

5. **REVOCATION OF BANKS PENINSULA DISTRICT COUNCIL PUBLIC PLACES AND SIGNS BYLAW 2004**

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager Strong Communities
Audited by:	Terence Moody

PURPOSE OF REPORT

1. The purpose of this report is to recommend the revocation of the remainder of the Banks Peninsula District Council Public Places and Signs Bylaw 2004 (the Bylaw) on the grounds that a review has shown that the provisions are covered by other bylaws or can be dealt with through Council operational policies.

EXECUTIVE SUMMARY

2. Following the review of bylaws undertaken in 2008 and 2009 the Banks Peninsula District Council Public Places and Signs Bylaw 2004 *Part 2 Liquor Control in Public Places* and *Part 3 Public Places* of the Bylaw were revoked and replaced by new provisions. These were replaced by the bylaws *Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009* and *Christchurch City Council Public Places Bylaw 2008* respectively. Some clauses of *Part 4 Signs* were also revoked by the latter bylaw.
3. Despite a new administrative bylaw having been introduced, the *Christchurch City Council General Bylaw 2008*, some administrative parts of The Bylaw and a section of *Part 4 Signs* relating to "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" were retained.
4. The Local Government Act 2002 (LGA) requires bylaws to be reviewed within five years of their adoption and The Bylaw must be reviewed by December 2009. Parts of the Bylaw have already been reviewed, revoked, and where appropriate, replaced as noted above.
5. The remaining parts of The Bylaw requiring consideration included the *Preamble*, *Part 1 Administration*, and clauses 4.1; 4.5; 4.6; 4.7; 4.8; 4.9; Schedule I; Schedule II; and Design Guidelines of *Part 4 Signs*. A clause by clause analysis of The Bylaw has been undertaken (**Attachment 1**) (separately circulated). This has revealed that many of the provisions in the *Preamble* and *Part 1 Administration* are contained in the Christchurch City Council General Bylaw 2008 and hence the Bylaw may be revoked.
6. The remaining provisions of *Part 4 Signs* relate to signage under the control of the Council, and do not need to be included in any bylaw. It provided for the Chief Executive to permit remote signs on sign frames provided by the Council in public places under the control of the Council. As far as it is known there have not been any "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" provided for in the Banks Peninsula ward under the Bylaw. The matters these provisions cover are addressed in the Christchurch City Public Places Bylaw 2008 which prohibits commercial use (such as signage) of public places without the Council's permission. Signage in public places will be further considered in the review of public places operational policies agreed by the Council at its meeting on the 24 September 2009.
7. Under the *Christchurch City Council Public Places Bylaw 2008* the Chief Executive has the delegated power to approve signs advertising commercial activities in public places and this could include such remote signs if that was desired. The review of operational policies regarding signs in public places will deal first with those in the Banks Peninsula Ward, however this delegation can be exercised to deal with any related issues that occur between the time the remaining parts of the Bylaw are revoked and the relevant operational policy review is completed. It should be noted there is no budget for erecting sign frames on roadways or in public places in the Banks Peninsula area.
8. Accordingly it will be recommended that the whole of The Bylaw may be revoked and the Special Consultative Procedure should be undertaken as required by sections 83 and 86 of the LGA.

FINANCIAL IMPLICATIONS

9. There are no other financial implications other than those associated with the Special Consultative Procedure which include printing of the Statement of Proposal and Summary of the Proposal, and the costs of Public Notices.

Do the Recommendations of this Report Align with 2009-2019 LTCCP budgets?

10. The budgets for the Regulatory Services group of activities in Our Community Plan 2009-2019 Volume 1 Page 89 make general provision for the enforcement of bylaws and the City Plan and investigation of complaints. It is not anticipated that the revocation of this bylaw will significantly impact on those budgets as similar provisions remain in the *Christchurch City Council General Bylaw 2008*.

LEGAL CONSIDERATIONS

11. The timeframes provided in section 158¹ of the LGA, that bylaws must be reviewed within five years of introduction, means The Bylaw must be reviewed by 15 December 2009. Section 160² of the LGA provides that a bylaw review is done by making the determinations required by section 155 as noted in paragraph 11 below. If, following the review, the Council determines that the bylaw should be amended, revoked, or revoked and replaced, it must act under section 156, and use the special consultative procedure to make, amend or revoke a bylaw.
12. The legal considerations in relation to the review of existing bylaws and adoption of a new bylaw largely arise from section 155 of the LGA. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
 - (1) *A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
 - (2) *If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*
 - (a) *is the most appropriate form of bylaw; and*
 - (b) *gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
 - (3) *No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act."*
13. In order to comply with section 155, the Council needs to identify the perceived problem and formally determine that a bylaw is the most appropriate way to deal with the perceived problem, and if so, that the proposed form of the bylaw is the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. If the Council does not satisfy the requirements of section 155 appropriately, then it is at risk of a challenge to its decision by way of a judicial review application. For example, if it did not have sufficient evidence of a problem, or there was a problem but there were other more appropriate ways to deal with it than a bylaw, then the bylaw might be open to challenge. Conversely, if there was evidence of a problem and that a bylaw was the most appropriate way to deal with that problem, but the Council did not make a bylaw, then that decision might also be successfully challenged.

Legal requirements for the special consultative procedure

14. The special consultative procedure under the LGA when revoking a bylaw requires that the Council prepare a Statement of Proposal (**Attachment 2**) (separately circulated) that must include:
 - (ii) a statement that the bylaw is to be revoked; and
 - (iii) the reasons for the proposal; and
 - (iv) a report on any relevant determinations by the local authority under section 155".

¹ Section 158 of the LGA requires bylaws made under the Act not later than 5 years after the bylaw was made if the bylaw was made after 1 July 2003. This applies to the Banks Peninsula District Council Public Places Bylaw 2004.

² Section 160 of the LGA requires the review under section 158 to be undertaken in accordance with section 155 including identifying the perceived problem to be addressed and whether a bylaw is the appropriate way of addressing the problem.

15. The Act also requires the Council to prepare a summary of the information in the Statement of proposal. Section 89(c) requires that the summary of information be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*" Section 83(e) of the LGA also requires the Council to give public notice of the proposal and the consultation being undertaken.
16. Since the revocation of this Bylaw is not likely to be a matter of significant interest throughout the Christchurch City Council district, it is proposed that the Summary of Information (**Attachment 3**) be published through local newspapers in the Banks Peninsula area, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries and on the Council's "Have Your Say" Website.
17. Submissions called for on the proposal will be considered by the Council and any persons wishing to present their submission orally will be heard prior to the final determination being made.

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

18. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. Under the Activity Management Plan provisions for Regulatory Services Enforcement and Inspections: *Enforce compliance through Inspection, Enforcement and Monitoring of statutory requirements: Building, Parking, Fencing of Swimming Pools, City Plan & bylaws.*

Do the recommendations of this report support a level of service or project in the 2009-2019 LTCCP?

20. Regulatory Services Enforcement and Inspection: *The Council's regulatory services make sure we follow all the laws and rules that apply in the city to keep our residents healthy and safe. This ensures that residents and businesses comply with rules for building, parking, and City Plan and bylaws.*³

ALIGNMENT WITH STRATEGIES

21. There are no specific strategies in relation to this issue.

Do the recommendations align with the Council's strategies?

22. See above.

CONSULTATION FULFILMENT

23. Consultation was undertaken with the Legal Services Unit and the Inspections and Enforcement Unit. It was accepted that the provisions of the Bylaw were adequately covered by the Christchurch City Council General Bylaw 2008, as well as other bylaws or operational policies as necessary.
24. Formal public consultation of any proposal adopted by the Council will go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the LGA). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

³ Our Community Plan 2009-2019 Volume 1, p 89

STAFF RECOMMENDATION

That the Council:

- (a) Resolve that it is satisfied that the Banks Peninsula District Council Public Places and Signs Bylaw 2004 is not necessary in terms of section 155 of the Local Government Act 2002 and therefore should be revoked.
- (b) Adopt the attached Statement of Proposal and Summary of Information and that it be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website.
- (c) Agree that public notice of the proposal be given in "The Press" on 27 January 2010 and in the appropriate community newspapers as close as possible to the 27 January 2010.
- (d) Agree that the period within which written submissions may be made to the Council be between 1 February 2010 and 5pm on the 5 March 2010.
- (e) Call for submissions, including any verbal submissions, which will be considered by the Council Hearings Panel on 30 March 2010.
- (f) Appoint a Hearings Panel to consider and where necessary hear any submissions on the revocation and to report back to the Council on its decision.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Receive the report for information.
- (b) Agree that the matter lie on the table until February 2010 when it will be considered by the Regulatory and Planning Committee alongside the report of the Public Places Policy Working Party.