

MINUTES

THURSDAY 12 APRIL 2007

9.19AM

**COUNCIL CHAMBER
FIRST FLOOR, TOWN HALL
WAKEFIELD STREET
WELLINGTON**

PRESENT:

Mayor Prendergast
Councillor Ahipene-Mercer
Councillor Foster
Councillor Gill
Councillor Goulden (9.19 - 9.45am)
Councillor McKinnon
Councillor Morrison
Councillor Pepperell
Councillor Ruben
Councillor Shaw
Councillor Wade-Brown (9.20 – 9.58am)

APOLOGIES:

Councillor Armstrong
Councillor Cook
Councillor Ritchie
Councillor Wain

042/07C **APOLOGIES**
(1215/11/IM)

Moved Mayor Prendergast, seconded Councillor Ahipene-Mercer, the motion that Council accept apologies for absence from Councillors Armstrong, Cook, Ritchie and Wain and a apology for lateness from Councillor Wade-Brown.

The motion was put and declared CARRIED on voices.

RESOLVED:

THAT Council:

1. *Accept apologies for absence from Councillors Armstrong, Cook, Ritchie and Wain.*
2. *Accept an apology for lateness from Councillor Wade-Brown.*

(Councillor Wade-Brown joined the meeting at 9.20am.)

043/07C **CONFIRMATION OF MINUTES**
(1215/11/IM)

NOTED:

There were no minutes to confirm.

044/07C **PUBLIC PARTICIPATION**
(1215/11/IM)

NOTED:

There was no public participation.

045/07C **ANNOUNCEMENTS BY THE MAYOR**
(1215/11/IM)

NOTED:

Mayor Prendergast made the following announcement:

“As you know, the law makes it clear that there are some matters that Council, or its Committees, can discuss with the public excluded, and with the report and minutes treated as confidential.

The importance of maintaining the confidentiality of such information is also well understood by all elected members and officers.

It is covered in the Code of Conduct for the Mayor and Councillors.

It is also clear that there is a well-established process for how such confidential material should be treated once Council or its Committees have made a decision on the basis of it – that is:

- That information (reports and minutes) remains PE, until the Chief Executive (or another officer with delegated authority) makes a decision that the information can be made publicly available.

Councillors, you will all be aware that, on a number of occasions in recent years, confidential material has found its way to the media.

On 11 November last year, a story appeared in the DominionPost on Council's confidential discussions and decision-making in relation to the development of a wine bar on the site of the Taranaki Street toilets.

The DominionPost article made reference to “a confidential council report”, and it is clear that the reporter had access to what is a PE report to the then Built and Natural Environment Committee in December 2002.

I am confident that the report was **not** provided to the media by a council officer. It remains public excluded.

I am left to draw the conclusion that it must have been provided to the media by someone else authorised to have a copy of the report.

I checked with staff and only one Councillor had requested a copy of that paper.

I asked that Councillor, in a private discussion, whether he was responsible for providing that report to the media.

He told me he was; his excuse being that now that it was four years old, it was no longer public excluded.

I informed him he was wrong and asked him to apologise for the breach of the Code of Conduct.

The Councillor refused. Despite repeated requests in writing that he apologise, and extensions of time, the Councillor has not done so.

You will all appreciate that without further evidence that the Councillor was responsible for providing the report to the media, and without a witness of his admission to me, it is difficult to take the matter any further.

I have decided not to pursue a formal Code of Conduct process because of the destructiveness of the last process when Councillors were asked to vote on a censure of a colleague.

Nonetheless, it is important that collectively we are aware of the facts of this case, and the fact that public excluded material remains public excluded, regardless of the timeframes.

I want to make it clear that this is not an issue about support or otherwise for the Courtenay Place Park, or any proposed development on the site of the toilets.

It is simply an issue about all of us exercising the integrity that is expected of us, and adhering to Code of Conduct requirements.

Such breaches of the Code when we all know the rules is unhelpful and disappointing, and I want to remind you all of the responsibilities you have under the Code of Conduct to maintain confidentiality of certain information.”

046/07C **PETITIONS**
(1215/11/IM)

NOTED:

There were no petitions presented.

047/07C **DEPUTATIONS**
(1215/11/IM)

NOTED:

There were no deputations

048/07C **CONFLICT OF INTEREST DECLARATIONS**
(1215/11/IM)

NOTED:

1. Mayor Prendergast declared a conflict of interest regarding Report 2 Strategy and Policy Committee - Meeting of Thursday 5 April 2007 – Item 064/07P Statement of Proposal to Amend the Liquor Control Bylaw. She advised that she would withdraw from the meeting when the matter was debated and voted on.

General Business

- 049/07C **APPROVAL OF RECOMMENDATION ON THE NOTICE OF REQUIREMENT FOR SUPREME COURT DESIGNATION**
 Report of Councillor Gill – Chair of the Hearing Committee, Notice of Requirement, Supreme Court.
 (1215/11/IM) (REPORT 1)

Moved Councillor Gill, seconded Councillor McKinnon the substantive motion.

The substantive motion was put.

Voting for: Mayor Prendergast, Councillor Ahipene-Mercer, Foster, Gill, Goulden, McKinnon, Morrison, Pepperell, Ruben, Shaw and Wade-Brown.

Voting against: Nil.

Majority vote: 11:0

The substantive motion was declared CARRIED.

RESOLVED:

THAT Council:

1. *Receive the information.*
2. *Approve the recommendations of the Hearing Committee in respect of the Notice of Requirement for the Supreme Court Designation as attached in Appendix One of the officers report.*

Reports from Committees – Part A – Committee Decisions requiring Council approval.

(Mayor Prendergast vacated that Chair for Report 2 due to a conflict of interest. Councillor Shaw chaired the meeting for Report 2.)

- 050/07C **STRATEGY AND POLICY COMMITTEE**
Meeting of Thursday 5 April 2007
 (1215/11/IM) (REPORT 2)
1. **ITEM 064/07P STATEMENT OF PROPOSAL TO AMEND THE LIQUOR CONTROL BYLAW**
 (1215/52/IM) (REPORT 4)

Moved Councillor Shaw, seconded Councillor McKinnon, the substantive motion.

(Councillor Goulden was asked to withdraw and apologise for comments that he had made during debate. He refused and was asked to leave the meeting.)

(The meeting adjourned at 9.45am to allow officers to speak with Councillor Goulden.)

(The meeting reconvened at 9.50am.)

(Councillor Goulden was not present when the meeting reconvened.)

The substantive motion was put.

Voting for: Councillor Ahipene-Mercer, Foster, Gill, McKinnon, Morrison, Pepperell, Ruben, Shaw and Wade-Brown.

Voting against: Nil.

Majority vote: 9:0

The substantive motion was declared CARRIED.

RESOLVED:

THAT Council:

1. Agree:

- (a) a bylaw remains the most appropriate way of addressing the perceived problem and*
- (b) that the most appropriate form of bylaw is one that combines prohibition at specific times with an events based ban*
- (c) the bylaw does not place unreasonable limitation on any rights established in the Bill of Rights Act 1990*
- (d) to the Statement of Proposal (attached as Appendix 1 to these minutes) to amend the Liquor Control Bylaw*
- (e) to resolve that the bylaw proceeds through the special consultative procedure as required by section 156 Local Government Act 2002.*

(Mayor Prendergast resumed chairing the meeting.)

051/07C **QUESTIONS**
(1215/11/IM)

NOTED:

There were no questions.

The meeting concluded at 9.58am.

Confirmed: _____
Chair
/ /

**STATEMENT OF PROPOSAL TO AMEND THE LIQUOR
CONTROL BYLAW**

1. INTRODUCTION

This statement of proposal concerns proposed amendments to the Liquor Control Bylaw. The current Bylaw

- a) prohibits the consumption and possession of liquor on Thursday, Friday and Saturday nights from 5pm to 8am the following morning in the Wellington Central area excluding the area north of the Stadium and the residential areas in Thorndon
- b) prohibits the consumption and possession of liquor on Christmas and New Years Eve in the same area and
- c) provides for the Council to invoke a prohibition for special events anywhere in the city.

It is proposed that the Bylaw is extended so that the area to which the bans outlined in a) and b) above apply includes Oriental Bay and Mt Victoria (as shown on the map attached to the bylaw).

The provisions in relation to invoking special events bans remain unchanged.

Section 147 of the Local Government Act 2002 (LGA 2002) provides for the Council to make a bylaw for liquor control purposes in relation to any public place under the control of the Council. A Liquor Control Bylaw was first adopted in October 2003 and came into effect in November 2003. That Bylaw was amended in May 2006.

The LGA 2002 requires that a special consultative procedure is used when it is proposed to make or amend a bylaw. This Statement of Proposal has been prepared in accordance with the requirements set out in s86, LGA 2002 for the special consultative procedure.

It includes:

- the reasons for the proposal
- consideration of whether the proposed bylaw amendment is the most appropriate way to address the perceived problem
- whether the proposed bylaw amendment is the most appropriate form of bylaw
- implications under the New Zealand Bill of Rights Act 1990
- a draft of the proposed bylaw (as amended).

2 Reasons for proposal

The reasons for this amendment are concerned with anti-social behaviour at Oriental Bay and this Statement of Proposal does not re-litigate the premise for the prohibition in the Central Area.

The Wellington City Council adopted an amended Liquor Control Bylaw in May 2006. At that time, the Council considered extending the area to which the liquor ban applied to include Oriental Bay but decided against that extension. It was agreed that complaints in Oriental Bay and at Mount Victoria would be monitored and reported back to the Strategy and Policy Committee in April 2007.

Oriental Bay residents and the Police report an ongoing escalation in problems at Oriental Bay that include liquor consumption and associated anti-social behaviour.

A number of initiatives have been put in place to contribute to the management of problems in Oriental Bay and it is now proposed to complement that range of initiatives with a prohibition on the possession and consumption of liquor in Oriental Bay on Thursday, Friday and Saturday nights and also on Christmas Eve and New Years Eve.

2.1 Problem Definition

There has been an escalation in anti-social behaviour in the Oriental Bay area. In February 2007, the Council received 118 complaints about vandalism, noise, motor cars and partying. In the previous six months there have been between 51 and 85 complaints each month. The Police also report escalation of disorder in that area.

The complaints are concerned with music and car motor noise, driver behaviour, vandalism, anti social behaviour, violence and breaking bottles through to the early hours of the morning at Oriental Bay with most complaints being received on Friday and Saturday nights. The level of disorder and disruption has been escalating with anti-social activity based at the triangular “green” between Oriental Parade and Oriental Terrace adjacent to the toilets and the wishing well.

Some of this offensive behaviour is associated with liquor consumption taking place in cars, on the beach and on footpaths. Because the problems are broad ranging across disorder, traffic, litter and vandalism the responses must also be comprehensive and cohesive.

A multi faceted response has been put in place at Oriental Bay with Council officers working closely with the Police and residents. Initiatives have included the installation of CCTV, increased presence of Walkwise and cleaning staff in the area, traffic calming initiatives, increased cleaning and immediate responses to noise complaints (rather than having a 15 minute stand down before responding). The Police have increased their presence in the area and perceive the area as a priority in managing crime and safety in the city.

A component of the plan to manage the area includes the use of a liquor ban which will complement the other initiatives. An extension to the liquor ban should not be seen in isolation and will not on its own solve the problems, but rather is one more mechanism to ensure an appropriate and timely response to problems as they occur at Oriental Bay.

The Liquor Control Bylaw is concerned with addressing a gap in measures aimed at managing anti social behaviour associated with liquor consumption. It supports the current strategic outcome that people feel safe at all times and also the draft strategic outcomes around Wellingtonians feeling safe in the city, being healthy and experiencing a high quality of life. A liquor ban is an early intervention tool that prevents the possession and consumption of liquor in public places with a view to preventing or reducing the downstream effects of alcohol consumption.

3 Is A Bylaw The Most Appropriate Way To Address The Problem?

The current Bylaw provides for early intervention to manage the downstream effects of liquor consumption in public places. By extending the provisions of the Bylaw to apply to Oriental Bay, an additional mechanism is in place to support safety and address some of the anti-social behaviour. Concerns have also been raised about the potential for offensive behaviour problems migrating to public places beyond Oriental Bay, particularly in the Mt Victoria area. Event-bans have been applied in the past to pre-empt offensive behaviour escalating in this area.

Though the Police, in 2006, did not consider a ban to be necessary in these areas, Police now consider a ban would offer significant assistance in managing and responding to disorder and concerns.

The Police are intervening if offending occurs. However regardless of whether offending has occurred Oriental Bay residents and visitors feel unsafe and intimidated. Some residents report that they are fearful in their own homes and are often frightened by the activities that can be heard and seen on the beach and roadways to the extent of not being able to leave their homes. Broken glass, other litter and groups that congregate to drink contribute to a growing sense of unease in the area. A liquor ban gives the Police a proactive early intervention tool to support responses in the area and to mitigate the downstream effects of liquor related behaviour.

The Summary Offences Act 1981, Crimes Act 1961 and Sale of Liquor Act 1989 establish offences for some liquor-related behaviour. However it is appropriate to pre-empt situations arising before offending occurs particularly at times where there is a higher risk of disorder.

Up until the introduction of the Liquor Control Bylaw, there were no similar policies or programmes to manage alcohol-related behaviour arising from drinking in public places. A ban on possession and consumption of liquor in public places sits alongside a range of initiatives that contribute to a safe and vibrant city.

It is recommended that Council agree that a bylaw remains the most appropriate way to address the perceived problem of drinking in public places.

4 The Most Appropriate Form of Bylaw

Councillors agreed that the current Liquor Control Bylaw is the most appropriate form of Bylaw in their deliberations in 2006. This proposal does not amend the current Bylaw clauses, but extends the area to which it applies so that it has effect in Oriental Bay and Mt Victoria. The Police are firmly of the view that the extension will be a useful tool and also that it should be consistent with the current Bylaw in terms of times and days. They consider that enforcement would become more complex should different times and days apply to different areas. However consideration can be given to amending the Liquor Control Bylaw so that it comes into effect at 8pm instead of 5pm on each of Thursday, Friday and Saturday nights. To do so allows for some social drinking in the late afternoon.

The Proposed Liquor Control Bylaw Amendments

The proposed amendments to the Liquor Control Bylaw will prohibit the consumption and possession of liquor in public places in Oriental Bay and Mt Victoria, as depicted in the map attached to the draft bylaw. It applies on Thursday, Friday and Saturday nights from 5pm to 8am the following day, and every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day.

The Liquor Control Bylaw does not apply to encroachments or to licensed premises with pavement leases. The LGA 2002 provides that a bylaw does not prohibit carrying unopened liquor from licensed premises or to licensed premises provided the liquor is removed from the public place promptly.

There are some events for which consumption of liquor is responsible, well controlled and integrated with the event. There is provision for events organisers to apply to the Council for dispensation from the ban on those occasions when those events fall within ban times. To date, no exemptions have been sought from the Liquor Control Bylaw.

The attached draft bylaw (which includes the amendments) prohibits the consumption, possession and bringing of liquor to public places in the Wellington central area, Oriental Bay and Mount Victoria as shown in the map attached to the bylaw. The Bylaw

- applies each Thursday, Friday and Saturday night from 5pm to 8am the following day;
- applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm through to 8am the following day
- allows for Council to resolve to invoke bans that prohibit the consumption and possession of liquor for specified events or periods in specified public places.

5 NZ Bill of Rights Act 1990 - Implications

Legal advice concludes that the proposed Liquor Control Bylaw amendments do not place unreasonable limitations on any rights established under the Bill of Rights Act 1990. The conclusions regarding the extension of the bylaw area to cover Oriental Bay and Mt Victoria have not changed from when the bylaw was initially made. No complaints from the public about the current Bylaw have been received by Council or the Police.

6 Liquor Control Bylaw Evaluation

Awareness of the current Bylaw is high and people report feeling safer knowing that a ban on public place drinking exists in the Central City on Friday and Saturday nights (although that is not reflected in Resident's Satisfaction Survey data on perceptions of safety). There is high overall support for the current ban. Data shows that retailers and residents support the ban and Police believe the ban is an effective tool for managing an increasingly active inner city.

The evaluation reported that Friday and Saturday continue to be the worst days of the week with Thursday emerging as the next most consistently problematic night for offending linked to drinking in public places. Offenders who state their last drink was taken in a public place are most likely to be arrested for disorder offences and whilst a time scale comparison shows the percentages have declined since the current bylaw has been enforced, it remains the highest offence category for offending linked to liquor consumed in public places.

That said, the Police advise that the Liquor Control Bylaw has been effective in managing the downstream effects of liquor related problems in the inner city. Wellington has an increasingly active inner city and this activity needs to be balanced with measures implemented to improve safety.

7 Implementation Issues

Enforcement

As provided in section 169 of the LGA 2002, the Police will continue to be responsible for the enforcement of the bylaw. The Police can:

- search a container or vehicle entering a public place
- seize and remove the liquor if the liquor is in breach of the bylaw
- arrest a person who has been asked and refused to either leave a public place or surrender liquor that is in breach of the bylaw.

Publicity and Signage

The signage in place for the current bylaw will be updated as required following Council's final decision.

WELLINGTON CONSOLIDATED BYLAW 1991**PART 23 – LIQUOR CONTROL**

This part of the bylaw prohibits the consumption and possession of liquor in public places from 5pm each Thursday, Friday and Saturday until 8am the following day. In addition, the prohibition applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day and occasionally during special events. It applies to the Wellington Central area, Oriental Bay and Mt Victoria as shown on the attached map. The bylaw includes a process to obtain prior Council written permission to authorise events that would otherwise breach the bylaw. The Council will erect signage to communicate the terms of the bylaw to the public.

The purpose of this bylaw is to address concerns relating to potential criminal offending and safety concerns that are linked to the possession or consumption of liquor in public places. By imposing this ban, the consumption of liquor within the central area and Oriental Bay should primarily be restricted to private residences or licensed premises on Thursday, Friday and Saturday nights.

The bylaw is introduced pursuant to s147 of the Local Government Act 2002 – this section should be read together with this part of the bylaw as it contains relevant definitions and the situations when this bylaw control will not apply (particularly relating to the transportation of unopened liquor). Pursuant to s169 and s170 of the Local Government Act 2002, the Police can enforce this part of the bylaw. Further details on the statutory provisions are provided as a note at the end of this part of the bylaw.

DEFINITIONS

Wellington Central Area means the area inside the boundaries depicted in the attached map but excluding:

- a) Any area that is subject to a road encroachment issued by the Council;
- b) Any licensed premises that occupies a paved area on legal road or Council land where permission to occupy has been granted by the Council.

23.2 LIQUOR PROHIBITION

23.2.1 The consumption or possession of liquor in a public place (including while in a vehicle), is prohibited within the Wellington Central Area, Oriental Parade and Mt Victoria as shown on the attached map. This prohibition is effective from 5pm Thursday to 8am Friday, 5pm Friday to 8am Saturday, 5pm Saturday to 8am Sunday. The prohibition also applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day

23.2.2 In addition to the prohibition in Clause 23.2.1 above, the Council by resolution may order a prohibition on the consumption or possession of liquor (including while in a vehicle) in a public place for certain specified times and/or within certain specified public places for specified special events. The prohibition must be notified in the appropriate Wellington metropolitan newspaper at least 14 days in advance of the special event.

23.3 COUNCIL PERMISSION

23.3.1 Any person may apply to the Council for prior written permission for any activity that would be in breach of any prohibition under this part of the bylaw.

23.3.2 The process for obtaining the Council's permission is outlined in Part 1 (Introduction) of this bylaw.

23.4 SIGNAGE

23.4.1 The Council will erect signage within public places covered by this bylaw to provide information to the public on the terms of the bylaw. The size, location and terms of this signage shall be at Council's discretion. To avoid any doubt, the absence of signage in any public place does not authorise breach of this part of the bylaw.

23.5 OFFENCES

23.5.1 Everyone commits an offence who:

- a) Consumes or possesses any liquor in a public place in breach of a prohibition under this part of the bylaw; and
- b) Breaches, or permits a breach of, the terms of any Council permission granted pursuant to clause 23.3 of this bylaw.

Note: This bylaw is introduced pursuant to the specific empowering provisions of the Local Government Act 2002 that provide for bylaws for liquor control purposes. This bylaw does not repeat or paraphrase those statutory provisions, and accordingly those provisions should be read in conjunction with this bylaw. In particular, the following provisions are noted:

Section 147 empowers the Council to make this bylaw. It also defines 'liquor' and 'public place'. In addition, s147(3) sets out a number of specific exemptions when the bylaw will not apply with respect to the transportation of unopened bottles or containers.

Section 169 provides the Police with powers of search and seizure, without warrant, to enforce the bylaw. The Police are responsible for enforcing the bylaw.

Section 170 sets out certain conditions imposed on the Police powers of search under s169.

This bylaw has no effect on any other Police powers of search, seizure and arrest or any other statutory offences.

Wellington Liquor Control Area,

