

28. 7. 2011

33. PROPOSED AMENDMENT TO ALCOHOL RESTRICTIONS IN PUBLIC PLACES (OKAINS BAY) BYLAW

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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to adopt for public consultation the proposed Christchurch City Council Alcohol Restrictions in Public Places Amendment (Okains Bay) Bylaw 2011 (**Attachment 4**). This will amend the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 (the 2009 Bylaw). This report contains an analysis under section 155 (**Attachment 1**) of the Local Government Act 2002 (the LGA 02). It also contains a Statement of Proposal (**Attachment 2**) (including the proposed Bylaw) and Summary of Information (**Attachment 3**) (as required by sections 83 and 85 of the LGA 02).

EXECUTIVE SUMMARY

2. The Council, at its meeting on 23 June 2011, resolved to:
 - (b) *Ask staff to prepare a separate section 155 analysis, statement of proposal and summary of information for the Okains Bay area, and report to the Council before the end of July 2011 to enable the Council to determine whether to commence the special consultative procedure.*
3. The Council considered preliminary advice on a possible alcohol ban in the Okains Bay area (and other areas) on 26 May 2011. The Council resolved to approve staff undertaking an analysis of possible amendments to the 2009 Bylaw for Okains Bay (and other areas) under section 155 of the LGA 02.
4. The Police, through the officer in charge in Akaroa, have indicated support for a permanent ban on New Year's Eve in Okains Bay although they have been unable to provide details of offences that may have occurred in the 2009/10 New Year's Eve period (or other New Year's Eve periods), except for two domestic disturbances in the camping ground – which is not a public place (as defined by the LGA02).
5. The Police view is that the temporary ban on New Year's Eve that was put in place for 2010/2011 worked extremely well – families enjoyed Okains Bay and were able to celebrate without alcohol-associated problems. The ban was easy to police as extra officers were rostered on for New Year's Eve at Akaroa.
6. Staff have undertaken an analysis under section 155 analysis of the LGA 02 and have consulted with the Chair of the Akaroa/Waiwera Community Board, the New Zealand Police and Mahaanui Kurataiao. The details of the section 155 analysis (**Attachment 1**) are attached to this report. Section 155 of the LGA 02 requires local authorities to determine that the proposed Bylaw:
 - (a) is the most appropriate way of addressing the perceived problems
 - (b) is in an appropriate form
 - (c) is not inconsistent with the New Zealand Bill of Rights Act 1990.
7. The analysis indicates that there is a perceived problem that would support the introduction of a Permanent Alcohol Ban in the Okains Bay beach and reserve area on New Year's Eve each year. The purpose of the ban is to prevent disorderly and anti-social behaviour arising from the consumption of alcohol.
8. This report recommends that a Permanent Alcohol Ban apply in the Okains Bay beach and reserve area to apply from 5.00 pm on 31 December until 7.00 am on 1 January each year. In accordance with section 156 of the LGA 02, a Special Consultative Procedure will be required to amend the 2009 Bylaw. If the proposed amendment is adopted, the Permanent Alcohol Ban will take effect from New Year's Eve 2011/12 onwards.

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FINANCIAL IMPLICATIONS

9. 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 LGA 02.
10. The cost of public notices and other publicity for a Special Consultative Procedure is estimated to be in the order of \$5000. The costs of the publicity and general communications related to the proposed amendment to the 2009 Bylaw can be funded through the existing City and Community Long-term Planning and Policy Activity budget for 2011/12.
11. Due to an oversight, a capital budget for alcohol ban signs was not provided for in the Annual Plan. Consequently all costs associated with alcohol ban signage in Okains Bay are unbudgeted.

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

12. See above.

LEGAL CONSIDERATIONS

13. Under section 145 of the LGA 02, the Council may make bylaws for one or more of the following purposes:
 - (a) protecting the public from nuisance
 - (b) protecting, promoting and maintaining public health and safety
 - (c) minimising the potential for offensive behaviour in public places.
14. In addition, section 147 of the LGA 02 provides that the Council may make a bylaw for liquor control purposes. Section 147 essentially allows a council to make a bylaw prohibiting or otherwise regulating or controlling the consumption, possession and carriage of alcohol in public places, including in vehicles in public places. "Public places" in section 147 is confined to land that is under the control of the Council and open to the public, and includes any road, even if it is not under the control of the Council. It should be noted that the term "road" is capable of a reasonably wide interpretation.
15. The bylaw-making power in section 147 also explicitly exempts the transport of unopened bottles or containers of alcohol to or from licensed premises or private residences in an area covered by a bylaw made for liquor control purposes.
16. The Police are empowered by the Act to enforce the provisions of a bylaw made for liquor control purposes. This is different from all other bylaws, where enforcement is undertaken by warranted Council officers. Section 169 of the Act gives the Police powers of arrest, search and seizure in relation to enforcing liquor ban bylaws. Section 170 sets out the conditions applicable to the power of search in section 169.
17. The process for making, amending or revoking bylaws under the LGA 02 is outlined in sections 83, 86, 155 and 156 of the Act. Section 155 requires local authorities to determine that any proposed Bylaw:
 - (a) is the most appropriate way of addressing the perceived problems
 - (b) is in an appropriate form
 - (c) is not inconsistent with the New Zealand Bill of Rights Act 1990.
18. Section 156 of the LGA 02 requires the Council to use the special consultative procedure when amending a bylaw.

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19. In addition to the statutory requirements, the law generally requires that any bylaw must be *intra vires* (in other words within the statutory powers that authorise the bylaw), certain, not repugnant to the general laws of New Zealand, and reasonable. There is a considerable body of case law on what constitutes reasonableness in the bylaw context. The Courts have noted that in ascertaining the reasonableness or unreasonableness of a bylaw, they will look to the surrounding facts, including the nature and condition of the locality in which it is to take effect, the problem it seeks to solve or proposes to remedy and whether public or private rights are unnecessarily or unjustly invaded.
20. For current purposes, in order to add a new Permanent Alcohol Ban Area the Council must amend the 2009 Bylaw. This is because the 2009 Bylaw sets out the Permanent Alcohol Ban Areas in the Schedule of the Bylaw.
21. The purpose of the 2009 Bylaw is to control anticipated or potential negative alcohol-related behaviour in any defined areas. Under clause 6 of the 2009 Bylaw, in Permanent or Temporary Alcohol Ban Areas, no person may:
 - (a) consume alcohol in a public place; or
 - (b) consume alcohol in a vehicle in a public place; or
 - (c) bring alcohol into a public place, whether in a vehicle or not; or
 - (d) possess alcohol in a public place, whether in a vehicle or not.
22. The 2009 Bylaw currently provides that certain areas of the city are "Permanent Alcohol Ban Areas", which are:
 - Central City
 - Hagley Park and Environs
 - South Colombo
 - New Brighton Mall, Marine Parade and Environs
 - Northlands Mall Surrounds
 - Sumner Esplanade
 - Jellie Park
 - Akaroa
 - Spencer Park
23. The location and the times that the Permanent Alcohol Ban Areas apply are set out in the Schedule to the 2009 Bylaw. Therefore, the Council would need to use the special consultative procedure in making any changes to these areas or times, in accordance with section 156 of the LGA 02.
24. This report also covers matters relating to section 77 of the LGA 02, which relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes, and the impact on the council's capacity.

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

25. Yes – as above. The section 155 analysis is provided in a separate document to this report. Analysis has been undertaken on Okains Bay beach and reserve area.
26. In 2008, the Council undertook a detailed section 155 analysis of the high-level issues relating to whether or not the Council should make the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009. It is not appropriate to re-litigate those high-level issues again, given that the Council subsequently undertook the special consultative procedure and made the 2009 Bylaw.
27. The section 155 analysis for the proposed Amendment Bylaw is carried out by answering the following questions for each of the current or proposed Permanent Alcohol Ban Areas:

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1. What is the perceived problem in the "Area"?
 - (a) Define the problem
 - (b) Define the Area
 - (c) What are the related crime statistics for the Area?
 - (d) Is there any Council 'Request for Service' (RFS) data?
 - (e) Summary of problem
 2. Is adding this Area to the Schedule of Permanent Alcohol Areas the most appropriate way of addressing the problem?
 3. Is the description of the Area and the times, days, or dates, during which the alcohol restrictions apply the most appropriate form?
 4. Are there any New Zealand Bill of Rights Act 1990 implications?
28. The draft Amendment Bylaw has been reviewed for vires, certainty, repugnancy, and reasonableness.
29. Consideration has also been given to whether or not "public places" as defined in section 147 includes the beach area. As mentioned above, "public places" in section 147 is confined to land that is under the control of the Council and open to the public. It also includes "road" whether or not the road is under the control of the Council. The beach area in Okains Bay is part of the marine and coastal area as defined in the Marine and Coastal Area (Takutai Moana) Act 2011. The marine and coastal area is not capable of being owned by any person, including the Crown. However, it appears that the beach area is capable of coming within the definition of "road". The term "road" has a wide definition and can include the beach. (See the definition of road in the Land Transport Act 1998 which includes a beach.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

30. An amendment to the bylaw could be considered to broadly align to the following Level of Service in the Strengthening Communities Activity Management Plan, 2.2.3.1. *Maintain Safe City Accreditation every 15 years.*

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

31. Yes – as above.

ALIGNMENT WITH STRATEGIES

32. 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, support people and services.

Do the recommendations align with the Council's strategies?

33. Yes – as above.

CONSULTATION FULFILMENT

34. Due to time constraints, only limited consultation with the New Zealand Police, the Akaroa/Waiwera Community Board and Mahaanui Kurataiao has been undertaken prior to the preparation of this report. All parties support the ban.
35. If the Council decides to seek an amendment to the Bylaw, a Special Consultative Procedure will be undertaken in accordance with the LGA 02. Any member of the public can make a submission and would have the opportunity to be heard before a hearing panel. Stakeholders such as residents of Okains Bay, the Police, the Akaroa/Waiwera Community Board and MKT will be notified of the proposed Amendment Bylaw.

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STAFF RECOMMENDATION

It is recommended that the Council, in relation to the proposed Christchurch City Council Alcohol Restrictions in Public Places Amendment (Okains Bay) Bylaw 2011:

- (a) Determines that there is sufficient evidence to support proposing a Permanent Alcohol Ban Area in the Okains Bay beach and reserve and commencing a special consultative procedure (as outlined below);
- (b) Resolves that the proposed Christchurch City Council Alcohol Restrictions in Public Places Amendment Bylaw 2011 meets the requirements of section 155 of the Local Government Act 2002, in that:
 - (i) the Council determines an amendment to the bylaw is the most appropriate way of addressing the perceived problem; and
 - (ii) the Council determines the proposed amendment to the bylaw is the most appropriate form of bylaw; and
 - (iii) the Council determines the proposed amendment to the bylaw gives rise to some implications under the New Zealand Bill of Rights Act 1990 but that the proposed amendment to the bylaw is not inconsistent with that Act;
- (c) Resolves that the Statement of Proposal (**Attachment 2**) (which includes the proposed Bylaw) and Summary of Information (**Attachment 3**) be adopted for consultation;
- (d) Resolves that public notice of the consultation be given in The Press and Christchurch Star newspapers and on the Council's website at the start of the consultation period, and that public notice of the proposal be given in community newspapers distributed in the Christchurch City Territorial Authority area, particularly in Banks Peninsula, as close as possible to the start of the consultation period;
- (e) Resolves that the consultation documents be made available for public inspection at Council Service Centres, Council Libraries and on the Council's website during the consultation period.
- (f) Resolves that the consultation period be between 9 August 2011 and 12 September 2011; and
- (g) Resolves that a hearings panel be appointed to hear submissions on 23 September 2011, deliberate on those submissions and to report back to the Council on the final form of the Bylaw in October 2011.

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BACKGROUND (THE ISSUES)

36. The Council considered preliminary advice on a possible alcohol ban in the Okains Bay area (and other areas) on 26 May 2011. The Council resolved to approve staff undertaking an analysis of possible amendments to the 2009 Bylaw for Okains Bay (and other areas) under section 155 of the LGA 02.
37. At the Council meeting of 23 June 2011 staff recommended adopting a section 155 analysis that concluded there was insufficient evidence for an amendment to the Bylaw with respect to Okains Bay. The Council decided not to adopt this section 155 analysis. Instead the Council resolved to:
- (b) *Ask staff to prepare a separate section 155 analysis, statement of proposal and summary of information for the Okains Bay area, and report to the Council before the end of July 2011 to enable the Council to determine whether to commence the special consultative procedure.*
38. A further section 155 analysis has now been undertaken (refer to **Attachment 1**).
39. A Temporary Alcohol Ban was introduced for New Year's Eve 2010/11 for the Okains Bay area due to considerable disorder on a previous occasion (see attached map). The major incident was in the 2009/10 New Year's Eve period when a group of young people advertised a "Cave" party at Okains Bay on the beach area. On this occasion Police advised that some problems were caused with drinking on the beach and some disorder that spilled over into the adjacent camping ground. The latter is privately operated and is not a public place under the control of the Council, hence no alcohol ban could be placed on that area.
40. The Police, through the officer in charge in Akaroa, have indicated support for a permanent ban on New Year's Eve in Okains Bay, although they have been unable to provide details of offences that may have occurred in the 2009/10 New Year's Eve period, except for two domestic disturbances in the camping ground – which is not a public place, as noted above.
41. Their view is that the temporary ban on New Year's Eve that was put in place for 2010/2011 worked extremely well. It has been reported that there was a considerable decline in incidents of disorder on New Year's Eve 2010/11 in the area in public places and families were able to enjoy Okains Bay and celebrate without alcohol-associated problems. The ban was easy to police as they have extra officers rostered on New Year's Eve at Akaroa.
42. The Police advise that experience has shown that alcohol bans are one of the most successful tools in reducing violence and disorder. They note that the alcohol ban in the CBD has resulted in reductions of six per cent for serious violence and six per cent for minor assaults each year for the last three years. However it is not clear that there is a direct causal link with the ban of drinking in public places or whether increased Police presence and the introduction of Safe City Officers have added to the reductions noted.

THE OBJECTIVES

43. The purpose of the proposed amendment to the Bylaw is to reduce alcohol-related harm, damage, disorder and crime and to improve community safety by putting alcohol restrictions in Okains Bay each New Year's Eve.

THE OPTIONS

44. There are three options:

Option 1 - amend the Bylaw to introduce a Permanent Alcohol Ban Area in Okains Bay to apply from 5:00pm 31 December to 7:00am on 1 January each year

Option 2 - consider implementing Temporary Alcohol Ban Areas as and when issues arise and any of the Police, Community Board or members of the community raise the issue as a concern

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Option 3 – do nothing.

THE PREFERRED OPTION

- 45. The preferred option is Option 1 which would apply a Permanent Alcohol Ban in Okains Bay from 5.00pm on 31 December until 7.00am on 1 January each year.
- 46. Option 1 is preferred because it is a proactive move to reduce alcohol-related harm and disorder on New Year's Eve in Okains Bay.
- 47. Option 2 is not preferred as it would be a reactive move and probably require Council to make a temporary ban each year alcohol-related concerns are raised. Option 3 is not preferred as the community and the Police have raised concerns about alcohol-related incidents on New Year's Eve in Okains Bay.

