

9. REVIEW OF PUBLIC STREETS ENCLOSURES POLICY AND FEES CHARGED

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| General Manager responsible: | General Manager City Environment |
| Officer responsible: | Transport and City Streets Manager |
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PURPOSE OF REPORT

1. The purpose of this report is to inform the Council of the results of consultation with business owners and the wider community in relation to:
 - (a) The Public Streets Enclosures Policy (the policy); and
 - (b) The way fees are calculated for occupation of legal road for outdoor dining areas and to make recommendations (if any) for changes to that policy and the way fees are calculated.

EXECUTIVE SUMMARY

2. Significant time and effort has been expended over the years in trying to formulate a policy that meets the needs of business owners, the public and the Council. The response to the latest round of consultation to say the least has been disappointing, the writer can only conclude that although there are strong views from some of the operators/licensees there is limited interest from the public or business owners in the policy or the way fees are calculated.
3. Owing to the lack of participation and the mixed views of those that did respond it is considered that there is no mandate to change either the policy or the methodology used for fee calculations.

FINANCIAL AND LEGAL CONSIDERATIONS

4. Transport and City Streets currently budgets \$202,000 (excluding cell sites) for street site rentals. Income from outdoor dining licences contributes \$192,000, assuming all licensees are paying the full licence fee. The financial implications for any reduction of the outdoor dining licence fee would adversely affect the Council's Annual Plan.
5. There are no legal considerations unless the policy is radically altered.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Policy - Agree to option "A" – That the current policy be retained.
- (b) Fees - Agree to option "A" – That the current fee charging methodology be retained.
- (c) That the above recommendations form the basis of the Council's standard licence to occupy legal road by adjoining retailers.
- (d) That the Corporate Support Manager be delegated authority to commence enforcement proceedings where these policies are not accepted, documented in a licence and the licensee does not meet its terms and conditions. This delegation is to include termination of occupancy.

BACKGROUND ON THE PUBLIC STREETS ENCLOSURES POLICY

6. On 26 September 2002 the Christchurch City Council adopted its current Public Street Enclosures Policy. This policy was designed to guide the Council in decision making regarding the desirability or otherwise of licensing public space for dining. The Council, as landowner, needed to consider the private and commercial advantages and disadvantages and balance the environmental and community needs of these uses for licensed public space.
7. Prior to adopting this policy, consultation was undertaken with interest groups and the general public. Individual letters were sent to interest groups and notices and media releases were published in The Press and the Christchurch Star. An article appeared in an edition of City Scene and a bulletin was posted on the Council's web site.
8. Subsequently some business owners have continued to lobby the Council for changes to the policy and the way the Council calculates its fees. There is a small group (predominantly some of the operators on "The Strip") who are dissatisfied with the Council's methodology used to set the licence fees, the amount charged and the content of the policy itself. These operators even took it upon themselves to stop rental payments.
9. This continued lobbying and cessation of fee payments resulted in the General Manager City Environment giving an undertaking in February 2005 to again review the policy and the fee structure. This undertaking required the operators along The Strip to pay 50% of their rental from the day they ceased payment until the review was completed. Once the review is completed any fee reconciliation would be backdated to when the operators ceased payments.
10. Accordingly an officer subcommittee was formed and met on 14 April 2005 to consider aspects of the policy. The subcommittee considered that the policy was working well and that no amendments were necessary. Nevertheless as a result of the undertaking, affected business owners and the general public have again been given the opportunity to make submissions on the policy and the fees charged.
11. Individual letters were sent to all licensees requesting their comments, public notices were placed in The Press on 4 and 8 June 2005 and the Christchurch Star on 8 June 2005, and submission packs were also sent to service centres, inviting both written and online feedback. Submissions closed Friday 8 July 2005.

BACKGROUND ON FEES CHARGED FOR OUTDOOR DINING AREAS

12. On 23 September 1998 the Council resolved to adopt the following licence fees for Oxford Terrace and Cashel Mall:

| Leased Area | Rental Calculation (per annum + GST) |
|---------------------------------------|---|
| 0m ² - 30m ² | 34% of Prime Rent Rate* |
| 30m ² - 60m ² | 34% of Prime Rent Rate* to 30m ² Plus 32% of Prime Rent Rate* for area above 30m ² and below 60m ² |
| 60m ² - 100m ² | 34% of Prime Rent Rate* to 30m ² Plus 32% of Prime Rent Rate* for area above 30m ² and below 60m ² Plus 30% of Prime Rent Rate* for area above 60m ² and below 100m ² |
| 100m ² - 200m ² | 34% of Prime Rent Rate* to 30m ² Plus 32% of Prime Rent Rate* for area above 30m ² and below 60m ² Plus 30% of Prime Rent Rate* for area above 60m ² and below 100m ² Plus 20% of Prime Rent Rate* for area above 100m ² and below 200m ² |

*The Prime Rent Rate is the rate that would be payable for an area that is within five metres of the front inside ground floor of the premises owned or leased by the licensee. The Council employed a valuer to establish the Prime Rent Rate for various sites around the city.

13. The bar owners challenged these levels with their own valuation assessment. It was later agreed by the City Streets Manager, Property Manager and bar owners that the following table be used.

| Leased Area | Rental Calculation (per annum + GST) |
|---------------------------------------|---|
| 0m ² - 30m ² | 30% of Prime Rent Rate* |
| 30m ² - 60m ² | 30% of Prime Rent Rate* to 30m ² Plus 26% of Prime Rent Rate* for area above 30m ² and below 60m ² |
| 60m ² - 100m ² | 30% of Prime Rent Rate* to 30m ² Plus 26% of Prime Rent Rate* for area above 30m ² and below 60m ² Plus 20% of Prime Rent Rate* for area above 60m ² and below 100m ² |
| 100m ² - 200m ² | 30% of Prime Rent Rate* to 30m ² Plus 26% of Prime Rent Rate* for area above 30m ² and below 60m ² Plus 20% of Prime Rent Rate* for area above 60m ² and below 100m ² Plus 15% of Prime Rent Rate* for area above 100m ² and below 200m ² |

*The Prime Rent Rate is the rate that would be payable for an area that is within five metres of the front inside ground floor of the premises owned or leased by the licensee. The Council employed a valuer to establish the Prime Rent Rate for various sites around the city.

14. The Council resolved on 10 December 1998 to adopt this rental formula for occupation of public space for the purposes of outdoor dining.
15. The philosophy behind using a percentage of the Prime Rental Rate is simple, as most business owners do not own the area of land they occupy for outdoor dining they therefore do not have at their disposal the full range of potential property rights. It is reasonable to expect that they should not pay a full market rental. This methodology also takes into account inclement weather conditions and restrictions that are placed on the level of occupancy by the policy.
16. Outdoor dining has spread throughout the city. The methodology for fee calculation has spread with it. The Prime Rental Rates vary throughout the city and the rates currently being used are based on October 2003 valuations.
17. Under the above formula the businesses along the area known as "The Strip" pay on average \$9,204.55 plus GST for an average area of 75m². Small areas throughout Christchurch attract the minimum fee of \$600 plus GST per annum to cover administration costs. The average rent payable is \$2,652 and the average area occupied is 27m².
18. There are no direct comparables within Christchurch. Food stalls in Cathedral Square pay \$5,500 plus GST per annum for a five-day week occupancy arrangement and \$7,500 plus GST per annum for seven days week. The average area a food stall occupies is unknown but is estimated to be between 8-15m².

Assessment of Submissions Received

19. There are 72 current or under negotiation outdoor dining licences. Sixteen submissions were received from business owners and two from members of the general public. Of those 15 submissions received from business owners one purports to represent nine businesses, for the purposes of collating figures they have been treated as individual submissions. This same submission is the only one that has detailed comments on specific clauses in the policy.
20. The submissions are summarised as follows:

| | No. Received | Fees to remain the same | Fees to be changed | Other comments |
|-----------------|---------------------|--------------------------------|---------------------------|-----------------------|
| Business Owners | 24 | 11 | 13 | 16 |
| Public | 2 | | 1 | 2 |
| Total | 26 | 11 | 14 | 18 |

Public Submissions

21. Of the two submissions received from the public, one objects to tables and chairs being placed under verandas and makes no comment in relation to fees, the other seeks to reduce occupancy on footpaths by basing rental on annual profit margins with a minimum fee of \$3,000.

Submissions from business owners on The Public Streets Enclosures Policy

22. Twelve consider the policy to be working well. Nine (the joint submission) make comment on clauses within the policy and make other general comments. Two would like to see fair application and enforcement of the Policy. One states that screens should not have to be transparent.

Submissions on fees from business owners

23. Feedback on a number of payment options was solicited as part of the consultation process. Submissions from 24 business owners were received and comments are as follows.
24. One states the fee is a local government tax, fees should cover costs of administration only.
25. Eleven support the current method of calculating fees, of these one would like the calculation to be based on a percentage of the lease of their indoor premises rather than the valuations that were obtained by the Council in October 2003.
26. Twelve would prefer a dollar amount per chair per annum, of these nine consider \$50 per chair per annum to be an appropriate level of payment. One states \$10 per chair per month to be appropriate. One likes the per chair scenario but is silent on amount. One states \$5 per chair per month for up to five chairs then \$10 per chair per month for 6-10 chairs and so on.
27. The following table serves to compare the current rental for four areas and for four different numbers of chairs. The current rental is based on the Prime Rental Rate for The Strip area. All examples are exclusive of GST. The fourth scenario mentioned above has not been tabled.

| Area | Number of Chairs | Current rental | \$50.00 per chair per annum | \$10.00 per chair per month (x12) |
|-------------------|------------------|----------------|-----------------------------|-----------------------------------|
| 20m ² | 14 | \$2,850.00 | \$700.00 | \$1,680.00 |
| 40m ² | 28 | \$5,510.00 | \$1,400.00 | \$3,360.00 |
| 75m ² | 52 | \$9,405.00 | \$2,600.00 | \$6,240.00 |
| 100m ² | 69 | \$11,780.00 | \$3,450.00 | \$8,280.00 |

28. The joint submission makes comparisons between the main centres in New Zealand and argues that Christchurch City Council licence fees are more expensive the other centres in New Zealand.

CONCLUSION

29. There has been continued lobbying from some business owners to review the policy and charging methodology with some of the narrative around inadequate consultation and engagement in 1998 and 2002. That view is not supported by an officer review as outlined in this report which summarises when and what happened in relation to the prior consultations and goes on to summarise the results of the current round on consultation.
30. Owing to the lack of submissions received from both the general public and business owners in relation to the current consultation the writer feels it is impossible to draw any firm conclusions. Even if taken that the submissions received fairly represent the broader views of business owners and the public, the views expressed are divided. They can form no basis for changing the policy or the method used to calculate fees.
31. As stated previously the joint submission makes comparisons between the four main centres for the calculation of fees. This comparison does nothing other than suggest that the Christchurch City Council charges more than other centres for outdoor dining areas and perhaps the other centres are not charging enough. The later has been reflected in some officer discussions with other local authorities. Whilst this approach may have some merit the Christchurch City Council must make its own decisions as to how it deals with its own land.

OPTION

Public Street Enclosures Policy

- 32. (a) Do nothing
- (b) Amend the Public Streets Enclosures Policy to allow business owners greater freedom in selection of furniture, type of enclosure and amount of permitted space for advertising.

PREFERRED OPTION

- 33. Do nothing

OPTIONS

Fees

- 34. (a) Retain existing policy.
- (b) Alter the payment methodology to a set amount per chair per annum
- (c) Increase rentals by adopting a full market driven approach ie 100% of the adjoining retail space rental.

PREFERRED OPTION

- 35. (a) Retain existing policy.

ASSESSMENT OF OPTIONS – POLICY

| | ADVANTAGES | DISADVANTAGES |
|-----------------------------------|--|---|
| (a) Retain existing Policy | Maintains status quo | Some operators will continue to be dissatisfied |
| | Keeps control of standards | Risk of continued lobbying of Council |
| (b) Amend the Policy | Greater freedom of use for businesses | Less Council control of furniture type |
| | Less enforcement action required | Risk of excessive advertising |
| | Possible increase in outdoor dining facilities | Possible increased enclosure of dining areas |

ASSESSMENT OF OPTIONS - FEES

| | ADVANTAGES | DISADVANTAGES |
|---|---|---|
| (a) Retain existing Policy | Maintains status quo | Some operators will continue to be dissatisfied |
| | Maintains income for allocated budget | Risk of continued lobbying of Council |
| | | Risk of non payment from dissatisfied parties |
| (b) Alter payment to \$50 per chair per annum | Operators along the strip will be satisfied | Those supporting the current methodology will be dissatisfied |
| | | Loss of budgeted revenue |
| | | Continual monitoring of chair numbers |
| (c) Alter payment to \$100 per chair per annum | Maintains overall income for allocated budget | Those operators who support the current methodology will be dissatisfied |
| | | Effective increase in fees for small to mid sized operators |
| | | Continual monitoring of chair numbers required |
| | | Per chair payments cannot be used for "other " businesses occupying legal road. |
| (d) Full market rental | Increase Council revenue by up to 200% | Dissatisfaction amongst most if not all operators |
| | | Possible decrease in outdoor dining areas |