

### 30. TEMPORARY ALCOHOL BAN OKAINS BAY - NEW YEARS EVE 2010/11



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#### PURPOSE OF REPORT

1. To consider a proposal for a Temporary Alcohol Ban for the Okains Bay beach and reserve area to apply from 5pm on 31 December 2010 until 7am on 1 January 2011.

#### EXECUTIVE SUMMARY

2. The Council at its meeting on the 30 September 2010 considered a request from the Akaroa/Wairewa Community Board to resolve to declare a Temporary Alcohol Ban for the Okains Bay beach and reserve for New Years Eve 31 December 2010 to 1 January 2011. The Council resolved unanimously on the motion of Councillor Reid, seconded by Councillor Buck, that the process to introduce this Temporary Alcohol Ban be commenced.
3. The Board referred to a request that had been received from the Okains Bay Reserve Management Committee to introduce a liquor ban covering the Okains Bay beach and reserve for the period from 31 December 2010 to 1 January 2011 (New Year's Eve). The Police through the officer in charge in Akaroa have indicated support for such a ban.
4. Both parties have provided information as to problems caused in the area during the New Year period of 2009/2010 (and previous years) and consider a temporary ban should be introduced this year in an attempt to preclude issues of disorder and alcohol-related harm occurring.
5. There are a number of considerations that the Council has to make before applying a temporary alcohol ban. These are detailed in Clause 5(2) in the Christchurch City Council Alcohol Restrictions in Public Places Bylaw (and paragraph 10 of this report). In addition, the Council needs to ensure it has met the decision-making requirements under Sections 77 to 82 of the Local Government Act 2002 (the Act).
6. Specifically for the proposed temporary alcohol ban in Okains Bay the Council has given consideration to the areas to be covered by the ban and the time/duration of the ban. Such bans can only be applied to public places over which the Council has control rather than all public places as may be defined in other legislation. Staff have undertaken the necessary work to satisfy these considerations and requirements in time for the Council to decide on the matter at this meeting.

#### FINANCIAL IMPLICATIONS

7. Financial provision will be required for public notices and display advertisements as well as appropriate signage. The costs of enforcement rest with the Police under powers in the Act.

#### Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

8. There is no specific budgetary provision for introducing temporary alcohol bans. The costs of investigating this temporary ban have been absorbed in the Long Term Policy and Planning Activity. The costs of public notices and signage, in this case, will be absorbed in the Enforcement and Inspection Activity as per page 95 of the 2009-19 LTCCP.

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**LEGAL CONSIDERATIONS**

9. The Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 (the Bylaw) provides the power to put Temporary Alcohol Ban Areas in place, by resolution, to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates. Section 151 of the Act and section 13 of the Bylaws Act 1910 make it clear that a bylaw may contain discretion. The Council must be careful to ensure that any discretion left to the Council is not so great that it might be considered unreasonable (which could make the bylaw, or part of it, invalid). To ensure this is not the case, clause 5 of the bylaw specifies a number of matters the Council must consider before it imposes a temporary ban. Clause 5 also requires that the resolution must describe the specific area that is the Temporary Alcohol Ban Area and the times, days or dates during which the alcohol restrictions apply to any public places in the area.
10. Under clause 5(2) of the Bylaw the Council must consider, in the case of resolving to introduce any temporary alcohol ban, the following matters:
- the nature of the expected event;
  - the number of people expected to attend;
  - the history of the event (if any);
  - the area in which the event is to be held;
  - the nature and history of alcohol-related problems usually associated with the area, together with any anticipated alcohol-related problems;
  - whether the benefits to local residents and to the city outweigh the restrictions imposed on local residents and other people in the area covered by the resolution;
  - any information from the Police and other sources about the proposed dates, the event or the area to be covered by the resolution;
  - whether the Police support the proposed Temporary Alcohol Ban Area.
11. The Act allows for such liquor bans in public places which are under the control of the Council as opposed to public places as defined in other legislation. It can include roads over which the Council has control but not private parking areas for example. The Act does not define the term "road" but it is possible that it may extend to the beach areas even though the beach (or foreshore) is in Crown ownership as a result of the Foreshore and Seabed Act 2004.<sup>1</sup>
12. The Police have various powers to enforce the Bylaw, including the power to search containers and vehicles in public places for alcohol, seize and remove alcohol, and arrest any person who is found to be breaching the Bylaw. Before the Police exercise these powers they must comply with the warning provisions in section 170 of the Local Government Act 2002. However, in certain circumstances as set out in section 170(3), the Police can search immediately and without notice. In order to give the Police this power, the Council would need to resolve that clause 8(1) of the Bylaw applies to the Temporary Alcohol Ban.<sup>2</sup>

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

13. Yes - the proposed Temporary Alcohol Ban will apply to a public place within the meaning of section 147 of the Act. The Area covers both Okains Bay Road as well as Okains Bay Beach. Applying a wide definition of road, the area comes within the definition of section 147 of the Act. There is a small portion of land owned by the Department of Conservation which will not be included nor will the adjoining land owned by Te Runanga O Ngai Tahu. The issue is covered by the Council's Alcohol Restrictions in Public Places Bylaw (2009).

<sup>1</sup> The Land Transport Act 1998 and the Transport Act 1962 define road in a wide manner and this includes beaches.

<sup>2</sup> Note that clause 8 provides as follows:

**8. POLICE POWERS OF SEARCH IN TEMPORARY ALCOHOL BAN AREAS**

(1) This bylaw authorises a member of the Police to exercise the power of search under section 169(2)(a) of the Act for the purposes of section 170(2) of the Act in areas to which a resolution declaring a Temporary Alcohol Ban Area applies.

(2) Clause 8(1) only applies if the resolution declaring a Temporary Alcohol Ban Area provides that clause 8(1) of this bylaw will apply.

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14. In terms of clause 5(1) of the Bylaw, the proposed resolution describes the specific area to which the Alcohol Ban will apply and the times and dates that it will apply. It is for a one-off event being the 2011 New Years Eve celebrations.
15. With respect to the considerations in clause 5(2) of the Bylaw, the following is noted:
  - (a) Clause 5(2)(a)(i) – the proposed ban relates to informal New Years Eve celebrations undertaken by visitors to Okains Bay. In past years young people went to the Bay and undertook consumption of alcohol, lit fires, and attempted to attend an advertised “rave” in a cave adjacent to the camping ground.
  - (b) Clause 5(2)(a)(ii) – the number of people attending the informal celebrations at Okains Bay is unknown but the Police consider the alcohol ban will preclude the gathering that occurred at the 2009/10 New Years period.
  - (c) Clause 5(2)(a)(iii) – the informal New Years Eve gatherings have taken place at Okains Bay for at least the last four or five years.
  - (d) Clause 5(2)(a)(iv) – the area where the informal New Years Eve celebration takes place is Okains Bay Beach.
  - (e) Clause 5(2)(b) – the alcohol related problems have included, underage drinking, dangerous driving, and unacceptable behaviour. These problems have been allegedly associated with excessive drinking in public places at the time of New Years Eve celebrations. It is anticipated that the same could happen for the coming New Years Eve 2011 if a Temporary Alcohol Ban is not imposed.
  - (f) Clause 5(2)(c) – given the responses of persons residing in the area to the proposal it could be seen that the benefits outweigh the restrictions if they reduce or remove the type of problems that occurred in the 2009/10 New Year. It is understood there is no other formal event taking place in the public place area at the time the ban will apply that would require drinking alcohol to take place.
  - (g) Clause 5(2)(d) and (e) – the Police support the proposed ban and Council officers have seen a copy of a police report relating to the problems with New Years Eve 2010.

### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

#### Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

16. Introducing a temporary alcohol ban in Okains Bay could be considered to broadly align to the following level of service (2.2.3.1. *Maintain Safe City Accreditation every 15 years.*) in the Strengthening Communities Activity Management Plan,

### ALIGNMENT WITH STRATEGIES

17. The Safer Christchurch Strategy aims to see rates of injury and crime decline, for people to feel safe at times in Christchurch City and for Christchurch to have excellent safety networks to support people and services.

#### Do the recommendations align with the Council’s strategies?

18. Yes – as above.

### CONSULTATION FULFILMENT

19. The Okains Bay Reserve Committee advise that there is community support for the proposal. Consultation has been carried out by staff, through MKT with the local Rūnanga and through letters to landowners close to the proposed alcohol ban area.

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#### STAFF RECOMMENDATION

It is recommended that the Council resolves as follows:

- (a) That having considered the matters in clause 5(2) of the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009, the Council declares, for the Okains Bay area (being the area shown on **Attachment 1**) a Temporary Alcohol Ban from 5 pm on 31 December 2010 until 7am on 1 January 2011.
- (b) That clause 8(1) of the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 applies to the Temporary Alcohol Ban described above.
- (c) That Public Notice be given in The Press and the community newspaper circulated in the Banks Peninsula Ward and signs be provided in the public places covered by the alcohol ban.

#### BACKGROUND (THE ISSUES)

20. A request has been received from the Okains Bay Reserve Management Committee to introduce a liquor ban covering the Okains Bay beach and reserve on the 31 December 2010 and 1 January 2011 due to problems caused in the past with underage drinking, dangerous driving, and unacceptable behaviour, allegedly associated with excessive drinking in public places at the time of New Year celebrations.
21. The public place liquor ban is supported by Senior Constable Steve Ditmer who is officer in charge in Akaroa. The police report advises that last New Years Eve there was considerable disorder caused by alcohol consumption by young people attracted to a publicised "rave" at a nearby cave on the beach. Activities of the Police concentrating on possession of alcohol at the cave area led to the young people congregating in the Okains Bay Camping Ground with the subsequent concern of families in the area. The Police are working with the Okains Bay Camp to detract underage youth from taking over the camp for this one night. Increased security and unaccompanied youth under 18 years will be addressed.
22. Under the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 the Council may declare a Temporary Alcohol Ban Area by resolution. Before doing so the Council must consider: the nature and history of alcohol-related problems associated with the area together with any anticipated alcohol-related problems; whether the benefits to local residents and to the city outweigh the restrictions placed on other persons; information from the Police about the proposed dates and times and whether they support the Temporary Alcohol Ban Area.
23. The letter from the Okains Bay Reserve Management Committee indicates that there is full support from the local community and the Police have provided information as to the reasons for the ban and expressed their support for it. In response to letters sent out to persons occupying or owning properties nearby those responding have supported the ban.

#### THE OBJECTIVES

24. To consider a proposal to introduce a Temporary Alcohol Ban Area in some of the public places under the control of the Council in the Okains Bay area.

#### THE OPTIONS

##### Option 1 – Do Nothing

25. Evidence from the Police indicates that a certain amount of disorder occurred during the New Year period in 2009/2010 and this is corroborated by the Okains Bay Reserve Management Committee. Both parties consider that while there is an option to do nothing this would not address the consumption of alcohol in public places nor avoid the congregation of young people at that time and in that area. To this end the "do nothing" option was rejected.

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**Option 2 – Permanent Alcohol Ban**

26. Due to the timing of introducing a permanent ban in the area, which would require an amendment to the schedule of the bylaw, and undertaking a Special Consultative Procedure, this option was not preferred. There would be insufficient time for the Council to receive a report and undertake the required consultative procedure and establish the ban before the New Year.

**THE PREFERRED OPTION**

**Option 3 – Introduce a Temporary Alcohol Ban**

27. The Council may, by resolution, determine that a temporary alcohol ban can be applied on the evidence that a problem could exist during the period. This could come into effect by the due date.