**Review of the Christchurch City Council Public Places Bylaw 2008**

**Section 155 Report**

**Introduction**

1. Under the Local Government Act 2002 (LGA), the Council is required to review its bylaws at five (section 158) and then 10 yearly intervals (section 159). The Council is undertaking this review as part of a series of rolling bylaw reviews. In order to meet the statutory requirements for review, the bylaw must be reviewed by 19 June 2018.
2. When the Council reviews a bylaw, section 160 of the LGA requires the Council to review the bylaw by making the determinations required by section 155.
3. Section 155 of the LGA must be followed when reviewing a bylaw. Section 155(1) requires a council to determine whether a bylaw is the ***most appropriate way of addressing a perceived problem***. This report provides the analysis of whether a bylaw is the most appropriate tool to address those problems.
4. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form, and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990). These two aspects will be considered when staff bring a further report to the Committee and Council, which will recommend any bylaw changes and consultation on those changes (consultation is still required, even if there are no changes).

**Bylaw-making powers**

1. The bylaw is made under section 145 and 146 of the LGA which empowers councils to make bylaws to:
	* + Protect the public from nuisance, promote and maintain public health and safety, and minimise the potential for offensive behaviour in public places;
		+ Regulate a number of activities, including trading in public places; and
		+ Manage, regulate against or protect from damage, misuse or loss, certain structures, infrastructure and land under the control of the territorial authority.
2. The penalty for breaching the bylaw is prosecution, and a fine on conviction of up to $20,000.
3. There is no infringement (instant fines) regime available at this time for breaching a bylaw made under the LGA. However, there is a range of other enforcement options and tools available under the LGA (for example, seizing offending equipment, or recovering costs from damage).
4. Additionally, enforcement officers have tools under other legislation, such as the Litter Act 1979, the Resource Management Act 1991, and other Council bylaws.

**Perceived and actual problems**

1. The bylaw's purpose is to balance the different needs and preferences of the community in relation to public places, in order to balance private use with public use. Prior to making the Christchurch City Council Public Places Bylaw 2008, the Council undertook a review of the two bylaws that were in force in the district at that time. During the course of that review, the Council identified various problems/issues that needed to be addressed. For the purpose of this review, the Council has considered whether or not those problems still exist.
2. Commercial activities in public places (e.g. markets, busking), where appropriate and managed, can add character, vibrancy and safety to urban areas, and can attract visitors to these locations. However, trading and events need to be balanced against the needs of the environment and the impact public and commercial activities may have on private properties adjacent to public areas, as well as to general public access to, and use of, the public areas.
3. Public places provide many opportunities for the community to use and enjoy the space, however, due to the nature of public land being open to all, the competing interests can create obstructions and/or be a nuisance. Examples of obstructions are sandwich board signs on footpaths and encroachment. Obstructions in public places need to be managed to ensure access is unimpeded, particularly for pedestrians with impaired mobility. Regulation assists in managing the hazards created by obstructions.
4. The review of the bylaw has raised several issues that occur in public places which are not regulated by the current bylaw. The analysis attached to this report identifies the following specific problems and issues that staff recommend should be covered by the bylaw:
	* + *Street numbering:* Requiring the owner/occupier of any building to display the building number in a position visible from the road, which would ensure greater visibility of street numbering on buildings (particularly business addresses) to assist the public, and also for emergency services to locate buildings.
		+ *Signage:* Advertising and signage in public places are a means of providing information to the public. This includes businesses using signage outside their premises so they are more easily locatable. However, there is also a need to ensure that signage does not impede pedestrian or vehicular access, and to manage the proliferation of signage in some areas.
5. Another perceived issue with the 2008 bylaw, is that the bylaw provides no regulation of nuisance behaviours occurring in public places. Staff have previously provided advice to Councillors about the limitations of bylaws (such as, no instant fines) to address behavioural issues (in relation to street-based sex work and loitering).
6. There is a history of tension between street-based sex workers (SBSWs) and residents on and surrounding the northern section of Manchester Street (and now also some issues on Manchester St, south of Bealey Ave). The impacts are causing stress to the residents (particularly late night noise, offensive and hazardous litter, intimidation, vandalism, trespassing and other issue). Some residents sought a regulatory response from the Council.
7. Street begging raises a number of issues that occur in public places, including obstruction to public places, obstructions to business access ways, and nuisance behaviours. While begging appears to be a relatively low level problem, it can create a perceived significant issue for those affected.

**Is a bylaw the most appropriate tool?**

1. The bylaw enables the management of public places in order to balance the various different, and sometimes competing, lawful uses for which public places may be used. It seeks to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.
2. Revoking the bylaw would reduce the tools that the Council has to manage the problems identified in the review, and result in a lack of regulatory options to manage the issues. Keeping the existing bylaw is not a reasonably practicable option either, as improvements and alignments with current practice, as well as new issues, have been identified through the review, and it would be inadvisable to maintain the status quo when known improvements have been identified.
3. A bylaw is the most appropriate tool to continue to provide the controls to:
	* + require anyone wanting to undertake a commercial activity or to create an obstruction in a public place to get permission from the Council
		+ enable the Council to declare Special Use Areas to prohibit or allow activities in specific areas, and
		+ prevent barbed, razor or electrified wire from being used in fencing in a way that could endanger public safety.
4. When the 2008 bylaw was drafted, much of the prescriptive detail was removed from the bylaw, and this information was put in operational policies. The policies cover a range of issues in public places, including footpath extensions for café seating, signboards in public places, structures on roads, and trading activities. This allows a greater degree of flexibility, as operational policies can be altered or updated without the need to undertake the full Special Consultative Procedure to amend the bylaw. This means that they are more flexible and can be altered as situations and needs change (in 2014 amendments were made to the LGA which mean a special consultative procedure is not required to be used for less significant bylaw amendments).

*Street numbering*

1. The Council made a decision in 2007 not to include a clause relating to "Number of properties to be displayed" (which was included in the earlier versions of the bylaw). In making this decision Council had regard to a range of factors including the results of a 2004 survey of central city businesses. A report to Council on the survey concluded that most businesses displayed adequate street numbers and that as the survey respondents were open to Council communications about the need for street numbers, that Council could achieve its objectives for adequate signage of street numbers without the need for bylaw regulation.
2. Following the earthquakes, the Royal Commission of Inquiry into the Canterbury Earthquakes highlighted problems that arose because records for each building had mainly been kept according to its postal address, not the council-allocated number (Volume 7). The Royal Commission noted that if a building has several entry points and/or multiple tenancies, then the territorial authority may have alternative addresses for the same structure. Alternatively, territorial authorities could have decided to identify a particular building by one particular address, even though different people and organisations may use several addresses. These addresses may not be the same as the postal address or the street address for the building and/or tenancy. This created issues for first responders.
3. Territorial authorities are responsible for allocating road names and numbering in New Zealand. Requiring property owners to display the council-allocated property number through a bylaw will avoid the inconsistent information recording seen in Christchurch after the earthquakes and is a regulatory measure that will assist public health and safety in any future events.

*Signage*

1. The need for regulatory controls and general guidance regarding signage is a known issue, and should be applied district-wide. The replacement District Plan now includes more signage provisions than previous plans, however there are still some gaps, such as regulation of sandwich boards and remote signage.
2. Regulation via a bylaw is considered the most appropriate method to control signage such as sandwich boards, and effectively resolve issues about signs. While the Council can provide guidance to sign owners in a policy, it can only remove any offending signs/boards if there is a bylaw in place. If required, seizure of property will be a more effective enforcement tool than a prosecution and fine (although these tools are also not available if Council only has a policy).

*Antisocial behaviour*

1. In general, it is accepted that Council control of public places through a bylaw should not:
	* + Apply to matters that are covered adequately by other legislation;
		+ Deal with matters that unnecessarily restrict individual freedoms;
		+ Cover matters that are insignificant in effect or magnitude;
		+ Deal with matters that can be more appropriately dealt with by other tools at the Council’s disposal; and
		+ Be impractical to enforce.
2. The LGA does not provide for an infringement (instant fine) regime for bylaws made under section 145 of the LGA. There is no dispute that nuisance or antisocial behaviours are problematic; however, the tools available to the Council are limited. For some anti-social issues (such as street-based sex work, begging and loitering), there are other tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981, which the Police enforce.
3. On 2 November 2017, the Council agreed not to develop a bylaw to regulate the location of street-based sex workers (SBSWs) away from residential areas. This was largely because the only means to create a bylaw is under section 145 of the Local Government Act, and this does not enable instant fines, give the Police any special enforcement powers, or allow arrests, meaning any bylaw would have been very difficult to enforce.
4. Instead, the Council has formed a collaborative community partnership to find non-regulatory ways of reducing the issues. The group will meet regularly and report to the Regulatory Performance Committee on a quarterly basis.
5. Similarly, the Council, through the Safer Christchurch Governance Group, is working to support the development of multi-stakeholder working group over a six month period to consider actions and generate a partnership to assist the street begging community under the Safer Christchurch umbrella. Staff will report to the Social and Community Development Committee on this working party.

Conclusion

1. The review concludes that the problems that existed in 2008 are still present, and a bylaw is needed/the most appropriate tool to address the problems discussed above. In drafting a replacement bylaw, staff will look at known and emerging issues where regulation may be needed and assess whether a bylaw is appropriate, and will be effective.
2. The review also determines that regulation against antisocial behaviour would not be the most appropriate tool to manage the issues, which are often complex. Staff consider that existing legislation is sufficient to deal with most incidences that cause nuisance to the public and the Council is continuing to address these issues through collaborative working parties.

**TABLE 1: CLAUSE-BY-CLAUSE ANALYSIS OF DRAFT PUBLIC PLACES BYLAW 2018**

| **Existing bylaw coverage**  | **Issues and analysis**  |
| --- | --- |
| **Interpretation (definitions)**  | * Where appropriate, it can be helpful for bylaws to use wording already established in legislation or in case law.
* The definitions in the bylaw are fit for purpose, and most do not need to be changed. However if the bylaw is to be replaced, there may be a need for additional definitions to be added, and terminology in the current bylaw could be updated and modernised at that time.
 |
| **Object of the bylaw (purpose)** | * The 2008 bylaw's purpose is to balance the different needs and preferences of the community in relation to public places, in order to balance private use with public use. Requiring Council permission to undertake certain activities in necessary to achieve this balance.
* The purpose is still relevant. The bylaw-making power in the LGA enables the council to regulate, among other things, to:
* Protect the public from nuisance, promote and maintain public health and safety, and minimise the potential for offensive behaviour in public places;
* Regulate a number of activities, including trading in public places; and
* Manage, regulate against or protect from damage, misuse or loss, certain structures, infrastructure and land under the control of the territorial authority.
 |
| **Commercial Activities**The bylaw requires anyone wanting to undertake commercial activities in a public place to get permission from the Council. A permit may be subject to certain terms and conditions. | * Commercial activity is regulated to restrict exclusive use of public places and so the Council is aware of who is carrying out commercial activities on Council land and to manage locations and times.
* Trading and events in public places, where appropriate and managed, can add character, vibrancy and safety to urban areas, and can attract visitors to these locations.
* However, trading and events need to be balanced against the needs of the environment and the impact public and commercial activities may have on private properties adjacent to public areas, as well as to general public access to, and use of, the public areas. There are many businesses wanting to use public places to do business (or expand their existing businesses), for example the popularity of food trucks and markets continues to grow therefore, it is reasonable to regulate commercial activities in public places.
* To avoid repetition throughout the bylaw, the permit conditions may be better placed in a general clause about permissions or attached to the permit itself.
* Examples of commercial activities include market stalls, events, mobile traders, busking, street collections and commercial activities in parks.
 |
| **Obstructions**The bylaw requires anyone wanting to erect or place any thing, in or on a public place to get permission from the Council. A permit may be subject to certain terms and conditions. | * Obstructions may be unavoidable, e.g. unloading a truck to take stock into a shop, in which case they should occur in the safest way, for as little time as possible, and alternative arrangements may need to be made to accommodate other users.
* Obstructions continue to be an identified issue. A bylaw clause is reasonable to ensure pedestrian and vehicular traffic is not impeded, particularly for people with impaired mobility.
* To avoid repetition throughout the bylaw, the permit conditions may be better placed in a general clause about permissions or attached to the permit itself.
 |
| **Operational policies** | * When the 2008 bylaw was drafted, much of the prescriptive detail was removed from the bylaw, and this information was put in operational policies. This allows a greater degree of flexibility, as operational policies can be altered or updated without the need to undertake the full Special Consultative Procedure to amend the bylaw. This means that they are more flexible and can be altered as situations and needs change.
* An explanatory note to the bylaw lists the relevant operational policies. The Trading and Events in Public Places Policy 2010 is currently under review, to coincide with the Public Places Bylaw review.
 |
| **Permit conditions** | * The bylaw has a number of clauses relevant to the permit conditions and requirements (must display permit, permit not transferable)
* Various circumstances arise where it may be necessary to alter, suspend or cancel a permit, including when the permit conditions have been breached, or if for example an event is being held in the location where a regular food truck operates.
* This bylaw clause allows the Council to effectively monitor public places and ensure the activity is suitable for the environment (particularly in the changing post-earthquake city), that permit conditions are being met, and that temporary activities can be accommodated.
* It is reasonable to have such as clause as a permit does not give permanent exclusive use of public places. However the specific detail may not be necessary in the bylaw as it will form part of a permit.
 |
| **Fees** | * Fees are set annually through the Annual Plan process. As many people are wanting to use public places for commercial gain, it is reasonable for the Council to charge for the use of the space.
* There are certain activities where a fee is not payable, e.g. busking in special use areas listed in the explanatory note.
 |
| **Special use areas**The Council may by resolution, and on any conditions the Council thinks fit, declare that any public place or specified part of a public place be:* Set aside for a special use or activity, or
* Cannot be used for a particular use or activity.
 | * The bylaw allows the Council to restrict, by resolution, the use of areas where certain activities are not suitable for the location, e.g. creates safety risks, causes damage, or creates a nuisance to other users.
* Conversely, Council can also allocate locations where certain activities can occur without the need for a written permit, such as the current Speaker’s Corner in Cathedral Square. This gives people the opportunity to spontaneously partake in the activity, and reduces the administrative time/cost to process applications.
* An explanatory note in the bylaw specifies the locations of special use areas:
* *Speakers' Corner*: Speakers' Corner was an area in Cathedral Square set aside for the purpose of public speaking, and is located on the eastern side of the Godley Statue (declared at a Council meeting on 23 November 2000). A new public speakers' corner opened in June 2013 and is now sited on privately owned land on the corner of Fitzgerald Avenue and Ferry Road.
* *Busker areas:* The Council resolved under the provisions of the Christchurch City Public Places Bylaw 2008 that areas of Cathedral Square, parts of City Mall (now ReStart Mall), and parts of Worcester Boulevard do not require a permit for the purposes of busking, provided that the busking conditions are complied with.
* With post-earthquake developments well underway, there is an opportunity to review the special use areas and determine if there is a need to add or remove any locations for specific activities. Any proposals will be discussed in the follow up report in July to be resolved by Council under the Special Use Areas clause.
 |
| **Barbed, razor or electrified wire**Barbed, razor or electrified wire may not be used within one metre of a public place, unless the wire is at a height 2.5 metres or more above ground level, or in a rural area. | * The bylaw making power allows the Council to address dangerous fencing of properties adjoining public places, e.g. building sites or gang residences, to protect people using the adjacent public place (footpath, etc.). This continues to be an issue, particularly with the many building sites in the city, post-earthquake.
* This clause does not apply to the use of barbed wire to fence stock in rural areas as this activity does not present the same safety concerns as areas adjacent to footpaths and other public areas.
 |
| **Offence and penalty** | * There is no infringement regime available at this time for breaching a bylaw made under the LGA.
* Taking a prosecution is costly and may be deemed extreme for some breaches of the bylaw.
 |