
AMENDED PUBLIC PLACES BYLAW – CONSULTATION REPORT BACK

1. Purpose of Report

To report on the special consultative procedure undertaken for the amended Public Places Bylaw and to recommend that the Committee refer the Bylaw to Council for its consideration and approval.

2. Executive Summary

The Council's bylaws relating to open spaces have been reviewed and their provisions, as appropriate, incorporated as amendments into the current Public Places Bylaw. The open spaces bylaws reviewed are:

- Part 5 – Cemetery and Cremation
- Part 11 – Harbour, Beaches and Foreshore
- Part 16 – Reserves and Swimming Pools (reserves provisions)
- Part 17A – Commercial Sex Premises (signage provisions)
- Part 17B – Smoking in Cable Car Lane

The special consultative procedure was initiated for the amended Public Places Bylaw. 91 written submissions were received and eight oral submissions heard by the Strategy and Policy Committee on 22 May 2008.

The majority of submissions covered issues relating to the review of the Commercial Sex Premises Bylaw and requested the Council consider banning brothels from residential areas.

Other submission themes included:

- agreement for the ban on smoking in Cable Car Lane – with requests for the ban to be extended
- a request for the Council to consider adopting an educative smokefree public places policy
- requests for the Council to do more to prevent and/or clean up the litter caused by cigarette butts.

The amended Public Places Bylaw is attached as Appendix 1. Two further changes are recommended to clarify the bylaw's intentions (these are shown as 'tracked changes' in Appendix 1):

- a changed focus for clause 10 so it relates to all 'commercial sex premises' rather than being confined to 'commercial sex services'

- adjustments to clauses 6 and 7 to clarify the activities that do and do not require Council's prior written approval.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that 91 written submissions were received and 8 oral submissions heard by the Strategy and Policy Committee on 22 May 2008.*
3. *Recommend to Council that it:*
 - a. *Agree that the special consultative procedure has been completed pursuant to sections 86 and 156 of the Local Government Act 2002.*
 - b. *Agree that the Bill of Rights Act 1990 implications have been considered for the proposed amendments to the Public Places Bylaw and that the bylaw is appropriate in accordance with section 155 of the Local Government Act 2002.*
 - c. *Agree to revoke the following parts of the Wellington Consolidated Bylaw 1991 from 1 July 2008:*
 - *Part 5 – Cemetery and Cremation*
 - *Part 11 – Harbour, Beaches and Foreshore*
 - *Part 16 – Reserves and Swimming Pools*
 - *Part 17B – Smoking in Cable Car Lane*
 - d. *Agree that Part 17A (Commercial Sex Premises Bylaw) of the Wellington Consolidated Bylaw 1991 be revoked and that Council relies on the District Plan to control the location of commercial sex premises in the city.*
 - e. *Agree that the amended Public Places Bylaw includes:*
 - *reference to 'commercial sex premises' as well as 'commercial sex services' in clause 10*
 - *changes to clauses 6 and 7 to clarify those activities requiring written Council approval*
 - f. *Agree the amended Public Places Bylaw, as attached in Appendix 1 to this report, is part of the Wellington Consolidated Bylaw 1991.*
 - g. *Agree that the Public Places Bylaw be operational from 1 July 2008.*
4. *Agree that officers report back on potential options for discouraging smoking in some public places (e.g. playgrounds).*

4. Background

The Local Government Act 2002 (LGA) requires the Council to review any bylaws enacted prior to 1 July 2003 by 30 June 2008.

The amended Public Places Bylaw is the result of a review of the following bylaws relating to open spaces:

- Part 5 – Cemetery and Cremation
- Part 11 – Harbour, Beaches and Foreshore
- Part 16 – Reserves
- Part 17A – Commercial Sex Premises
- Part 17B – Smoking in Cable Car Lane

The proposed bylaw will ensure that appropriate rules exist for the effective management and protection of open spaces and associated assets and amenities. It also supports Council policies relating to the control of public places. The bylaw:

- streamlines the rules that apply to open spaces – combining provisions relating to open spaces simplifies the bylaw rules, removing potential inconsistencies and any confusion they may cause when spread over a number of bylaws.
- updates the controls affecting open spaces – the bylaws that have been reviewed contained provisions that are obsolete, either as a result of changes in legislation or Council policy, such as the adoption of the Council's Footpath Management and Trading in Public Places policies. The old bylaws will be revoked to remove the obsolete provisions.

The necessary provisions from the open spaces bylaws have been carried over into the Public Places Bylaw as amendments.

Existing provisions in the current Public Places Bylaw were included in the consultation documents, but were not revisited as part of the review as the bylaw was created after 1 July 2003 and its provisions are not being changed.

The Council approved the statement of proposal at its meeting of 6 March 2008, thereby initiating the special consultative procedure. Submissions opened on Tuesday 1 April 2008 and closed on Friday 2 May 2008.

5. Discussion

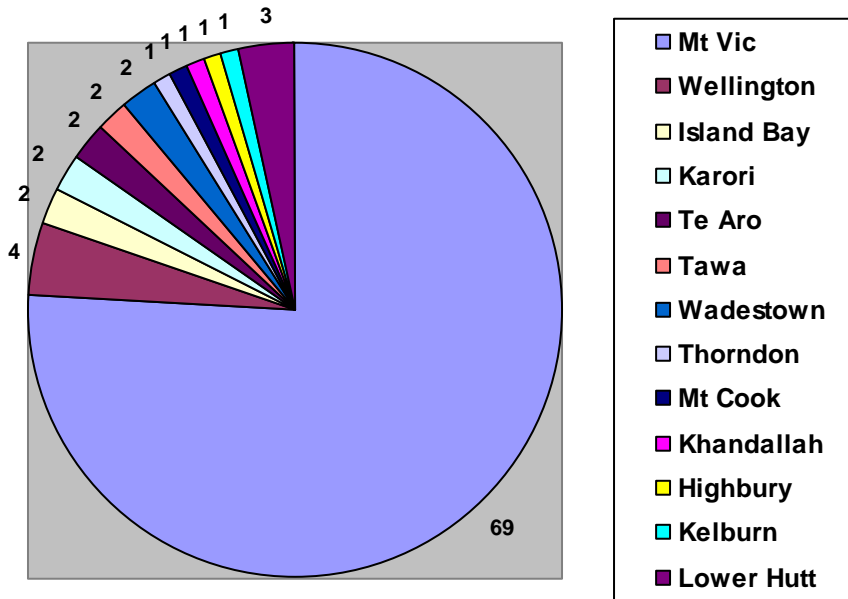
5.1 Consultation Feedback

The consultation document (including the Summary of Information and Statement of Proposal) was sent to mana whenua, community boards, residents associations, representative industry groups and government agencies. The review was publicly notified in the Dominion Post and the consultation document was placed in libraries and service centres and was accessible from the Council's website.

The Council received 91 written submissions (88 from individuals and 3 from organisations) and SPC heard 8 oral submissions at its meeting of 22 May 2008. All written submissions are attached as Appendix 2.

The majority of submissions were received from Mt Victoria residents, as is clearly shown in the below graph:

Figure 1 – Location of submissions



The main themes identified in the consultation are as follows:

- 86 submissions (94.5%) on the issue of commercial sex premises (brothels in particular)
- 8 submissions (8.8%) relating to the Smoking Ban in Cable Car Lane Bylaw and smoking in public places
- 2 submissions relating to the Reserves Bylaw
- 1 submission relating to the Harbours, Beaches and Foreshore Bylaw
- 1 submission relating to the Cemeteries and Cremations Bylaw

The following sections summarise the issues raised in the submissions and provides officer comment.

5.2 Commercial Sex Premises

The overwhelming majority of submissions (94.5%) focused on the review of the Commercial Sex Premises Bylaw. Those submissions were concerned with regulating the location of commercial sex premises which is outside the scope of this bylaw.

Of the 86 submissions 82 indicated that there should be greater controls on the location of commercial sex premises. 68 of the 82 submitters specifically requested the Council ban them in residential areas.

Four (4) submitters disagreed with the Council having a bylaw that would ban commercial sex premises from certain areas, noting that sex workers need safe environments to work in such as residential and populated areas like the Courtenay Character Area.

As noted above, many of the submissions originated from residents in Mt Victoria as a consequence of opposition to a resource consent granted to allow a Pirie Street brothel to expand from 3 to 5 sex workers.

5.2.1 Revocation of the Commercial Sex Premises Bylaw

Through this bylaw review the Council is revoking its Commercial Sex Premises Bylaw as it has been superseded by provisions in the District Plan.

The Commercial Sex Premises Bylaw has two main effects. It:

1. prohibits signage and touting across the city; and
2. prohibits commercial sex premises in the Courtenay precinct.

The signage provisions, as they are related to public places, are included in the proposed Public Places Bylaw. The provisions relating to commercial sex premises in the Courtenay precinct are now included in the District Plan. The Plan allows commercial sex premises to be:

- “permitted activities” in **commercial areas** – except for in the Courtenay Character Area where operators are required to apply for a Discretionary (Unrestricted) resource consent, assessed on a number of criteria.¹
- “permitted activities” in **residential areas** under the “working from home” provisions, if the premise has three or fewer sex workers. Premises with more than three sex workers also require a Discretionary (Unrestricted) resource consent, again assessed on a number of criteria.²

¹ Applications are assessed according to their:

- proximity to existing commercial sex activities
- effects on the streetscape and physical character of all or part of the Courtenay Character Area
- effects on amenity values
- visual effects
- location near facilities used by younger age groups and families (i.e. cinemas, theatres and public transport facilities).

² Applications under this are subject to:

- the scale of building (i.e. its compatibility with size, location, topography, other developments)
- amenities such as noise, dust, glare, vibration, fumes, smoke, odours, pollutants, etc
- the scale of the building fitting with the location
- its impact on traffic (no loss of safety or residential amenity – i.e. congestion)
- appropriate design and appearance.

In both instances, section 15 of the Prostitution Reform Act 2003 (PRA) requires that in considering the resource consent application the Council must consider if a business is likely to cause a nuisance or serious offence “to ordinary members of the public” and if it is incompatible with the existing character or use of the area.

The District Plan is considered the best mechanism for controlling the location of commercial sex premises as it regulates the location of brothels in residential areas, under the working from home provisions and resource consent requirements.

Officers recommend that the current Commercial Sex Premises Bylaw be revoked and Council relies on the District Plan to control the location of commercial sex premises.

5.2.2 Clarifying clause 10 of the proposed bylaw

Clause 10 of the amended bylaw refers to ‘commercial sex services’, which are not defined in the bylaw.

The definition of a ‘commercial sex service’ in the PRA 2003 is significantly more limited than that given to a ‘commercial sex premise’ in the Council’s Commercial Sex Premises Bylaw. A ‘commercial sex service’ in the PRA covers:

“physical participation by a person in sexual acts with, and for the gratification of, another person...for payment or other reward...”

The definition of ‘commercial sex premises’³, however:

- a) “means premises used or intended to be used primarily for exposing, selling, or hiring goods or services related to sexual behaviour; and
- b) to avoid any doubt includes strip clubs, strip bars, rap parlours, peep shows, lap dancing bars, escort agencies, adult bookshops, adult video shops, adult cinemas, sex shops; but
- c) does not include hospitals, healthcare services, chemists, community welfare facilities, or premises where therapeutic massage is offered and which are not brothels in terms of the Prostitution Reform Act 2003.”

Officers recommend that the Council agree that the amended Public Places Bylaw is changed to reflect the broader approach of the original bylaw (i.e. restricting the advertising of commercial sex premises) as well as restricting the advertising of non-premise based commercial sex services. This would require:

- the above commercial sex premises definition and the PRA’s definition of commercial sex services to be included in clause 1
- clause 10 to refer to ‘commercial sex premises’ as well as ‘commercial sex services’.

³ The definition was updated to remove reference to the Massage Parlours Act 1978 which was revoked when the Prostitution Reform Act was enacted in 2003.

These possible changes are highlighted in the bylaw attached as Appendix 1.

This change will ensure consistency between the definitions in the bylaw and District Plan. However, it will also require the Council to take additional legal considerations into account.

The Council is empowered to regulate the *signage* advertising *commercial sex services* under section 12 of the PRA. Extending it to commercial sex premises – and beyond signage to touting and the handing out of flyers – means the Council is also relying on the LGA for its empowerment to make this bylaw.

As a matter of course all bylaws must be reasonable, within the territorial authority's scope of power and not repugnant to the laws of New Zealand⁴. The LGA 2002 also requires territorial authorities to consider if the proposed bylaw is the most appropriate way of addressing the perceived problem and to identify any implications it will have under the New Zealand Bill of Rights 1990 (BORA).

The identified problem is the potential offence that touting and handing out of flyers advertising sex premises and services may cause, particularly in family oriented residential or entertainment areas. The problem fits under section 145(c) of the LGA⁵ – where the Council is seeking to minimise “the potential for offensive behaviour in public places”.

A bylaw is the most appropriate mechanism to regulate such activity as it provides the enforcement capability that is not available through policy implementation alone.

The bylaw does have direct BORA implications as clause 10 can be seen to place limits on the “right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”. However, it is considered that this limitation is justifiable in a free and democratic society.

5.2.3 Other issues

Other issues raised in regard to the Commercial Sex Premises Bylaw were:

Submission	Officers comment	Amend bylaw?
That applicants for sex premises be required to provide evidence of any criminal convictions and that they are fit and proper persons to own or to manage a sex premise.	The Ministry of Justice is responsible for certifying brothel operators for commercial-sized brothels. Operators are required to be over 18 years old and not have been convicted of some specific offences such as a number of violence offences, offences under the	No

⁴ Section 17 of the Bylaws Act 1910.

⁵ Section 145 also allows territorial authorities to make bylaws that protect the public from nuisance and to protect, promote and maintain public health and safety.

	Arms Act 1983, and offences under the Misuse of Drugs Act 1975. Small owner operated brothels, however, are not required to be certified as operators, so no information is held on either the location or number of these brothels.	
The bylaw is too restrictive on the handing out flyers. This activity should be allowed to occur in R18 restricted premises.	The amended bylaw only covers public places, and does not regulate activities on private premises.	No
The bylaw is too restrictive regarding non-operation of commercial sex premises in the Courtenay Character Area. Small discrete brothels on side streets should be allowed. This area is a safe one, which sex workers should not be shut out of	The Commercial Sex Premises Bylaw, which banned new commercial sex premises establishing in Courtenay Place is being revoked as of 1 July 2008. The provisions in the District Plan regarding the Courtenay Character Area have superseded the bylaw. Under the Plan, new commercial sex premises will be considered “Discretionary (Unrestricted) Activities” for which a resource consent must be applied for.	No

5.3 Smoking Ban in Cable Car Lane

Three submissions agreed with the inclusion of the Smoking in Cable Car Lane Bylaw into the amended Public Places Bylaw. One disagreed saying it limited people’s personal freedoms and stated that Council was acting outside of its core responsibilities in enforcing this bylaw.

Twenty-eight (28) submitters (30.8%) responded ‘yes’ and 1 ‘no’ to the question of whether the Council should “consider making more controls to discourage people from smoking in public places”. Five further submissions made specific comments on smoking in public places as part of their response to this question.

The specific issues raised were:

Submission	Officer comment	Amend bylaw?
Request to improve the “no smoking” signage in Cable Car Lane	Officers have had ongoing problems with signage being vandalised and are continuing to look at different signage options, including stickers on rubbish bins and signs on the pavers.	No
Request for the Council to consider adopting an educative smokefree public places policy – to cover parks, playgrounds, beaches and events.	Increasing numbers of territorial authorities are adopting smokefree policies, particularly focusing on public places used extensively by children. Such policies take an educational approach rather than a regulatory one.	No

<p>Another submitter requested the ban be extended to cover the whole of the western side of Lambton Quay, though a further submitter suggested that any ban should not cover the space outside of bars so they would not be penalised further by no smoking laws.</p>	<p>Officers recommend that a report back be made to SPC on potential options for controlling smoking in public places..</p> <p>Regarding smoking outside of bars – if a policy was to be adopted it would not cover footpath permits issued to bars as the areas effectively become the bars’ exclusive area of use.</p>	
<p>Request for action on the perceived increase in litter deriving from outside smokers dropping their cigarette butts. Requested actions included the Council erecting bigger signs, undertaking more prosecutions, and finding ways of requiring building owners to provide receptacles for the butts.</p>	<p>Bars are given conditions with their footpath licenses to provide ashtrays and appropriate receptacles for cigarette butts as well as to ensure the area is clear of litter (including cigarette butts). Owners not complying with this license are approached by the Council.</p> <p>The Council does not, however, have the ability to require building owners to place receptacles on their buildings as this is private property.</p> <p>Capacity will be initiating an educational campaign to create awareness around the disposal of cigarette butts as many are ending up in the harbour via the stormwater system.</p> <p>Officers are also compiling an information card for smokers that outlines the impact of cigarette butts on the environment (again focusing on stormwater in the harbour).</p>	No
<p>One submitter suggested the Council should do more to help people quit smoking.</p>	<p>Programmes encouraging people to quit smoking come under the auspices of a number of agencies, including the Ministry of Health, district health boards, primary healthcare organisations (PHOs), Smokefree NZ and the Cancer Society. Although public health is of interest to the Council, further involvement is probably not necessary as it is directly within the purview of a number of other organisations.</p>	No

5.4 Reserves

One (1) submission was received which agreed on the inclusion of the Reserves Bylaw in the amended Public Places Bylaw. The submitter supported the provisions around allowing illegally parked cars to be towed away.

5.5 Cemetery & Cremation

One (1) submission was received on the Cemetery and Cremation Bylaw, making the below comment:

Submission	Officers comment	Amend bylaw
That the Wellington Cemeteries and Crematorium Handbook be reviewed to ensure that the important provisions from the Public Places Bylaw are provided in the handbook.	This request has been passed onto the Cemeteries Manager for action.	No

5.6 Harbour, Beaches and Foreshore

Two (2) submissions were received regarding the provisions of the Harbour, Beaches and Foreshore Bylaw, raising the following issues:

Submission	Officers comment	Amend bylaw
Request that the clause relating to Swimming in Dangerous Places (11.7) be retained as part of the proposed bylaw.	All areas below High Water Means Spring are subject to the Regional Coastal Plan administered by the Greater Wellington Regional Council, meaning the Council would be unable to enforce any bylaw around swimming in this area. Section 25.1.3 of the proposed bylaw, however, provides the Council opportunities to erect 'danger' notices as deemed necessary from time to time.	No
The bylaw should include equivalent provisions to those in the reserves bylaw around allowing parked vehicles to be towed away. Clear labelling of where cars can park and strict enforcement is required.	Under section 14.5, the amended bylaw provides for removal of vehicles in any public place – which includes all reserves, beaches, the harbour and foreshore. The development of future parking is managed by the relevant reserve management plans.	No

5.7 Clarification – Provisions in the Amended Public Places Bylaw

Officers recommend that the wording of clauses 6 and 7 are adjusted to clarify the intention of these bylaws.

Alternative wording is highlighted in Appendix 1 which:

- clarifies that both clauses 6 and 7 refer to the roading corridor – with clause 7 specifically referring to the requirement for written Council approval
- removes the inconsistency between clauses 6 and 7 in relation to “event” and “street events”. These are correctly recorded under clause 6 (“Assembly”) where street events are able to proceed without permission.

6. Next steps

If the Committee agrees to recommend that Council adopts the amended Public Places Bylaw, it will be considered by Council on 27 June 2008. The bylaw will come into force on 1 July 2008. When the bylaw is adopted officers will contact submitters to inform them of the result. Officers will also publish the bylaw online and in written form.

The Reserves Act 1977 requires the Minister of Conservation to consider any variations or additions made to the “model bylaws prescribed by the Minister”. A copy of the draft bylaw has been forwarded to the Minister for sign-off.

The Burial and Cremations Act 1964 requires the Council to provide a copy of any bylaws made under the act to the Minister of Health at least 21 days before they are confirmed by the Council. A copy of the draft bylaw has also been forwarded to the Minister for his information.

7. Conclusion

The Council consulted on proposed amendments to the Public Places Bylaw during April and May 2008. Feedback from the consultation has been considered and a final bylaw, with a few changes highlighted, is attached for consideration and approval by the Committee to refer the bylaw to Council.

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Chris Linnell, Senior Policy Advisor

Supporting Information

1) Strategic Fit / Strategic Outcome

The proposed bylaw supports Council's outcomes under the Environment and Social and Recreation strategies for safe and accessible public places.

2) LTCCP/Annual Plan reference and long term financial impact

The bylaws are monitored and enforced by the Transport, Parks and Gardens and Building Consents and Licensing business units. No long term financial impacts have been identified.

3) Treaty of Waitangi considerations

No Treaty of Waitangi issues have been identified through the review process.

4) Decision-Making

The report provides options that were considered in the review.

The proposed bylaw, if adopted, is not expected to generate change to any material extent in terms of the criteria in the Significance Policy.

5) Consultation

Consultation occurred by following the Special Consultative Procedure.

6) Legal Implications

Council's lawyers have been consulted during the development of the proposed bylaw.

7) Consistency with existing policy

The proposed bylaw retains the intent of the existing bylaws and has been drafted to meet Council's responsibilities as the controller of public places.

Appendix 2

Submissions received