

## 21. WINDBREAK OUTSIDE THE 'BOULEVARD' ON OXFORD TERRACE

**Officer responsible**  
City Streets Manager

**Author**  
Stephen Matheson, DDI 371-1653

The purpose of this report is to provide information so the Committee can make a recommendation on an application by the owners of the Boulevard for a variation in their licence to occupy legal road. The variation is required to allow them to seek the necessary consents to construct a windbreak around and over the legal road they currently lease.

### BACKGROUND

In August 2000 a deputation of Oxford Terrace restaurant and bar owners addressed both the City Services and Environment Committees on their proposal to erect windbreaks in front of their premises between the Clarendon Towers and the Bridge of Remembrance. They subsequently presented a petition to the Committee agreeing to work with the Committees to set guidelines for windbreak and awning protection. At that time, the premises trading as "Sticky Fingers" on Oxford Terrace had a particular proposal for a windbreak structure in mind.

The Environment Committee subsequently established a 'Windbreak Subcommittee' to consider this matter further. The subcommittee met in September 2000, at which the petitioners were represented. A report was presented to the subcommittee from the City Streets Manager discussing the sorts of issues that would need to be addressed, including the need to obtain a resource consent and building consent, design issues, environmental effects and issues of health and safety. (This report is attached as Appendix A). The subcommittee, unfortunately, made no formal recommendations as to appropriate guidelines or policy for the erection of windbreaks along the strip. The subcommittee did agree to the erection of a windbreak on a trial basis, ending in February 2001, subject to a number of conditions. The trial did not proceed.

In late July 2001 the owners of the Boulevard Restaurant and Bar erected a tent-like awning over the legal road on Oxford Terrace which it leases from the Council. This was done without the Council's approval and without resource or building consents. There has been continuing, and as yet unresolved, legal debate about the removal of this structure. The Council has issued an abatement notice for the removal of the structures and the Boulevard owners have obtained a High Court injunction to stop this. The owners have agreed to apply retrospectively for the necessary approvals and the application to the Council to vary the lease is the first step in this process.

### THE PROPOSAL

The application is to request the Council's approval for a change in the lease to erect a windbreak structure on legal road. There is no legal time frame for responding but the applicant needs a decision before applying for resource and building consents.

Photographs of the existing awning structure outside the Boulevard are attached as Appendix B. Colour photographs will be available at the meeting. The structure's purpose is to provide additional comfort to the restaurant's customers by giving protection from the wind and sun. The structure can function with sections of the wall and roof either open or closed as required. This can significantly alter the appearance of the structure.

### DISCUSSION

In considering windbreaks on public footpaths there are a number of areas that need to be addressed. These are described in detail in the report prepared for the Windbreak Subcommittee which is attached as Appendix A, and are summarised below.

In summary, the areas that need to be addressed are:

- **Council's Legal Powers**  
At what point does the size or permanency of the structure require the Council to follow road stopping procedures?
- **Suitability**  
What parts of the City are suitable for, and the Council is comfortable with windbreak structures?
- **Maintenance Responsibilities**  
Who is to maintain the area inside the windbreak structure? Should it be removed totally for scrubbing the pavers?

- **Environmental, including visual effects**

Should the public space be totally claimed for private use? Should there be strict design guidelines, or an insistence on total uniformity to provide a positive visual impact?

One issue with this application is the visual impact of the proposed structure, and its suitability in this environment. As it is essentially an urban design issue, comments were sought from Urban Design professionals within the Council.

The Urban Design Team leader from City Solutions comments as follows:

*“Along Oxford Terrace there is a clear transition from private space, through semi-public space to public space. Although part of the outdoor space is physically occupied by seats and planters, because these are generally at a low level, the space is still visually part of the public realm.*

*This application for a windbreak structure with a roof and sides would:*

- *Disrupt the ordered transition from public, through semi-public to private space*
- *Block the view along the terrace*
- *Break up the continuity of the street elevation*
- *Claim the public space for private commercial use*

*It is accepted that the covering could be removed or retracted when not needed, but the not insubstantial framework would still remain.*

*Approval for this windbreak would create a precedent to accept similar types of structure not only on Oxford Terrace, but also in other significant pedestrian areas in the Central City.*

*Alternative windbreak structures may be appropriate, but guidelines and policy for these need to be developed.”*

It is unfortunate that the Windbreak Subcommittee did not complete its assessment and produce a set of guidelines that could be used to assess this application. Any decision to approve this application now runs the risk of having the guidelines for such structures, and the way they are operated, set for the Council through the resource consent process. It would be preferable to have guidelines approved by the Council and available to both staff and owners for assessing this and any subsequent application.

If the Council were to approve this application it may also wish to reconsider the rental being charged. Clearly with the higher level of service being provided, then a higher rental would be appropriate. No work has been done on what might be an appropriate rental.

- Recommendation:**
1. That this application be declined.
  2. That a Windbreak Subcommittee (or similar subcommittee reporting to the appropriate Standing Committee) be appointed to develop policy and guidelines for the erection and use of windbreak structures on legal road.

**Chairman’s**

- Recommendation:**
1. That the above recommendation be adopted.
  2. That an ad hoc subcommittee, the Central City Streets Subcommittee, be established, comprising Councillors Stonhill, C Evans, M Evans, Corbett and the Chairman, to develop policy proposals for recommendation to the Council via the Sustainable Transport and Utilities Committee, concerning windbreaks and similar structures and issues on central city streets, the subcommittee to continue until all matters referred to it by the Committee are concluded.