

## 11. HEARING PANEL REPORT ON THE PROPOSED ALCOHOL RESTRICTIONS IN PUBLIC PLACES BYLAW 2009

Author:

Alcohol Restrictions in Public Places Bylaw Hearing Panel

### PURPOSE OF REPORT

1. This is the report of the Alcohol Restrictions in Public Places Bylaw Hearing Panel (the Panel). It summarises the submissions received on the proposed Alcohol Restrictions in Public Places Bylaw 2009 (the Bylaw) and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed Bylaw (with the recommended changes highlighted) is **attached** to this report as Attachment 1, and a final version of the Bylaw, for adoption, is **attached** as Attachment 2.

### EXECUTIVE SUMMARY

2. The purpose of the proposed Alcohol Restrictions in Public Places Bylaw is to reduce alcohol-related harm, damage, disorder and crime and to improve community safety by placing restrictions on alcohol in some public places. The proposed Bylaw prohibits the consumption of alcohol in specified public places and otherwise regulates or controls the possession or bringing of alcohol into specified public places. The proposal includes Alcohol Ban Areas, where alcohol restrictions would apply in public places, in the central city; Hagley Park and environs; South Colombo; New Brighton Mall, Marine Parade and environs; Northlands Mall and surrounds; Sumner Esplanade; Jellie Park; and Akaroa.
3. On 27 November 2008, the Council adopted the proposed Bylaw for consultation. Submissions on the proposed Bylaw were open between 28 January 2009 and 2 March 2009. Twenty-five submissions were received. Of these, 17 supported the Bylaw in whole or in part, six had some concerns about the Bylaw and two addressed issues other than the proposed Bylaw. Five submitters requested to be heard by the Panel in support of their submissions.<sup>2</sup> The hearings were held on 23 March 2009. The Panel was chaired by Councillor Sue Wells, and the Panel members were Deputy Mayor Norm Withers and Councillors Helen Broughton, Ngaire Button, Yani Johanson and Bob Shearing.
4. Some changes are recommended to the proposed Bylaw as a result of submissions. The most significant change suggested is to reinstate the Spencer Park New Year's Eve ban.<sup>3</sup> Other suggested changes are to the wording of some clauses and explanatory notes in the proposed Bylaw. No changes (from what was proposed) are recommended to either the Alcohol Ban Areas or the times, days or dates during which the restrictions will apply. The suggested changes are referred to in more detail throughout this report, and a full copy of the proposed Bylaw, with the changes indicated, is attached.
5. The Panel has also recommended to the Council that it take a number of other steps relating to issues arising out of submissions. These are referred to throughout this report and in the recommendations section at the end of the report.

### DEVELOPMENT OF THE PROPOSED BYLAW

6. The proposed Alcohol Restrictions in Public Places Bylaw was developed as part of a review of the existing alcohol-related bylaws, which are:
  - (a) The Christchurch City Liquor Control Bylaw 2004; and
  - (b) Part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004.
7. The Local Government Act 2002 (LGA02) requires these bylaws to be reviewed by 1 July 2009 (CCC bylaw) and 15 December 2009 (BPDC bylaw). Due to the amalgamation of the two Councils and the need to align the regulation across the new jurisdiction, the two bylaws were reviewed together and the proposed new Bylaw will revoke and replace both bylaws.

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<sup>2</sup> Five submitters requested to be heard. Two people spoke to one submission and five people spoke to another. Overall, ten people/groups addressed the Panel.

<sup>3</sup> The ban is in the current CCC Bylaw and was not in the proposed Bylaw that went out for consultation.

8. Once the bylaws have been reviewed, they do not have to be reviewed again for ten years.<sup>4</sup> However, in the interim, if any new areas are identified where alcohol restrictions may be appropriate or necessary, an amendment can be made to the Bylaw, using the Special Consultative Procedure.<sup>5</sup>
9. The review of the existing bylaws and options for a new bylaw were considered by the Alcohol Policy and Liquor Control Bylaw Subcommittee, which met seven times from July to September 2008. The Subcommittee had the same membership as the Regulatory and Planning Committee and its terms of reference were “to work with staff to carry out the initial review of the Alcohol Policy and Liquor Control Bylaw, and consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems and make recommendations to the Regulatory and Planning Committee”.<sup>6</sup> The review also involved seeking the advice of the Police, as the Police are provided with special powers under the Local Government Act to enforce bylaws made for ‘liquor control purposes’.<sup>7</sup>

## CONSULTATION AND SUBMISSIONS

10. The Special Consultative Procedure<sup>8</sup> took place from 28 January 2009 to 2 March 2009.
11. The Council placed public notices in *The Press* and other local newspapers to notify the public of the proposal, indicate where the relevant documents could be found and to invite submissions. Display advertisements were also placed in *The Press*, *Christchurch Mail*, *Bay Harbour News*, *Akaroa Mail*, *Pegasus Post*, *News Advertiser* and *Observer* at the start of the consultation period, as well as some ‘last days’ advertising towards the end of the consultation period in the major newspapers.
12. Articles were included in the Healthy Christchurch newsletter, the Hospitality Association newsletter and a special edition of the tri-agency liquor licensing newsletter, to notify readers of the proposal, indicate where the relevant documents could be found and to invite submissions.
13. In order to bring the consultation to the attention of younger members of the community, an advertisement was included on Facebook, a social networking website that attracts many people in the 18-30 year old age range. Facebook users could click on an advertisement on the website<sup>9</sup>, and were directed to the Christchurch City Council website and consultation documents.
14. Twenty-five submissions were received:
  - 18 from individuals<sup>10</sup>
  - Two from groups of residents<sup>11</sup>
  - Three from organisations<sup>12</sup>
  - Two from Community Boards<sup>13</sup>.
15. Of these, 17 supported the Bylaw in whole or in part, six had some concerns about the Bylaw and two addressed issues other than the proposed Bylaw.

<sup>4</sup> Section 159 of the LGA02 – ‘Further reviews of bylaws every 10 years’

<sup>5</sup> An amendment requires the same process as creating a bylaw ie a section 155 analysis and undertaking the Special Consultative Procedure. Section 156 of the LGA02 – ‘Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act’

<sup>6</sup> 3 July 2008, Regulatory and Planning Committee minutes

<sup>7</sup> Section 169 and 170 of the Local Government Act 2002

<sup>8</sup> Section 83 of the Local Government Act 2002 – ‘Special Consultative Procedure’

<sup>9</sup> www.facebook.com

<sup>10</sup> Michael Fitzgerald, Sue Ramsay, Christine Swadel, Di Tanner, Gordon Bruce Gray, Russell Thompson, Kathleen Crisley, David B Knutson, Dr Beatrice Dias-Wanigsekera, Harold Hodgson, Kay Maclachlin, Bruce Tulloch, Doreen Tulloch, Mr Douglas White and Mrs Rita White, George Oliver Warren, Gavin and Andrea Cox, Dianne Monk, M A Davies.

<sup>11</sup> Juliana Venning (on behalf of some Ilam residents), Stephen Tarpey Ellis (on behalf of some residents in the streets around the Helmores Lane area).

<sup>12</sup> Canterbury District Health Board, Partnership Health Canterbury, Community Law Canterbury.

<sup>13</sup> Akaroa/Wairewa, Burwood/Pegasus.

16. Ten people appeared in support of their submissions at the hearings. Two people represented themselves, three people represented groups or organisations and five people represented groups of residents. Those who appeared in support of their submissions largely reiterated their written submissions, except for Peter Shaw from Community and Public Health, who clarified at the hearing that he supported the proposed Bylaw.

#### SUMMARY OF SUBMISSIONS

17. The table below contains the number and percentage of submissions grouped by proposed Alcohol Ban Area with additional groupings of Bylaw as a whole and General, both for those who supported the Bylaw and those who had some concerns. There is also an Other category to accommodate submissions which did not address issues covered in the consultation document.

Broad Support for the Bylaw		Concerned about Effects of the Bylaw	
Theme	Number (%) of Submissions	Theme	Number (%) of Submissions
Bylaw as a whole	8 (32%)	Bylaw as a whole	1 (4%)
General	1 (4%)	General	0 (0%)
Central City	1 (4%)	Central City	1 (4%)
Hagley Park and Environs	3 (12%)	Hagley Park and Environs	2 (8%)
South Colombo	0 (0%)	South Colombo	0 (0%)
New Brighton Mall, Marine Parade and Environs	1 (4%)	New Brighton Mall, Marine Parade and Environs	1 (4%)
Northlands Mall and Surrounds	1 (4%)	Northlands Mall and Surrounds	0 (0%)
Sumner Esplanade	0 (0%)	Sumner Esplanade	0 (0%)
Jellie Park	1 (4%)	Jellie Park	0 (0%)
Akaroa	1 (4%)	Akaroa	0 (0%)
Spencer Park	0 (0%)	Spencer Park	1 (4%)
<b>Total in Support</b>	<b>17 (68%)</b>	<b>Total with Concerns</b>	<b>6 (24%)</b>
Other (did not address proposed Bylaw)		<b>2 (8%)</b>	

#### COMMENTS ON THE BYLAW AS A WHOLE, AND GENERAL COMMENTS

##### *Privatisation of public space*

18. One submitter was concerned about the privatisation of alcohol consumption in public places, as the proposed Bylaw would allow drinking in public places if the public places are covered by a liquor license.

##### *Hearing panel response*

19. The Panel acknowledges that the consumption of alcohol will be allowed in some public places under the proposed Bylaw, where that public place is covered by a liquor licence.
20. The reason the consumption of alcohol is allowed in such situations, is because a liquor licence issued under the Sale of Liquor Act 1989 already places regulatory controls over the sale and consumption of alcohol in the place specified in the license. In this sense, the Bylaw does not need to apply, because other regulatory controls are already in place.

### ***Broader approach to alcohol issues***

21. Community and Public Health (CPH) argued that the Bylaw should be part of a wider package, including an alcohol strategy and city health plan, so that the key message of the unacceptability of intoxicated behaviour is delivered.
22. In their oral presentation, CPH clarified that they were supportive of the Bylaw in general, and although they preferred that an alcohol strategy should be developed first, they accepted that the proposed new Bylaw had been developed because of a legislative requirement.<sup>14</sup>

#### *Hearing panel response*

23. The Panel acknowledged that work to review the Council's current Alcohol Policy (which largely relates to liquor licensing) was underway, and that proposed changes to the Sale of Liquor Act regime were making their way through Parliament. The range of other initiatives the Council is involved in to reduce alcohol-related harm in the Christchurch area was also discussed, including the work of Healthy Christchurch, Safer Christchurch, the Alcohol Accord, the Transport Accord, the Riccarton Community Accord (Com-Be Zone), etc.

### ***Bylaw not the whole solution to alcohol-related problems***

24. Partnership Health Canterbury, in support of the Bylaw, commented that the Bylaw is just part of the solution to reducing alcohol-related harm, especially binge drinking. They noted that organisations in Christchurch have to work collectively to reduce alcohol-related harm by changing attitudes and reducing the normalisation of alcohol consumption.

#### *Hearing panel response*

25. The Panel acknowledges that the proposed Bylaw addresses just one aspect of alcohol-related harm and is confined by the bylaw-making power specified in the Local Government Act 2002.

### ***Banning alcohol in all public places***

26. Two submitters suggested that alcohol should be banned in all public places.

#### *Hearing panel response*

27. The Panel acknowledges that the option of banning the consumption of alcohol in all public places was considered by the Alcohol Policy and Liquor Control Bylaw Subcommittee during the development of the proposed Bylaw. However, the Council received legal advice that this was not advisable under the specific bylaw-making power in the Local Government Act.

## **CENTRAL CITY ALCOHOL BAN AREA**

#### *Proposal*

28. The proposed new Central City Alcohol Ban Area would apply at the same time as the current ban (at all times), but the outer boundaries of the current ban area have been extended slightly in the proposed Bylaw. Both sides of the four Avenues are included (the current ban only applies to the middle of these Avenues ie half way across the road) and the Park Terrace boundary has been extended to the banks of the Avon River.

#### *Broken glass and litter*

29. One submitter noted the amount of litter and broken glass on the pavements and roads in the latter half of each week and increasing noise levels.

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<sup>14</sup> As mentioned previously in this report, the two existing bylaws needed to be reviewed within five years of coming into force (s.158(1) of the Local Government Act 2002) - the existing CCC bylaw by 1 July 2009 and the existing BPDC bylaw by 1 December 2009. The bylaws were reviewed together and will be revoked and replaced by the proposed new Bylaw.

*Hearing panel response*

30. The Panel acknowledges the current issues and hopes that they will be alleviated to some degree by the new Bylaw.

*Enforcement of the existing Bylaw*

31. One submitter was concerned that the current Central City Alcohol Ban Area is not being enforced adequately by the Police, and that there are many breaches. The submitter noted that most people in the central city are aware that there is an alcohol ban, but people continue to break the law.

*Hearing panel response*

32. The Panel received advice from the Police on the enforcement of the current bylaws. See the later section of this report on enforcement matters.

*Picnics along the Avon River and in Victoria Square*

33. One submitter was concerned about being unable to consume alcohol in a social setting with picnics on the banks of the Avon River, eg in Victoria Square, because of the Bylaw.

*Hearing panel response*

34. The Panel acknowledges that the central city ban (which includes Victoria Square and a section of the Avon River) has been in place since 2004. The Panel discussed the possibility of reducing the hours of the ban in the central city to 10pm to 7am to allow for daytime picnics, but decided by majority to recommend retaining the status quo. The Panel also acknowledges that alcohol-related harm is not just a night-time problem.

*Confusion on when and why the Bylaw applies*

35. One submitter suggested that having al fresco dining and drinking adjacent to Alcohol Ban Areas is confusing (such as along 'The Strip' on Oxford Terrace, where people can legally drink on one side of a rope (in a licensed premises) but not on the other side of the rope (on the footpath, which is a public place under the Bylaw)).

*Staff response*

36. Regardless of an Alcohol Ban Area existing, alcohol sold at a licensed premises (such as a bar, restaurant, café, nightclub, tavern or other on-license) is for consumption **on** the premises. A common way of identifying a premises' licensed outdoor area is using rope, planter boxes, barriers, etc, to define the area.
37. The only type of liquor licence allowing alcohol to be taken away and consumed elsewhere is an off-license (such as a bottle store or supermarket) which allows alcohol to be sold for consumption **off** the premises.
38. Even without an Alcohol Ban Area, people are not allowed to take alcohol from an on-license to consume it elsewhere.

*Hearing Panel response*

39. The Panel acknowledges that this may be confusing to some people, but that it is a feature of our regulatory system, and is the same across the country.

## **HAGLEY PARK AND ENVIRONS ALCOHOL BAN AREA.**

### *Proposal*

40. The proposed Hagley Park and Environs Alcohol Ban Area is completely new. There is no Hagley Park ban area in the current Bylaw. The proposed ban would apply from 10:00pm to 7:00am every day.

### *Boy racer problems along Harper Avenue*

41. Three submissions, one of which was signed on behalf of 42 households in Helmores Lane and its environs, suggested this new Alcohol Ban Area could help Police deal with boy racers in the area and reduce the amount of broken glass and litter; two submitters also suggested the restrictions would work well with the 'No Parking' ban, provided they are both enforced.

### *Hearing panel response*

42. The Panel acknowledges that the Area Assessment undertaken for the proposed Hagley Park and Environs Alcohol Ban Area indicated 'boy racer' problems along Harper Avenue as a major concern, and is something that the proposed Bylaw will contribute to addressing. The Council placed no stopping restrictions along Harper Avenue for similar reasons.<sup>15</sup>

### *Public events in Hagley Park*

43. Two submitters were concerned about the ban being imposed during public events in the Park and being deprived of the ability to enjoy a glass of wine at such events.

### *Hearing panel response*

44. The Panel noted that the ban in the Hagley Park area did not begin until 10pm and that most public events (eg Classical Sparks, Christmas in the Park, etc) were close to finishing or had finished by then, and that this had been a consideration in proposing the 10pm-7am timeframe. The proposed Bylaw would not prevent people from enjoying alcohol at such public events.
45. The Panel notes that an exemption from the ban can be obtained through a dispensation to the Bylaw. This would mean that the alcohol restrictions would not apply for a particular period or event, as applied for. An exemption would be sought under clause 13 of the Christchurch City Council General Bylaw 2008. The Panel noted that there was currently no cost for applying for such an exemption.
46. Additionally, a Special Licence could be applied for under the Sale of Liquor Act 1989 if alcohol is to be sold during an event or gathering, for example a food and wine festival. A liquor licence issued under the Sale of Liquor Act 1989 already places regulatory controls over the sale and consumption of alcohol in the place specified in the license. In this sense, the Bylaw does not need to apply, because other regulatory controls are already in place.

### *Enforcement impact of the additional ban area on the Central City Ban*

47. One submitter generally in support of the Bylaw was concerned that any extension of the Central City Alcohol Ban Area (with the addition of the adjacent Hagley Park and Environs Alcohol Ban Area) would result in already stretched Police resources being further stretched over a greater geographical area and that an effective means of enforcement prior to expanding the area should be found.

### *Hearing Panel response*

48. The Panel notes that the extension of Alcohol Ban Areas within the central city (to establish a new Ban Area in Hagley Park) was requested by the Police.

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<sup>15</sup> Council meeting minutes, 19 December 2008, no stopping restrictions along Harper Avenue and Deans Avenue and along Helmores Lane (to the bridge) from 11pm to 5am.

## **NEW BRIGHTON MALL, MARINE PARADE AND ENVIRONS ALCOHOL BAN AREA**

### *Proposal*

49. The proposed New Brighton Mall, Marine Parade and Environs Alcohol Ban Area is completely new. There is no New Brighton Ban Area in the current Bylaw. The proposed ban would apply at all times.

### *Suggested addition of Thomson Park*

50. The Burwood/Pegasus Community Board supported the New Brighton Mall, Marine Parade and Environs Alcohol Ban Area and suggested adding Thomson Park on Marine Parade to the Area.

### *Hearing Panel response*

51. The majority of the Panel requested that the views of the Police be sought on the question of adding Thomson Park. The Police were advised, but are not supportive of extending the Ban Area at this stage. The main problem areas are already included in the proposed Alcohol Ban Area.
52. The Panel's recommendation is that the proposed Alcohol Ban Area be recommended to Council as was proposed, without the addition of Thomson Park.

### *Problems caused by local bars, not drinking in public*

53. One submitter said the issue was the local hotel and the behaviour of its patrons, not people drinking on the beach or on the streets. This submitter was also concerned about being unable to carry alcohol home after purchasing it from the supermarket.

### *Hearing panel response*

54. The Panel has asked that all submissions that referred to problems associated with specific licensed premises be referred to the Council's District Licensing Agency.
55. The comment regarding the carrying of alcohol is explained in the section "Carrying Alcohol through Alcohol Ban Areas" below.

## **JELLIE PARK ALCOHOL BAN**

### *Proposal*

56. The proposed Jellie Park Alcohol Ban Area is completely new. There is no Jellie Park Ban Area in the current Bylaw. The proposed ban would apply at all times.

### *Suggested addition of Greers Road and Cottesmore Place*

57. One submitter noted that users of the skateboard area leave rubbish, empty beer and Ready To Drink (RTD) bottles in the area and on the street. The submitter suggested that both sides of Greers Road between Clyde Road and Cottesmore Place should be included in the Alcohol Ban Area.

### *Hearing Panel response*

58. The Panel requested that the views of the Police and Community Board be sought on the question of adding Greers Road.
59. The Police were advised of this request, but are not supportive of extending the Ban Area at this stage. They advised that the main problem is people drinking in the park and the impact this is having on other park users, which is covered by the proposed Bylaw.
60. The Community Board does not hold a particular view either way, and would be comfortable with either the status quo or the extension, but indicated support for the Police view.

61. The Panel's recommendation is that the proposed Alcohol Ban Area be recommended to Council as was proposed, without the addition of Greers Road and Cottesmore Place.

#### **SPENCER PARK ALCOHOL BAN AREA**

##### *Proposal*

62. The Spencer Park Alcohol Ban Area is in the current Bylaw, but was not included in the proposed new Bylaw. Advice received during the development of the proposed Bylaw indicated that the ban had not been actively used by Police in recent years. However, it was also acknowledged that it was possible that the Alcohol Ban itself may have contributed to the low level of recorded offences. The current ban only applies on New Year's Eve.

##### *Reinstate the Spencer Park ban*

63. The managers of the Spencer Beach Holiday Park were concerned about the removal of the New Year's Eve Spencer Park ban from the proposed Bylaw because of the potential negative effects on the Spencer Beach Holiday Park over the New Year's Eve period. They indicated that the ban was well-known and effective.

##### *Hearing Panel response*

64. The Panel recommend that the Spencer Park Ban Area be reinstated into the proposed Bylaw, to apply on New Year's Eve, from 8:30pm on 31 December, to 6:00am on 1 January each year. The existing Ban Area has been extended to include the beach area for consistency and clarity with other Ban Areas that include beaches.

#### **POLICE ENFORCEMENT**

65. Community Law Canterbury argued that liquor control bylaws give Police discretionary powers, and raised concerns about what they saw as heavy-handedness of the Police enforcement approach in applying the current Bylaw, believing that people are routinely arrested for breaches, regardless of the circumstances. The submission included anecdotes of several incidents of enforcement action taken by the Police against people, and some statistics of arrests. Community Law Canterbury argued that arrests far outweighed warnings, but acknowledged that statistics were not collected by the Police for informal warnings. They indicated that Auckland Police had written enforcement guidelines and suggested these should be developed for Christchurch.
66. Community and Public Health (CPH) were concerned about what they believed was a 'zero tolerance' approach taken by the Police to enforcement of the current Bylaw, and shared Community Law's impression that people are routinely arrested for breaches, regardless of the circumstances (eg tourists and visitors to the city, who may not be aware of the Bylaw).
67. Conversely, another submitter commented on the lack of Police enforcement action taken against people breaching the current Bylaw, particularly in the central city.

##### *Hearing Panel response*

68. The Panel sought a response from the Police and was advised as follows:

*"The Police take a measured and fair approach to enforcing the current bylaws. They give a lot of unofficial warnings, but these are not documented, so there are no statistics available to monitor this or compare it to arrests/prosecutions (which are recorded). People breaching the Bylaw are often asked to tip the alcohol out and put the bottle/can into the nearest rubbish bin. This is an effective approach and removes alcohol from the streets.*

*Police operations are guided by law, and as such they do not need additional written guidelines. Police have the discretion to act as they see fit in a given situation for the enforcement of all sorts of laws.*

*If there are concerns about any Police behaviour, complaints can be made to the Independent Police Conduct Authority.*

*The Police confirmed that they do not operate a 'zero tolerance' approach to enforcing the Bylaw, but that they use discretion in its application, as with any enforcement action they take. Enforcement also depends on Police resourcing and will alter on any given night.*

*Police consider an alcohol ban to be an effective tool for removing offenders before they go onto commit other crimes, thus preventing escalation."*

#### *Police powers of search in Temporary Alcohol Ban Areas*

69. The Panel asked staff to clarify clause 8 (Police powers of search in Temporary Alcohol Ban Areas).
70. Staff advised the Panel that the clause relates to an option to include enhanced search powers for the Police for the imposition of a Temporary Alcohol Ban. If the clause is in the Bylaw, the Council can consider whether or not to give the Police enhanced search powers when it considers a resolution to put a Temporary Alcohol Ban Area in place. If the clause is not in the Bylaw, the Police powers for a Temporary Alcohol Ban would be the same as for a Permanent Alcohol Ban (which are set out in the Local Government Act 2002). If the clause is not in the Bylaw, the Council cannot give the Police enhanced powers of search.
71. Staff advised that the clause gives the Council an option to include enhanced search powers for the Police, and that each time a Temporary Alcohol Ban is considered, the option of using this clause, for the specific situation at hand, can be explored.

#### *Use of Police search powers*

72. In raising concerns with the Police about the search provisions in the Local Government Act, the Panel was told by the Police that they act when they see an offence committed and do not go looking for breaches (eg searching people or vehicles for alcohol without cause). The Police also advised the Panel that protections exist in law against unreasonable search and seizure, for example, through the New Zealand Bill of Rights Act 1990, and that the Police only use their powers when they have just cause.

#### *Hearing panel response*

73. The Panel decided that the proposed Bylaw be recommended to Council as proposed, without the removal or alteration of the clause on Police powers of search in Temporary Alcohol Ban Areas.

#### *Enabling instant fines for breaches*

74. Community and Public Health suggested that the Council lobby for law changes to allow Police to issue infringement notices (instant fines) for breaches of liquor control bylaws.

#### *Hearing panel response*

75. The Panel understands that the Council has approached central government previously to seek the enabling of the infringements regime in the Local Government Act 2002, and recommends that a further approach is made to Central Government to empower the Police to issue instant fines for breaches of the new Bylaw.

### **SIGNAGE**

#### *Current signage inadequate, appropriate signage necessary for enforcement*

76. Two submitters commented that current signage is inadequate. Other submitters indicated that signage was essential for fair enforcement and to raise awareness of the alcohol restrictions.

#### *Hearing Panel response*

77. The Panel notes that current signage could be improved and that this will be considered as part of the implementation of the Bylaw.

78. The Panel has asked that further information relating to signage and communications around the implementation of the new Bylaw be referred back to the Liquor Control Bylaw and Alcohol Policy Subcommittee.

#### **CARRYING ALCOHOL THROUGH ALCOHOL BAN AREAS**

79. Several submitters raised concerns about being able to carrying alcohol through Alcohol Ban Areas, such as a bottle of wine bought from an off-license/bottle store, or alcohol being carried to or from a BYO restaurant.

#### *Staff advice*

80. Although alcohol consumption in public places is prohibited by the Bylaw, alcohol possession and carriage are only restricted by the Bylaw, not prohibited. The explanatory note to clause 7 of the Bylaw sets out a range of scenarios in which alcohol can legitimately be carried in Alcohol Ban Areas. This includes commercial deliveries, alcohol bought from off-licences within Alcohol Ban Areas, alcohol being carried to or from BYO restaurants and alcohol being carried to or from private residences in Alcohol Ban Areas. These exemptions are set out in the Local Government Act, so are only explained in the Bylaw (rather than being contained within clauses).

#### *Hearing Panel response*

81. The Panel acknowledges that the issue of carrying alcohol within or through Alcohol Ban Areas can be confusing, and that this is not helped by the lack of clarity in the Local Government Act itself, but that the explanatory note to clause 7 of the Bylaw is intended to make this as clear as possible. The Bylaw does not prevent people from carrying alcohol within or through Alcohol Ban Areas for legitimate reasons.
82. The Panel agreed that the provisions in clause 7 and 8 do not need amendment to allay the concerns of the submitters.

#### **ALCOHOL-RELATED ISSUES IN THE ILAM AREA**

83. One submitter supported a group of Ilam residents arguing for the introduction of an alcohol ban in the Ilam area around the University of Canterbury.
84. The written submission included a previous submission made by a similar group of Ilam residents in 2004 (during consultation establishing the current Bylaw), and a petition with 115 submissions from 2004 seeking a liquor ban in the area.
85. The submitters expanded on the brief written submission by commenting more specifically on the alcohol-related issues faced by residents living around the University of Canterbury. These include drunken behaviour, littering, drinking on the streets and considerable amounts of broken glass. The submitters argued that the problems in Ilam were greater than those described in some of the areas included in the proposed Bylaw, and questioned why their area was not included in the proposal.
86. They argued that these problems occur year round, not just at key times such as Orientation Week, and as such, they would not be satisfied with the imposition of a temporary ban.
87. The group of residents sought relief from the current alcohol-related issues through the establishment of an alcohol ban (though realised this could not be achieved through the proposed Bylaw without further investigation and consultation).

#### *Staff advice*

88. As indicated in the consultation documents, if substantial changes to the proposed Bylaw are sought through submissions, it may not be possible to include them at this stage (without further consultation), but the Hearing Panel can refer any matter back to the Council for further consideration.

89. A bylaw can be amended at any time, provided that the requirements of the Local Government Act 2002 are met, including a section 155 analysis and the use of the Special Consultative Procedure.

*Hearing Panel response*

90. The Panel recommends that, in light of comments from the Police at the hearing, further work be undertaken to investigate the possibility of an Alcohol Ban Area in the public places around the University of Canterbury in Ilam, with the possibility of proposing an amendment to the Bylaw for the area, if the section 155 analysis under the Local Government Act 2002 justifies it.

**MATTERS NOT RELATED TO THE PROPOSED BYLAW**

*Conduct of licensed premises*

91. Community and Public Health (CPH) suggested that licensed premises should be required to serve alcohol out of glasses, rather than glass bottles, which would give licensed premises more of an incentive to prevent people improperly leaving the premises with alcohol.

*Hearing Panel response*

92. The proposed bylaw does not cover matters related to licensed premises or any matters already covered by the Sale of Liquor Act 1989. The suggestion made by CPH will be referred to the Council's District Licensing Agency for consideration.

*Raising the drinking age*

93. Several submitters suggested raising the legal drinking age.

*Hearing panel response*

94. The proposed Bylaw cannot alter the legal drinking age (or the legal purchase age), as it can only cover those matters provided for in the bylaw-making power in the Local Government Act 2002 (s.147), which relate to the possession, consumption and carriage of alcohol in public places.

**SUMMARY OF CHANGES TO THE BYLAW**

95. The Panel deliberated on the issues raised in submissions, and as a result, has recommended several changes to the proposed Bylaw now being recommended to Council.
96. The most significant change suggested to the proposed Bylaw is to reinstate the Spencer Park New Year's Eve ban. Some minor changes are proposed for:
- The preamble
  - The definition of 'Temporary Alcohol Ban Area'
  - The list of things Council will have regard to when considering a Temporary Ban (clause 5(2))
  - The explanatory note to clause 5 (Temporary Alcohol Ban Areas)
  - The name of the Northlands Mall and Surrounds Alcohol Ban Area.

**LEGAL CONSIDERATIONS**

97. A bylaw Hearing Panel has no decision-making powers, but can make recommendations to the Council as a result of considering written and oral submissions.<sup>16</sup> The Council can then accept or reject those recommendations, as it sees fit. However, the Local Government Act states that the views presented during consultation should be received by the Council with an open mind and should be given "due consideration in decision-making".<sup>17</sup>

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<sup>16</sup> Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated

<sup>17</sup> Section 82(1)(e). This is also supported by the Council's Consultation Policy, which states: "we will receive presented views with an open mind and will give those views due consideration when making a decision".

98. The Local Government Act<sup>18</sup> requires that the Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. A recommendation has been made to this effect.
99. It is appropriate to resolve that the Bylaw will come into effect on 1 July 2009, which is the date by which one of the bylaws which would be revoked by the proposed new Bylaw is required to be reviewed by under the Local Government Act 2002.<sup>19</sup>
100. The Legal Services Unit considers that the form of the Bylaw, as proposed in this report, is the most appropriate form, and that the Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (in accordance with section 155 of the Local Government 2002). The Legal Services Unit considers that the amendments, as recommended by the Panel, comply with these requirements.

#### HEARING PANEL RECOMMENDATIONS

The Panel (by majority) recommends to the Council:

- (a) That it adopt the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 as amended.

*(Councillor Johanson voted against the Panel recommendation and requested that it be recorded)*

The Panel (unanimously) recommends to the Council:

- (b) That it give public notice as soon as practicable, that the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 has been adopted by Council, that it comes into effect on 1 July 2009, and that copies of the Bylaw will be made available.
- (c) That it send copies of the Bylaw and this report to those people or organisations that made submissions.
- (d) That further work be undertaken to investigate the possibility of an Alcohol Ban Area in the public places around the University of Canterbury in Ilam, in conjunction with the Liquor Control Bylaw and Alcohol Policy Subcommittee, and that the Subcommittee be authorised to form any appropriate working parties to give effect to this resolution.
- (e) That communications and signage information about the implementation of the new Bylaw be reported to the Liquor Control Bylaw and Alcohol Policy Subcommittee prior to the new Bylaw coming into force
- (f) That information be compiled for the Liquor Control Bylaw and Alcohol Policy Subcommittee to give a summary of initiatives the Council is involved in to combat alcohol-related harm in Christchurch
- (g) That an approach be made to Central Government to seek the enabling of the infringements regime in the Local Government Act 2002 to empower the Police to issue instant fines for breaches of the new Bylaw
- (h) That any matters raised in submissions that referred to the conduct of specific licensed premises be referred to the Council's District Licensing Agency.

*[Note: **Attached** to this report are two copies of the Bylaw – a marked up copy (showing the changes to the proposed Bylaw, as consulted on) and a clean copy (for adoption).]*

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<sup>18</sup> Section 157

<sup>19</sup> The Christchurch City Liquor Control Bylaw 2004 is required by s.158(1) to be reviewed five years after it was made, which is 1 July 2009. Part 2 of the Banks Peninsula District Council Public Places and Signs Bylaw 2004 (liquor control in public places) is also required by s.158(1) to be reviewed, but five years after it was made is 1 December 2009. Once these bylaws have been reviewed, they do not have to be reviewed again for ten years (s.159). However, in the interim, if any new areas are identified where alcohol restrictions should be in place, an amendment can be made to the Bylaw (s.156).