcement under the Sale of Liquor Act 1989 (eg in relation to intoxication, under-age purchases or ‘bar-hopping’ with drinks)
 - (b) using s.38(3) of the Summary Offences Act 1981 to combat under-age drinking in public places
 - (c) dedicating Police resources to particular problems eg ‘boy racer’ activities and using existing legislation
 - (d) using Crime Prevention Through Environmental Design (CPTED) eg crime cameras and lighting
 - (e) more recycling bins for glass bottles or more rubbish bins.

¹⁸ Section 38(3) of the Summary Offences Act 1981

62. While there is other legislation available to Police to deal with disorder and some alcohol-related offending, alcohol bans provide an opportunity to remove potential offenders and/or victims from a location before incidents escalate. In this sense, alcohol bans can be employed as an effective crime prevention tool, and for this reason the proposed Bylaw is considered to meet the test in section 155(1) of the Act; it is a most appropriate way to meet these problems.

Form of bylaw and Bill of Rights Act implications

63. The form of the proposed Bylaw is considered appropriate, but can be tested further through public consultation.
64. As with many regulatory controls that limit the ability of people to do certain things and/or go certain places, this may have an implication on rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). However, section 5 of the NZBORA provides that "...the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Council can therefore limit NZBORA rights if such a limitation is "demonstrably justified".
65. An analysis of whether such a limitation is "demonstrably justified" will involve considerations such as:
- (a) Does the limit have a significant and important objective? – the limitation should serve a significant and important function to warrant overriding a constitutionally protected right.
 - (b) Is the limit rational and proportionate? – there should be a rational and proportionate connection between the law limiting the right and the reason for the limitation. The measures adopted should impair the right as little as possible.
66. The possible rights in the NZBORA that might be affected by a liquor control bylaw include freedom of movement (section 18), and possibly freedom from discrimination (section 19). The right to freedom from unreasonable search and seizure (section 21) may be regarded as affected, but although a bylaw may increase the possibility that unreasonable search and seizure could take place, this is a matter within the control of the Police, and the bylaw itself is not necessarily inconsistent with that right.
67. Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. The laws of New Zealand do not make it illegal to consume or possess alcohol in public places (except for those under 18), so a restriction on where people can go and consume or possess alcohol, in public places, will be a partial restriction on freedom of movement. However, a bylaw that does not prohibit this activity completely in every public place, and provides a rationale for why there is a ban in certain places will be a demonstrably justified limit in a free and democratic society.
68. There was an argument raised in a recent case (*Ngeru v Police*) that a liquor ban bylaw might be indirect discrimination against homeless alcoholics, but it did not succeed in that case and, when a bylaw only provides for a limited number of ban areas, there is also not likely to be any inconsistency with the NZBORA.

Police view about liquor control bylaws

69. Liquor bans are an important tool for reducing alcohol-related harm, but can only be effective if they are strictly and consistently enforced. One of the key benefits for Police is that people who breach the liquor bans can be arrested and removed from hotspots before problems arise, thus helping to minimise alcohol-related crime and disorder. Police can use this tool to remove aggressive or vulnerable people from hotspot locations.

70. While this tool provides Police with the ability to remove potential offenders and/or victims from the streets at high risk times, it also removes the Police Officer from the street and reduces Police visibility. Enforcement of liquor ban bylaws depends on Police resources and priorities.
71. For a crime to occur, three elements have to be present: ability, motivation and opportunity. Eliminate any one of these and the crime will not occur. If the Police can effect early intervention by removing alcohol from the public environment, the opportunity for disorder, violence, anti-social behaviour and littering will be greatly reduced.
72. It is important to realise the limitations of liquor bans. They are a proactive policing tool, but they require a heavy investment of Police resources. They are also of limited value unless they are supported by additional strategies that address intoxication and drinking behaviours. Liquor bans are also limited in that they can potentially stop drinking in public places, but they cannot stop intoxication.

Data/evidence limitations

73. It is difficult to separate the impact of increased Police resources and targeted Police operations from the impact of liquor control bylaws. New Zealand researchers Webb *et al* state: "It is difficult to disentangle the independent effects of Police enforcement of a liquor ban from other initiatives which, in a comprehensive crime prevention and community safety strategy, are likely to have mutually-reinforcing effects on one another".¹⁹
74. As such, isolating positive impacts solely attributable to our existing liquor control bylaw areas has proved difficult. Police advice suggests that removing the existing alcohol ban areas (with the exception of the Spencer Park New Year's Eve ban) would result in an increase of crime and disorder. Crime statistics for the existing ban areas, including statistics on liquor ban breaches, have been included in each area assessment in the attachments to this report.
75. As well as difficulties in separating the impacts of our current liquor ban areas from the impacts of changing Police priorities and resources, it is also difficult to separate data relating to alcohol generally from data relating specifically to alcohol consumption *in public places*, which is what a bylaw could cover.
76. A further issue, relating to both the existing and proposed new areas, is the different nature of the ban areas. Potential ban areas are not necessarily comparable across all types of data/evidence. For example, some areas may represent problem areas because they are a 'boy racer' corridor, a holiday destination (for example, on New Year's Eve), or because they have a concentration of licensed premises, late night eating establishments and entertainment venues which draw people to the area. The nature of each potential ban area is different, and the evidence to justify seeking a ban will therefore vary and may not be directly comparable.
77. As well as Police data, Council data has been utilised through the Request for Service (RFS) system. However, RFS data records complaints, not actual events or incidents, so does not represent a true reflection of the extent of any problems. Additionally, there is no information which links the complaints to alcohol consumed in public places, or indeed to alcohol generally.

¹⁹ Webb, M; Marriot-Lloyd, P; Grenfell, M. *Banning the bottle: Liquor bans in New Zealand*. (2004).

Other alcohol-related initiatives

78. Evidence suggests that liquor bans are most effective when introduced alongside a range of other initiatives. As mentioned previously in this report, there are a range of other CCC initiatives underway, including:

- (a) the Safer Christchurch Strategy²⁰
- (b) the Alcohol Accord²¹
- (c) the Transport Accord²²
- (d) recent funding for the Safe City Officer Programme and crime prevention cameras;
- (e) Christchurch's designation as an International Safe City²³
- (f) the upcoming review of our Alcohol Policy (which relates to liquor licensing)²⁴
- (g) the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health to apply the Sale of Liquor Act 1989.

79. Many other initiatives are happening at a national level. Together, these approaches work at different levels to complement each other and to address different aspects of alcohol-related harm in our communities. For example, in March 2006, the Government adopted the New Zealand Police Alcohol Action Plan which sets out a commitment by the Police to work in partnership to prevent and reduce alcohol-related crime, and ultimately to reduce alcohol-related harm.²⁵ The Action Plan states (in relation to managing alcohol at events and during holidays, but applicable generally in relation to bylaws):

*Police's proactive emphasis on compliance with liquor ban by-laws will also continue. Although the vast majority of liquor ban breaches are resolved by a warning or caution, the power of arrest and detention is particularly important ... The power to 'nip trouble in the bud' and remove people who are intent on flouting liquor bans is an important way Police Officers can maintain a safe environment for everyone to enjoy ...*²⁶

THE OBJECTIVES

80. The purpose of the proposed Bylaw is to reduce alcohol-related harm, damage, disorder and crime and to improve community safety by putting alcohol restrictions in some public places within the Christchurch City Council district.

THE OPTIONS

81. In reviewing the existing two bylaws, the Christchurch City Liquor Control Bylaw 2004 and part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004, the options are:

- (a) Option one: Status quo, retain the two bylaws and the coverage of the ban areas
- (b) Option two: Revoke the two bylaws and no longer have a bylaw for liquor control purposes
- (c) Option three: Revoke the two bylaws and create an updated bylaw with updated ban areas.

²⁰ The Safer Christchurch Strategy gives a unified approach to crime prevention, injury prevention and road safety. The Strategy brings together the work of government agencies and community organisations whose focus is on creating a safer Christchurch and sets out a wide range of actions and targets for the city's safety and crime prevention agencies.

²¹ In October 2006, more than 50 bars in the central business district formed the Alcohol Accord in partnership with the Council, New Zealand Police, Community and Public Health and the Hospitality Association.

²² In May 2008, the Central Business District Transport Accord was launched. Christchurch's taxi operators and Red Bus Company formed the Transport Accord in partnership with the Council, New Zealand Transport Agency, New Zealand Police, Hospitality Association, Environment Canterbury, Automobile Association, Taxi Federation and ACC.

²³ In June 2008, the Council agreed to triple the number of extra crime prevention cameras and to fund the Safe City Officer programme to help reduce crime in the central city area and to improve perceptions of crime and safety in the city.

²⁴ The Council's Alcohol Policy, which covers some aspects of liquor licensing in the district, is due to be reviewed later in 2009. This will provide the Council the opportunity to address a range of concerns relating to licensed premises, including opening hours. The policy relates to matters covered by the Sale of Liquor Act 1989.

²⁵ New Zealand Police, *New Zealand Police Alcohol Action Plan* (2006), <http://www.police.govt.nz/resources/2006/alcohol-action-plan/alcohol-action-plan.html>

²⁶ New Zealand Police, *New Zealand Police Alcohol Action Plan* (2006), <http://www.police.govt.nz/resources/2006/alcohol-action-plan/alcohol-action-plan.html>

Option 1

82. Option 1, status quo, retain the two bylaws and the coverage of the ban areas, is not the preferred option, as it would not reflect the amalgamation of the Christchurch City Council and the Banks Peninsula District Council, and the ban areas in the two bylaws need to be updated to reflect the current context, which has changed since the two bylaws were made in 2004.

Option 2

83. Option 2, revoke the bylaws and no longer have a bylaw for liquor control purposes, is not the preferred option, as liquor control bylaws provide a valuable early intervention tool for the Police to manage the potential downstream effects of alcohol consumption in public places. Liquor control bylaws can prevent alcohol-related harm in our communities and contribute to a number of Council goals, including the LTCCP strategic direction: working with partners to reduce crime, help people avoid injury and help people feel safer.²⁷

Option 3

84. Option 3, revoke the two bylaws and create an updated bylaw with updated ban areas, is the preferred option.

PREFERRED OPTION

Option 3

85. Option 3 is the preferred option as it:
- (a) provides a single bylaw to cover the whole district
 - (b) allows improvements to be made to the operation and functionality of the bylaw itself, and
 - (c) updates the ban areas to reflect the current context.
86. As bylaws have come up for review since the amalgamation of the Banks Peninsula District Council and the Christchurch City Council, the Council has been replacing the separate bylaws from the two old jurisdictions with updated, single bylaws that cover the whole of the new district. It is appropriate to do the same for the two bylaws covering liquor control matters.
87. Since the two bylaws were first made over four years ago, the drafting and application of liquor ban bylaws has evolved nationally. It is appropriate therefore, to reflect these changes in the new bylaw to improve the operation and functionality of the bylaw itself. Some examples are:
- (a) clarity that the bylaw applies to alcohol consumed in vehicles in liquor ban areas
 - (b) including criteria in bylaws around decision-making for putting temporary bans in place
 - (c) clarifying what can be done by resolution and what has to comply with sections 83 and 86 of the LGA (that is, undertaking the Special Consultative Procedure), and
 - (d) aligning the drafting style and standard clauses in the bylaw with the rest of the new CCC bylaws.
88. The two bylaws were made in 2004 and the city's alcohol issues have changed over that time. New issues have emerged and problems have shifted or altered. Police resourcing and priorities have changed. It is appropriate, therefore, to review the areas covered by the bans and to consider removing or altering these, and to consider adding new areas where problems have been identified.

²⁷ Our Community Plan 2006-2016, Volume 1, p.60

ASSESSMENT OF OPTIONS

The Preferred Option

89. Option 3 - Revoke the two bylaws and create an updated bylaw with updated ban areas.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> ▪ potential to reduce alcohol-related harm ▪ contributes to a safer city 	<ul style="list-style-type: none"> ▪ restricts freedoms
Cultural	<ul style="list-style-type: none"> ▪ improve negative drinking culture ▪ reduce the culture of fear/negative perceptions of safety 	<ul style="list-style-type: none"> ▪ n/a
Environmental	<ul style="list-style-type: none"> ▪ potential to reduce the amount of glass bottles, broken glass and litter on our streets and in our parks 	<ul style="list-style-type: none"> ▪ signage – amenity costs
Economic	Potential to: <ul style="list-style-type: none"> ▪ increase perceptions of safety and to increase business activity ▪ reduce damage, vandalism, etc ▪ positively impact on tourism 	<ul style="list-style-type: none"> ▪ may impact on off-licence sales within Alcohol Free Areas
<p>Extent to which community outcomes are achieved:</p> <p><i>A Safe City: We live free from crime, violence, abuse and injury. Rates of crime and injury decline.</i></p> <p><i>A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.</i></p> <p><i>A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.</i></p> <p><i>An Attractive and Well Designed City: Christchurch has a vibrant centre, attractive neighbourhoods and well-designed transport networks. Christchurch is attractive and well maintained.</i></p> <p>Option 3 would contribute to these four community outcomes – in both real and imagined terms. The Alcohol Free Areas put in place through the proposed Bylaw may contribute to perceptions of safety and have the potential to reduce alcohol-related harm. Alcohol Free Areas are not a complete solution to alcohol-related issues, but they are part of a wider, multi-faceted approach to managing or reducing alcohol-related harm.</p> <p>Impact on the Council’s capacity and responsibilities:</p> <p>The Act gives the Police special enforcement powers for bylaws made for “liquor control purposes”. Enforcement for this bylaw is a matter for the Police, rather than the Council.</p> <p>There will be some costs to Council in relation to publicising the Alcohol-free Areas on an ongoing basis and ensuring adequate signage is in place.</p> <p>Effects on Maori:</p> <p>Similar to other ethnic groups.</p> <p>Consistency with existing Council policies:</p> <p><i>Alcohol-related Harm At Public Events - Policy To Reduce (22 February 2001)</i> – This policy contributes to reducing alcohol-related harm at outdoor events and requires effective joint planning between event organisers/promoters and key stakeholder groups to reduce alcohol-related harm or to care for people affected by alcohol.</p>		

Alcohol Policy (29 July 2004) – This policy expresses support for the implementation of liquor ban bylaws.

Other related Council initiatives include: the Safer Christchurch Strategy; the Alcohol Accord; the Transport Accord; recent funding for the Safe City Officer Programme and crime prevention cameras; our designation as an International Safe City; the upcoming review of our Alcohol Policy (which relates to liquor licensing); and the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health.

Other related initiatives include: the New Zealand Police Alcohol Action Plan, which endorses liquor bans as a useful policing tool to address alcohol-related harm.

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

The Act gives the Police special enforcement powers for bylaws made for “liquor control purposes”, so a partnership approach has been taken with the Police in the development of the draft bylaw. Additionally, the need for Alcohol Free Areas or the evaluation of current areas largely relies on evidence provided by the Police, such as crime statistics or enforcement statistics relating to the current liquor ban areas. The views and preferences of the public can be ascertained through the special consultative procedure on this proposal.

Other Options

90. Option 1 - status quo, retain the two bylaws and the coverage of the ban areas

	Benefits (current and future)	Costs (current and future)
Social	As above	As above
Cultural	As above	As above
Environmental	As above	As above
Economic	As above	As above
Extent to which community outcomes are achieved:		
As above, but if the ban areas are not updated to reflect the current situation, community outcomes will have less chance of being achieved (a Safe City, a Prosperous City, a Health City) .		
Impact on the Council’s capacity and responsibilities:		
As above.		
Effects on Maori:		
As above.		
Consistency with existing Council policies:		
As above.		
Views and preferences of persons affected or likely to have an interest:		
As above. The Police have indicated that the current areas are not, in all cases, reflective of current issues. The Police have been working closely with staff on the review of the current bylaws, and have recommended a number of changes to the areas covered, and to the content of the bylaw itself. As the retention of the current bylaws would still need to be the subject of a special consultative procedure the views of the public would be ascertained as part of that process.		

91. Option 2 - Revoke the bylaws and no longer have a bylaw for liquor control purposes

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> ▪ would allow increased freedom, rather than restrictions 	<ul style="list-style-type: none"> ▪ potential to increase alcohol-related harm and result in a city which is, or is perceived as, less safe
Cultural	<ul style="list-style-type: none"> ▪ n/a 	<ul style="list-style-type: none"> ▪ may contribute to negative drinking culture ▪ may increase the culture of fear/negative perceptions of safety
Environmental	<ul style="list-style-type: none"> ▪ less signage 	<ul style="list-style-type: none"> ▪ potential to increase the amount of glass bottles, broken glass and litter on our streets and in our parks
Economic	<ul style="list-style-type: none"> ▪ may increase off-licence sales 	Potential to: <ul style="list-style-type: none"> ▪ reduce perceptions of safety and to reduce business activity ▪ increase damage, vandalism ▪ negatively impact on tourism
<p>Extent to which community outcomes are achieved:</p> <p>Not having a bylaw for liquor control purposes could negatively impact on safer city initiatives and perceptions.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Not having a bylaw for liquor control purposes could increase the need for dealing with alcohol-related harm – to people, the environment and to property (including city streets).</p> <p>Effects on Maori:</p> <p>As above</p> <p>Consistency with existing Council policies:</p> <p>Not having a bylaw for liquor control purposes would not be consistent with some Council strategies, policies or other initiatives, such as: the Safer Christchurch Strategy; the Alcohol Accord; the Transport Accord; recent funding for the Safe City Officer Programme and crime prevention cameras; our designation as an International Safe City; the upcoming review of our Alcohol Policy (which relates to liquor licensing); and the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The Police have indicated that liquor control bylaws provide a valuable early intervention tool to manage the potential downstream effects of alcohol consumption in public places, and can prevent alcohol-related harm in our communities. As the revocation of the bylaws would still need to be the subject of a special consultative procedure the views of the public would be ascertained as part of that process.</p> <p>Other comments:</p> <p>Of the 73 territorial local authorities in New Zealand, all but ten have some form of liquor control bylaw. All of the sixteen city councils have some form of liquor control bylaw.</p>		