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The Environment Committee is responsible for amenity issues within the city and therefore the purpose of this report is to examine possible legal means by which graffiti can be covered up or removed from private properties as soon as is practicable after its appearance in view of public places.

INTRODUCTION

The Council at its meeting held on the 28 October 1999 received the Graffiti Working Party Update and resolved 3. *That staff report to the Environment Committee on introducing a bylaw (or other means) to facilitate the removal of graffiti from private property.*

It should be noted that the Working Party had suggested that that Council delay making a decision regarding a bylaw to enable graffiti¹ to be removed from private property until a co-ordinator had been appointed and the need carefully assessed.

Section 33 of the Summary Offences Act states that;

Every person is liable to a fine not exceeding \$200 who, without the consent of the owner or occupier

a) ...

(b) Writes, paints, sprays, or etches on, or otherwise marks, any structure.

Under that Act a constable has the power of arrest if offenders fail to give their name and address.

On the face of it there is the power under the Local Government Act 1974 to introduce a bylaw making it an offence to permit the continuance of graffiti upon buildings, walls fences, etc that are visible from any road or public place under section 684 (15)

(15) Regulating, controlling, or prohibiting the display or continuance of the display, upon or over public buildings or bridges, or upon or over buildings, walls, fences, posts, trees, pavements, or hoardings, situated in or upon or adjoining any land or road the property of or under the control of the council, or the display or continuance of the display, in any manner so that it shall be visible from any such road or public place, of posters, placards, handbills, writings, pictures, or devices for advertising or other purposes:

¹ Defined in the Concise Oxford Dictionary, 1990 as “a piece of writing or drawing scribbled, scratched, or sprayed on a surface.”

While this may enable a private citizen to be prosecuted for such an offence, or enable the Council to require the removal of the graffiti it may still not permit the Council to immediately remove or cover the graffiti without the approval of the owner or occupier. That is if it could be caught within a bylaw made under the above as “writings, pictures, or devices for advertising or other purposes.” Even if clause 14 of *The Christchurch City General Bylaw 1990* applies to such graffiti that clause requires a notice in writing to the owner or occupier requiring them to remove the “thing” within a time to be specified in the notice. Only then may the Council remove or alter the “thing”. It does, however, have the advantage that even if the Council undertakes the work the owner or occupier could still be prosecuted for the offence.

An opinion has been received from the Legal Services Manager (attached) in which he states:

In my opinion the Council does not have the lawful authority to remove or cover up graffiti on private land without first obtaining the consent of the landowner.

It is also his opinion that graffiti does not fall within the matters covered by subparagraph 15 of section 684 (1) above.

Even if the Council did obtain the consent of the owner of a private property to remove or cover up graffiti the legal opinion is that it can undertake the work but the cost of doing so must be repaid by the landowner. The authority for this can be found in sections 644E and 463(2) of the Local Government Act 1974.

The definition of “Outdoor advertisement” contained in the City Plan would seem to be not as helpful in attempting to apply this to “graffiti” and therefore City Plan rules. Even if it did, however, there is no provision that would enable speedy action to be taken to remove or cover such “graffiti” as soon as it has been placed on any building, fence, or wall.

PRESENT REACTIVE METHODS FOR GRAFFITI REMOVAL

At present graffiti on Council owned properties is removed, or painted over, once it has been notified to the appropriate officer and in these cases the cost is placed where it lays, on the Council. It is in the areas of graffiti on privately owned property that legal problems exist. In these cases the Council may wish to undertake removal or covering up but the permission of the owner of the property must be obtained prior to any work being undertaken. It is understood this is given in most cases but a number of property owners, for a number of reasons, do not provide such permission.

There are a number of problems in arranging the “immediate” removal or covering up of graffiti on private properties, and some of these also apply to property owned by the Council or by companies in Council ownership. The first is the obvious one of co-ordination of the receipt of complaints or reports of graffiti. This is being examined by the Graffiti Working Party in the development of a common receipt point for reporting graffiti. The second is the amount of resources, both physical and financial, available for undertaking removal or covering up graffiti in a timely fashion. This applies to both

direct Council owned properties, and to those owned by private owners who would provide approval for the Council to do such work. The third is the failure to become aware of recently carried out graffiti until some time after its placement thereby minimising the effectiveness of the removal.

The Graffiti Working Party is currently addressing not only the preventative aspects of the problem but also the matter of co-ordination of responses city wide for the removal of graffiti. The matters in the paragraph above will also be examined.

CONCLUSION

The Legal Services Manager has suggested that should the Council wish to create an offence for a building owner to permit the continuance of graffiti on the building it would need to seek parliamentary authority to make a bylaw of that type. It should be noted, however, that when this Council and a number of other territorial authorities sought to have legal provision for promoters of events responsible for the removal of posters placed on buildings this was unsuccessful. It was not accepted due to the argument that this would apply vicarious liability for illegal acts on persons who had not physically undertaken the offence. It may well be that this would apply in the case of graffiti also.

At present the Council does not have an explicit policy in regard to graffiti and its removal nor clear objectives in relation to this. For example it could cover such matters as the Council setting targets in relation to removal of graffiti from all furniture or structures on the road within not more than a specified number of hours. This could relate to any street furniture including that owned by utilities, such as power boxes. The policy could also specify that the owners of private buildings known to be targeted with graffiti, or likely to be targeted, will be approached to obtain permission to remove or cover graffiti immediately it is noticed or reported. It would be necessary to obtain the agreement of the property owner that they would pay the cost of the work undertaken. This should occur throughout the City and would be initially related to properties fronting onto to public places including roadways.

The introduction of a single co-ordinated centre to receive reports and complaints and to implement a citywide graffiti removal programme, including the obtaining of private building owner's permission would be advantageous. While in general relying on members of the public to report new graffiti may be satisfactory the use of Council officers specifically to examine some areas may be needed.

Chairman's

Recommendation:

1. That the Environment Committee initiate a "graffiti" removal policy.
2. That a method of control of graffiti on Council-owned property be introduced.
3. That a public graffiti hotline be implemented forthwith.