

8. NEW REGENT STREET PEDESTRIAN MALL – VARIATION TO THE SPECIAL ORDER

General Manager responsible:	General Manager City Environment DDI 941-8608
Officer responsible:	Transport and Greenspace Manager
Authors:	Christine Toner, Consultation Leader and Barry Cook, Team Leader Network Operations and Traffic Systems

PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's support for the proposal to restrict the hours that goods service vehicles are permitted in the mall and to amend clause (c) in the declaration in relation to its reference to approval by the traffic manager or parking operations manager. The report also requests that the Council approve the commencement of the legal requirements necessary to make these changes to the declaration of a variation to the New Regent Street Pedestrian Mall Special Order.
2. This matter will also be presented to the Hagley/Ferrymead Community Board on 15 July 2009 and the consideration and recommendations of the Board will be provided to the Council by way of memorandum from the Community Board Adviser.

EXECUTIVE SUMMARY

3. The Council has received a request from the tram operators, Christchurch Tramway Ltd, to restrict the access and parking of private vehicles at night in New Regent Street Pedestrian Mall.
4. The pedestrian only street is used by vehicles for parking in the evening even though this is banned by the declaration. It is a convenient place for patrons of the nearby restaurants to park. The parked vehicles are generally private motor cars that on a regular basis obstruct access for the tram. This has restricted the restaurant tram from completing its circuit. Delays of up to one hour have been experienced.
5. On 28 July 1994 the Council resolved to make a Special Order that New Regent Street (Armagh Street to Gloucester Street) be declared a pedestrian mall. The Special Order conditions prohibit the driving, riding or parking of any vehicle or the riding of any bicycle or the riding of any animal at all times subject to the following exceptions and conditions:
 - (a) Trams;
 - (b) Goods Service Vehicles are permitted in the Mall for the purpose of loading and unloading at any time other than between 10am and 4pm each day;
 - (c) Trade and other vehicles (including those operated by service authorities) of any class may enter the Mall at specified times if authorised to do so by the Traffic Manager or Parking Operations Manager;
 - (d) Street cleaning and rubbish collection vehicles operated by the Christchurch City Council or its nominated contractor may enter the Mall at any time;
 - (e) Any vehicle or specified class of vehicle that has entered the Mall under any section of this order must not be parked for a longer period than is necessary for its driver to carry out his or her business or for the period of any emergency;
 - (f) Nothing in this Special Order shall be deemed to prohibit or restrict the use of the Mall by any fire appliance, ambulance, or other vehicle to enter the Mall or portion thereof for the protection of human life or of property.
6. The power to declare New Regent Street a pedestrian mall is contained in section 336 of the Local Government Act 1974. That section also gives the Council the power to revoke or vary a declaration creating a pedestrian mall by using the special consultative procedure. There is a right of appeal to the Environment Court against any decision made by the Council.

7. As specified in the First Schedule (One Way Streets) of the Traffic and Parking Bylaw 2008, New Regent Street is a one-way street (north to south).
8. Currently motorists are informed of the restrictions in New Regent Street by way of signage. These signs will be amended to show the new times if approved.
9. It is proposed to change the existing time that goods vehicles are allowed to enter the street for delivery purposes. The special order currently allows access, for goods vehicles at any time from 4pm one day through to 10am the following day. The proposal is alter this to allow access for goods service vehicles between 5am-10am and 4pm-11pm each day (ie to add a night time ban from 11pm to 5am). Outside of these times no vehicles will be allowed in New Regent Street except for those that are exempt in the declaration. Special arrangements that are already in place under (c) of the special order to allow business owners and operators access to their businesses will continue.
 - (a) The new declaration would then read:
 - (i) Clause (b) Goods Service Vehicles are permitted in the Mall for the purpose of loading and unloading only between 5am-10am and 4pm-11pm each day;
 - (ii) Clause (c) Trade and other vehicles (including those operated by service authorities) of any class may enter the Mall at specified times if authorised to do so by the Council officer that holds the position of asset owner at that time.
10. These proposed changes to the pedestrian mall declaration will be indicated on the signage at the entrance to the Mall so Police or Parking Enforcement Officers can carry out enforcement.
11. Consultation has been carried out previously with all business operators in New Regent Street. The Christchurch Tramway Limited has also been contacted. Parking Enforcement endorses this proposal. The Special Consultation Procedure will ensure that all affected parties will have the opportunity to present their feedback.

FINANCIAL IMPLICATIONS

12. The cost for changing the signage is estimated to be \$1200.

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

13. The installation of signs is within the LTCCP Street and Transport Operational Budgets.

LEGAL CONSIDERATIONS

14. Section 336(1) of the Local Government Act 1974 provides that a Council "*may, by using the special consultative procedure (a) declare a specified road or part of a specified road to be a pedestrian mall and (b) prohibit or restrict the driving, riding, or parking of any vehicle, or the riding of any animal, on all or any portion of the pedestrian mall*" either generally or during particular hours. Section 336(8) states that any declaration "*may be revoked or varied by a subsequent declaration using the procedure in subsection (1), and that subsection applies with all necessary modifications*". This means that to vary the special order for New Regent Street, made by the Council in 1994, the Council must apply both sections 336(8) and 336(1), and carry out a special consultative procedure.
15. Any declaration of the Council under s336(1) may include exemptions and conditions but does not take effect until the time for appealing a declaration has expired or any appeal has been determined. Any person can appeal the making of the declaration to the Environment Court (they must do so within one month of the declaration). When a special consultative procedure is carried out under s336(1) (or 336(8)), the public notice required by section 83(1)(e) of the Local Government Act 2002 must explain the right of appeal. Once a declaration has been made it is an offence under section 336(7) to drive, ride, or park any vehicle or ride any animal, or causes or permits any vehicle to be driven, ridden, or parked or any animal to be ridden, in contravention of the declaration.

16. Sections 83, 87 and 89 of the Local Government Act 2002, are all relevant in relation to the special consultative procedure that is required to vary the mall declaration. Section 83 requires the preparation of a statement of proposal and a summary of the information in the proposal. The statement of proposal must be included in the agenda for a meeting of the local authority and must be made available for public inspection. The summary is circulated for consultation in accordance with s 89.
17. As noted, public notice must be given of the consultation being undertaken. In addition to explaining the right of appeal it must advise where people can view copies of the summary and the full proposal, and set out the time for submissions, which must not be less than one month from the date of the first public notice. Persons who make a submission must be sent written acknowledgement of their submission and be given a reasonable opportunity to be heard.
18. Section 87 specifies that where a special consultative procedure is required for any other purpose than consulting on the LTCCP, annual plan or a bylaw then the statement of proposal must include a detailed statement of the proposal including:
 - “(a) a statement of the reasons for the proposal; and*
 - (b) an analysis of the reasonably practicable options, including the proposal, identified under section 77(1); and*
 - (c) any other information that the local authority identifies as relevant.”*
19. Section 89 relates to the summary of information that must be prepared and specifies that it must be a fair representation of the major matters in the statement of proposal. It must also indicate where the statement of proposal can be inspected and where a copy can be obtained, and must state the period within which submissions may be made. The Council must determine what form it will be in and it must be distributed as widely as reasonably practicable (in such manner as is determined appropriate by the Council, having regard to the matter to which the proposal relates) as a basis for general consultation.

Analysis of reasonably practicable options considered by the Council

20. The following options exist for the Council:
 - (a) Status Quo ie: Do Nothing. This option is not preferred as it does not address the request from businesses and the Christchurch Tramway Limited to address vehicle access and evening parking of private vehicles in the Mall outside the restricted hours.
 - (b) Vary the time restrictions in the New Regent Street Pedestrian Mall Special Order. This is option will address the businesses and the Christchurch Tramway Limited request and align the time restrictions in the New Regent Street Pedestrian Mall with the time restrictions proposed throughout the inner city pedestrian precincts, making enforcement by Parking Unit Officers more manageable. Option (b) is the preferred option.

ADDITIONAL CONSIDERATIONS

21. In the decision in *Pool v New Plymouth City Council* [1977] 6 NZTPA 201, the Town and Country Planning Appeal Board adopted some ‘considerations’ in examining a decision to declare part of a city street a mall. Those considerations were:
 - (a) Whether the closure of a street to traffic would be to the advantage of the community in general;
 - (b) Whether there were disadvantages to the community in general which balanced or outweighed the advantages;
 - (c) Whether there was detriment to property owners or business operators which was unreasonable given the absence of compensation;
 - (d) Whether the closure adversely affected other property owners or business operations who may depend on the flow of traffic along the street.

22. These 'tests' were reframed in the context of the principles of the Resource Management Act 1991 in ***Bain v Waimakariri District Council***, C111/08, Environment Court Christchurch, 20/10/08, as follows:
- (a) whether aspects of the public interest would be enabled by the creation of the pedestrian mall;
 - (b) whether aspects of the public interest would be disenabled by the creation of the pedestrian mall;
 - (c) whether individuals would benefit from the creation of the pedestrian mall;
 - (d) whether individuals would be disadvantaged by the creation of the pedestrian mall; and overall
 - (e) whether the pedestrian mall would better achieve the sustainable management of the physical resources of the district.
23. These considerations/tests from the above cases are also relevant, so far as they may be applicable, in relation to a variation of a mall declaration, and have been considered in analysing the options in this case.
24. Social Considerations:
The current situation in which vehicles are parked in New Regent Street pedestrian mall during the evenings causes risk to pedestrians and sometimes obstructs the tram. Following requests from local businesses and the Christchurch Tramway Ltd, in March 2008 the Council consulted with the business operators in New Regent Street and the Christchurch Tramway Limited about possible changes to the hours of restriction for Goods Service Vehicles, signage to be installed at each end of New Regent Street to enforce the time restrictions, and the possible installation of bollards. Responses were supportive and included suggestions for alterations to the "Letter of Authorisation" scheme for business owner's access and the possibility of providing disability access during the day time restrictions.
25. Environmental Considerations
The proposal for varying the Special Order declaration creating the pedestrian mall in New Regent Street will not have an impact on the environment. This area already operates with access for the tram and Goods Services Vehicles. The changes to the hours that Good Services Vehicles are permitted in the mall are minor and the impact on the businesses in the Mall is expected to be insignificant.
26. Cultural Considerations
The Council is not aware of any cultural issues that should be taken into account in respect of the proposal contained in this statement.
27. Economic Considerations
The Council is not aware of any economic issues that should be taken into account in respect of the proposal contained in this statement. The changes to the hours that goods service vehicles are permitted in the mall are minor and the impact is anticipated to be insignificant.

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

28. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

29. Aligns with the Streets and Transport activities by contributing to the Council's Community outcomes - Community and Safety.

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

30. This contributes to improve the level of service for parking and safety.

ALIGNMENT WITH STRATEGIES

31. The recommendations align with the Council's Parking Strategy 2003.

Do the recommendations align with the Council's strategies?

32. As above.

CONSULTATION FULFILMENT

33. Preliminary consultation has been carried out with all business operators in New Regent Street. The Christchurch Tramway Limited has also been contacted. Parking Enforcement also endorses this proposal.

STAFF RECOMMENDATION

It is recommended that the Council resolves:

- (a) To adopt for consultation through the special consultative procedure the proposed changes to New Regent Street Mall declaration as detailed in the attached Statement of Proposal.
- (b) To approve the Statement of Proposal (**Attachments 1 and 3**) and Summary of Information (**Attachment 2**) in respect of the proposed declaration to vary the New Regent Street Pedestrian Mall Special Order.
- (c) To adopt the dates for publicly notifying the Statement of Proposal and the Summary of Information (6 August 2009 to 9 September 2009).
- (d) To determine that the Summary of Information be distributed to all properties and businesses along New Regent Street and nearby properties in adjacent streets and any absentee owners identified within the distribution area, as well as to other relevant stakeholder groups, including Spokes, Taxi Federation, Transport Groups, and any Resident and Business Groups in the distribution area.
- (e) To determine that the Statement of Proposal and Summary of Information be made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (f) That public notice of the proposal be published in a newspaper having a wide circulation in the Council's district; and that this explains the right of appeal in relation to this proposal, and advises where people can view copies of the summary of information and the statement of proposal, and the time within which submissions can be made.
- (g) To appoint a hearings panel to hear any submissions on the proposal.