

## **SUMMARY OF INFORMATION IN THE STATEMENT OF PROPOSAL CONSOLIDATED BYLAW REVIEW**

The Council has reviewed the Consolidated Bylaw 1991 parts relating to the following:

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

For the purposes of this review, the areas covered by the above bylaws are collectively termed 'open spaces'.

After conducting the review, the Council is proposing to amalgamate relevant provisions from the previous bylaw parts into the Public Places Bylaw to regulate the management and protection of different types of open spaces. A multiplicity of bylaws that have a similar purpose can cause confusion and lead to inconsistencies in the Council's approach to enforcing rules for the public places under its control. The provisions that need to be retained from the bylaws listed above can be preserved by amending the Public Places Bylaw. The existing provisions of the Public Places Bylaw are not being reviewed as this bylaw was adopted recently (July 2004).

The Council is authorised under the Local Government Act 2002, and the Reserves Act 1977 to make bylaws for the purposes of managing public places, and for protecting associated amenities, structures and infrastructure from damage, misuse or loss. The Council is also authorised to make bylaws under the Burial and Cremation Act 1964.

The Council is keen to know what residents, ratepayers and stakeholders think about matters that have been identified in the course of the bylaw review and the proposed amendments to the Public Places part of the Wellington City Council Consolidated Bylaw 1991.

Information, along with a submission form, can be obtained from the Council libraries, service centres and contact centre. They are also available online at [www.wellington.govt.nz](http://www.wellington.govt.nz)

**Submissions open Tuesday 1 April 2008 and close at 4pm Friday 2 May 2008.**

## STATEMENT OF PROPOSAL

### Wellington City Council Open Spaces Bylaws Review And Amendment to the Public Places Part Wellington Consolidated Bylaw

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## 1. Introduction – Reasons for reviewing the open spaces bylaws

This *Statement of Proposal*, relates to the review of the Wellington City Council's bylaws for open spaces. The objectives of the review are:

- to ensure that appropriate rules exist for the management and protection of open spaces and associated assets and amenities,
- to support Council policies relating to the control of public places.

The Council is reviewing the bylaw to meet the requirements of the Local Government Act 2002 (LGA). The LGA requires the Council to periodically review all of its bylaws; otherwise they cease to be enforceable. The review process helps ensure that the bylaws are effective, efficient and relevant regulations.

The bylaw review aims to:

- *streamline the rules that apply to open spaces.* The Consolidated Bylaw 1991 has several parts that relate to open spaces and public places. This can create confusion and potential for inconsistencies. Combining these parts will simplify the bylaw rules. Amending the Public Places bylaw will achieve this objective. A more comprehensive Public Places Bylaw will be helpful during future reviews, which the Council is required to undertake on a regular basis. The proposed new Public Places bylaw includes the provisions in the current Public Places bylaw and provisions that are carried over from the open spaces bylaws that have been reviewed. The proposed amended Public Places bylaw is attached as Appendix 1.
- *update the controls affecting open spaces.* The bylaws that have been reviewed contain provisions that are obsolete. This can occur following changes in legislation and Council policy. Revoking the old bylaws removes the obsolete provisions. The bylaws that the Council proposes to revoke can be found in Appendices 2, 3, 4, 5 and 6.
- *introduce rules that are needed to protect the wider community because alternative statutory controls do not exist.* A bylaw can be a useful mechanism to support the Council policies by providing enforcement powers. Many enforcement powers are found in statutes such as the Crimes Act 1961, the Summary Offences Act 1981 or the Local Government Act 2002. Where a problem that requires enforcement action isn't covered by a statute, a bylaw can be used to protect public places and the interests of the community.

The Council proposes to amend the Public Places Bylaw (Part 17 of the Consolidated Bylaw) to include provisions being carried over from the four bylaws being reviewed.<sup>1</sup> The existing provisions in the Public Places Bylaw are not being reviewed and are not being changed to an extent that materially affect an existing right, interest, title, immunity or duty of any person who is subject to those provisions. These provisions are shaded so as to focus on the clauses that are being reviewed, which are not shaded.

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<sup>1</sup> The four open spaces bylaws being reviewed are Cemetery and Cremation (Part 5), Harbour, Marinas and Foreshore (Part 11), Reserves (Part 16) and Smoking Ban in Cable Car lane (Part 17B).

## 2. Have your say

Wellington City Council is keen to know what you think about the matters covered by this review. Anyone can make a submission on the issues covered by the review. If you wish to make a submission, please ensure that you include the following information:

- your name, postal address, phone number, fax number and email address (if applicable)
- your submission, with reasons for your views
- any changes you would like made
- whether you wish to speak to the Council in support of your submission.

A submission form is attached to help you.

Councillors will consider all the submissions before making a decision on whether to adopt the proposed bylaw. The process and timetable for conducting this review is shown in section five of this document.

Please fill in the attached submission form or make a submission on line at [www.wellington.govt.nz](http://www.wellington.govt.nz) or email your submission to [policy.submission@wcc.govt.nz](mailto:policy.submission@wcc.govt.nz)

Submissions can be sent to:

Freepost WCC  
Open Spaces Bylaws Review Consultation  
Policy Unit  
Wellington City Council  
P O Box 2199  
Wellington

Submissions open Tuesday 1 April 2008 and close at 4pm Friday 2 May 2008.

## 3. Background

### 3.1 Bylaws being reviewed

This review covers the following parts of the Wellington City Council's Consolidated Bylaw:

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

These bylaws were made under provisions in the Local Government Act 1974, that have since been repealed. The Local Government Act 2002 (LGA) requires the bylaws to be reviewed prior to 1 July 2008 or they will be considered revoked. All bylaws made under the LGA 2002 are required to be regularly reviewed.

The bylaws being reviewed provide the Council with tools to:

- Protect the public from nuisance
- Protect, promote and maintain public health and safety
- Minimise the potential for offensive behaviour in public places
- Regulate advertising that is visible from a public place
- Control cemeteries, reserves, recreation grounds and other land (and associated amenities, structures, etc) that is under the Council's control.

#### **3.1.1 Cemetery and Cremation Bylaw (Part 5 – Consolidated Bylaw),** (see Appendix 2)

Most of the provisions in the Cemetery and Cremation Bylaw cover user information and operational policies that are provided in a more appropriate format in the *Wellington Cemeteries and Crematorium Handbook*. This form of communication is more user-friendly than a bylaw and can be updated without being subject to the statutory processes that apply to bylaws.

Many provisions were found to be unnecessary as they prescribe details such as the types of forms to be completed to access cemetery related services. These are operational issues that do not need to be captured in a bylaw. The form and much of the content of the bylaw is now obsolete and below the LGA bylaw making standard (refer to 4.1 of this report for LGA requirements).

The proposed bylaw will continue to enable the Council to minimise the potential for offensive behaviour, control activities in cemeteries and also has cemetery-specific provisions.

### **3.1.2 Harbour, Beaches and Foreshore (Part 11 Consolidated Bylaw)**

(see Appendix 3)

Much of the Harbour, Beaches and Foreshore Bylaw was found to be either unnecessary or obsolete due to the effect of other statutes. Some of its provisions fall within the Summary Offences Act 1981 and other provisions are invalid because they relate to areas outside of the Council's territorial jurisdiction<sup>2</sup>.

The proposed bylaw will continue to enable the Council to minimise the potential for offensive behaviour, control activities on beaches and also provides some specific provisions relating to managing beaches.

### **3.1.3 Commercial Sex Premises (Part 17A Consolidated Bylaw)**

(See Appendix 4)

Sub part 2 of the Commercial Sex Premises bylaw banned commercial sex premises from the Courtney Character Area. Sub parts 3 – 5 of this bylaw regulated forms of advertising for commercial sex premises that could be viewed from a public place.

Sub part 2 of this bylaw has been superseded by a District Plan change that made new commercial sex activities a Discretionary Activity (Unrestricted) in the Courtenay Character Area. This means that a resource consent is required for any new activities.

Sub parts 3 – 5 of this bylaw have been carried into the proposed bylaw and follow an existing clause entitled 'Hoardings, Posters and Notices'. The purpose of retaining sub parts 3 - 5 is to—

- (a) prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or is incompatible with the existing character or use of that area<sup>3</sup>,
- (b) protect the public from nuisance that is likely to be caused by distribution of flyers and touting for commercial sex services, and
- (c) minimise the potential for offensive behaviour.

### **3.1.4 Smoking Ban in Cable Car Lane (Part 17B Consolidated Bylaw)**

(See Appendix 5)

The Smoking Ban in Cable Car Lane Bylaw has been carried into the proposed bylaw, and is alongside a clause from the Harbour, Beaches and Foreshore bylaw that prohibits smoking in a public place adjacent to dangerous goods.

The Smoke-free Environments Act 1990 does not control smoking in public places and expressly states (section 20) that the Council can use the bylaw powers in the LGA to prohibit smoking in public places. There is growing public debate about whether it is appropriate to restrict smoking in certain public places. For example, some councils discourage smoking in/near playgrounds by installing signage – although such measures are not enforced through a bylaw.

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<sup>2</sup> Marine reserves are managed by the Department of Conservation. See s 149 LGA 2002 for the power of regional councils to make bylaws. The Council's jurisdiction terminates at the mean high water tide mark.

<sup>3</sup> There are two statutes that enable the Council to make a bylaw to control signage for commercial sex premises; namely section 684 (xv) of the Local Government Act 1974 and section 12 of the Prostitution Reform Act 2003.

# APPENDIX 1

The Cable Car Lane Smoking Ban was imposed by the Council in 2002 as the area was identified as being a problem because it is enclosed. This characteristic contributed to the accumulation of cigarette butts and a concentration of second-hand smoke, which detracted from the quality of the Lane's environment. The concentration of cigarette smoke also posed a health-risk to non-smokers who use the area. The balcony above Cable Car Lane was excluded from the bylaw.

The Council has been asked to extend the smoking ban to include the balcony above Cable Car Lane. A review of the balcony's status has shown it to be an encroachment for the first-floor bar (Concrete) and is subject to the Smoke-free Environments Act 1990. A bylaw cannot over-rule the effect of a statute and the reference to the balcony in the bylaw serves to clarify its legal status. The Council understands that the use of the balcony by smokers does not breach the Smoke-free Environments Act 1990.

No new smoking-prohibited zones are proposed in the amended bylaw because the Council has not considered adopting a policy on smoking in public places and has no plan do to do so at this time. However, this review does provide the Council with an opportunity to invite comments on whether smoking controls should be extended. Feedback on this wider issue could inform the Council's consideration of this wider issue. If the Council wishes to control smoking in public places the bylaw can be changed, in accordance with the bylaw making processes that are explained in section 4.

### **3.1.5 Reserves (Part 16 Consolidated Bylaw)**

(See Appendix 6)

There are many types of public places and open spaces that the Council controls. Enforceable rules are needed to enable the Council to manage these areas, minimise conflict between users, protect the places and associated amenities. Many of the provisions in the Reserves Bylaw are still needed by the Council for reserves and other public places. As already noted above, a separate bylaw for reserves would involve unnecessary duplication of rules and this raises the possibility of confusion as to which bylaw would apply.

Carrying the provisions that are needed from the Reserves bylaw into the Public Places bylaw, by way of an amendment, facilitates easier understanding by the community and enforcement by the Council.

This review covers the first seven clauses of the Reserves Bylaw and excludes the swimming pool clauses as they have been reviewed as part of the development of the proposed Local Public Health Bylaw 2008.

## **3.2 Bylaw to be Amended - Public Places (Part 17 Consolidated Bylaw)** (See Appendix 7)

The Public Places Bylaw has not been reviewed because it was made in 2004, pursuant to the Local Government Act 2002, where-as the open spaces bylaws were made pursuant to repealed provisions in the Local Government Act 1974, and other statutes. However, the process to amend the bylaw, such as is proposed requires public consultation. This is explained below.

Minor changes are proposed to the original provisions in the Public Places Bylaw that do not materially affect an existing right, interest, title, immunity or duty of any person who is subject to those provisions. Examples of such minor changes include references to the Council's Footpaths Management Policy and Trading in Public Places Policy, which were adopted after the bylaw was made in 2004. The proposed Public Places Bylaw will also look noticeably different from the current bylaw as a result of including provisions from the five open spaces bylaws that are being reviewed.

One issue within the original Public Places Bylaw that is being reviewed is the most appropriate controls for notifying the Council of activities that organisers want to hold in public places. The Council also seeks to remove any conflict and overlap in clauses concerning the notification and permission processes for **organised events** in public places<sup>4</sup>. While the Council supports a broad range of activities that contribute to a vibrant environment, it needs an **administrative** process to ensure that activities in public places can occur safely without interfering with traffic and pedestrian movement and to ensure multiple events are not competing for use of the same space at the same time.

The proposed bylaw in Appendix 1 is cross referenced using the chapter and clause numbers for clauses that originate in one of the other parts of the Consolidated Bylaw.

**The Council does not intend to consult on the provisions in the proposed bylaw that are derived from the current Public Places Bylaw as it was made relatively recently and is not scheduled for a substantive review until 2014. The whole bylaw is shown for clarity and completeness; however the parts that have been shaded are not part of this review.**

This scheduled review date is not extended by amending the bylaw in the manner that is proposed.

## **3.3 Legislation**

Bylaws are subordinate to statutes that have been enacted by Parliament. This means that a bylaw depends on clear legal authorisation in a statute to be enforceable. It also means that a bylaw cannot contradict the authority of a statute. Some legislative requirements are mandatory, which means the Council is required to do something stated in a statute. Other provisions are enabling, which means the Council has discretion whether to do something allowed in a statute.

There are several statutes that apply to the proposal to amend the Public Places Bylaw as shown in Appendix 1:

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<sup>4</sup> See clauses 6 and 7 of the proposed bylaw.

### **3.3.1 The Local Government Act 2002**

The LGA is the most important statute because it states what issues can be controlled through a bylaw and the *process* that the Council must follow to make a bylaw. A number of other statutes that also provide bylaw making authority usually require the Council to follow the LGA 2002 bylaw making process. The process requirements are explained in the next section.

### **3.3.2 The Local Government Act 1974**

Parts of this statute remain in force and this enables the Council to make bylaws under its provisions.

### **3.3.3 The Reserves Act 1977**

The Council is required to observe certain procedural requirements found in the Reserves Act 1977 when making bylaws that affect land that is covered by this statute.

### **3.3.4 The Burial and Cremation Act 1964**

Although the Local Government Act 2002 has specific bylaw making provisions that apply to cemeteries, the Council is also required to observe a procedural requirement in the Burial and Cremation Act 1964.

### **3.3.5 The Smoke-free Environments Act 1990**

This statute enables the Council to make bylaws to control smoking in public places.

### **3.3.6 The Prostitution Reform Act 2003**

This statute enables the Council to make bylaws to control signage for commercial sex services. Usually the Council is barred from making bylaws that are inconsistent with the NZ Bill of Rights Act 1990<sup>5</sup>, however this requirement does not apply to bylaws made pursuant to the Prostitution Reform Act 2003<sup>6</sup>.

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<sup>5</sup> Section 155 (3) LGA 02.

<sup>6</sup> Section 13 Prostitution Reform Act 2003.

## 4. Bylaw Making Procedures

### 4.1 Local Government Act 2002 requirements

Part 8 of the LGA 2002 requires councils to periodically review all their bylaws using the process found in section 86. Section 293 of the LGA 2002 provides validation of bylaws that were made under repealed provisions of the Local Government Act 1974; however as this validation expires on 30 June 2008, old bylaws need to be reviewed if they are to continue to be enforceable.

Section 155 requires the Council to consider whether a bylaw is the most appropriate way of addressing a perceived problem. A principle we have applied under section 155 is that duplication of statutory controls in a bylaw is unnecessary and unhelpful. It is not the role of the Council to regulate matters covered by legislation. Doing so could result in different compliance thresholds and different approaches to enforcement. Application of this principle has also prompted an amalgamation of the four open spaces bylaws and the Public Places Bylaw.

Section 155 also requires the Council to consider whether a proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (BORA).

Section 156 requires a special consultative procedure contained in section 86 to be followed. This involves preparing a:

- *statement of proposal* that covers the points outlined in section 155, a draft of the proposed bylaw, a statement if any bylaw is to be revoked and the reasons for the proposal.
- *summary of the information* contained in the statement of proposal that must be a fair representation of the major matters in the statement of proposal and be distributed as widely as is reasonably practicable as a basis for general consultation.

Section 76 requires that when the Council is making a decision it considers and assesses practicable options, community views and whether the decision is inconsistent with or is likely to have effects that are inconsistent with the Council's policies.

### 4.2 What is the perceived problem?

There are several potential problems that confront the Council as the controller of various types of public land. The Council needs adequate powers to:

- have the ability to enforce Council policies and rules relating to public places
- protect, promote and maintain public health and safety
- minimise the potential for offensive behaviour in public places
- protect the public from nuisance
- inform the community of the rules that exist for the management and protection of all kinds of public places and associated amenities,
- be able to exclude people from public places so that the Council can manage, maintain and improve such places
- manage the risk of potential conflict between users of public places.

## **4.3 Is a bylaw the most appropriate way to address the problem?**

Bylaws have been used for managing land under the Council's control for many years and various statutes continue to make this form of control available to the Council. A bylaw continues to be widely regarded as an effective and efficient regulatory instrument to address the perceived problems listed above because people do not want to risk incurring the penalties that can be applied for breach of a bylaw.

Therefore, where no controls exist and there is a perceived need to protect the public or to minimise offensive behaviour in public places or minimise a threat to the effective management and protection of public places, amenities and infrastructure, a bylaw is the most effective way of addressing the problem.

A bylaw is a regulation that sets an enforceable standard of behaviour or a parameter for each issue under the broader purposes of that bylaw. Council officers retain managerial discretion over how best to exercise the powers in the bylaw and whether any breach warrants enforcement action. In situations where the Public Places Bylaw requires a person or group of people to obtain Council approval for an activity in a public place, the bylaw may need to be read in conjunction with the Reserves Management Plan.

A Reserve Management Plan is a plan that provides for and ensures the use, enjoyment, maintenance, protection, preservation, the development, of a specific reserve.

## **4.4 Most appropriate form of bylaw**

The proposed bylaw revises older bylaws and draws them together to improve their form and effect.

## **4.5 Bill of Rights implications**

The BORA expressly protects certain freedoms in NZ society. However such freedoms are not protected or enhanced by having no rules at all. The bylaw proposes certain controls to an extent that the Council considers to be in the interests of the community. The exercise of such controls is limited by the statute(s) that enable the Council to make a bylaw. Section 5 of the BORA also provides for the rights and freedoms contained in the BORA to be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

## 4.6 Assessment of options for LGA decision making requirements

The Council has identified the following options that arise from the review of the open spaces bylaws:

- Option 1      Status quo – multiple bylaws*  
The open spaces bylaws will lapse on 1 July 2008 if not reviewed by 30 June 2008. Section 293 of the LGA 2002 provides only a temporary validation of bylaws that were made under the LG 74, which terminates on 1 July 2008. Maintaining the controls that are lawfully available to the Council is considered desirable, however having separate bylaws gives rise to duplication, confusion and inconsistencies in managing problems in public places. Some changes are necessary because:
- (a) the form of the open spaces bylaws are no longer considered appropriate and,
  - (b) in some cases, the Council no longer has jurisdiction to make a bylaw.
- Option 2      Review the current bylaws and Amend the Public Places Bylaw (recommended)*  
The proposed bylaw draws together the various controls that Council requires to continue to effectively manage the lands under its control. It also avoids the disadvantages outlined in option one above.
- Option 3      Educational programmes (no bylaw)*  
The bylaws could be allowed to lapse. Instead of a bylaw the Council would rely on voluntary compliance to publications, notices and public education messages to manage the problems listed above. This option is not considered appropriate because the Council would lack recourse to enforcement powers.

## 4.7 Relationship to the Council's strategies

The proposed bylaw contributes to Wellington being a healthy place to live work and play. Table 1 illustrates the linkages of the proposed bylaw to community outcomes.

Table 1. Relationship to community outcomes

<p>Community Outcomes</p>	<ul style="list-style-type: none"> <li>• Opportunities for active and passive recreation are diverse, safe, affordable, accessible and attractive.</li> <li>• Wellingtonians will feel safe in all parts of the city.</li> <li>• Wellington will preserve and improve its parks, trees and open spaces.</li> <li>• Wellington city and its amenities will be accessible to all Wellingtonians</li> <li>• Wellingtonians will protect and have access to public green open spaces and the coast.</li> <li>• Wellingtonians will enjoy recreation and be amongst the most active in New Zealand.</li> <li>• Wellington's communities will have ready access to multi-use indoor and outdoor facilities and spaces.</li> </ul>
<p>The Council's Long Term Outcomes</p>	
<p>4.1 – More liveable 4.2 – Stronger Sense of Place 4.4 – Better Connected 6.3 – More Actively Engaged 6.4 – Better Connected</p>	<p>Wellington's natural environment will be accessible to all, for a wide range of social and recreational opportunities that do not compromise environmental effects.</p> <p>Wellington will recognise and protect significant features of its coastal and terrestrial landscape and natural heritage.</p> <p>Wellington will have a network of green spaces and corridors linking the coastline, Town Belt and Outer Green Belt.</p> <p>Wellington residents will be actively engaged in their communities, and in recreation and leisure activities.</p> <p>Wellington will offer excellent access to sound social infrastructure that supports high levels of social cohesion.</p>
<p>Why the activity is important</p>	<p>The Council needs to exercise effective control of public land that it holds for the community. The proposed amendments to the Public Places Bylaw provide the Council with appropriate tools to manage the use of, control and protect public places.</p>

## 5. Process and timeline

The proposed bylaw has been developed through internal consultation with Council officers from Policy, Transport, Parks and Gardens, Open Spaces and Recreation Planning and Building Consents & Licensing.

External consultation will be undertaken in terms of the special consultative procedure required under section 86 of the Local Government Act 2002.

The timeline for the bylaw review is as follows:

6 – 27 March 2008	The Council considers the proposed bylaw and initiates the special consultative procedure as required under section 86 of the Local Government Act 2002.
1 April – 2 May 2008	Consultation period.
15 May 2008	Strategy and Policy Committee hears the oral submissions.
5 June 2008	Strategy & Policy Committee consider report on the special consultative procedure.
26 June 2008	The Council will reflect on the report from the Strategy and Policy Committee and consider the adoption of the proposed bylaw.

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## APPENDICES

APPENDIX 1	Proposed bylaw: Wellington Consolidated Bylaw 1991: Part 17 (Public Places)
APPENDIX 2	Bylaw to be revoked: Wellington Consolidated Bylaw 1991: Part 5 (Cemetery and Cremation)
APPENDIX 3	Bylaw to be revoked: Wellington Consolidated Bylaw 1991: Part 11 (Harbour, Beaches and Foreshore)
APPENDIX 4	Bylaw to be revoked: Wellington Consolidated Bylaw 1991: Part 17A (Commercial Sex Premises)
APPENDIX 5	Bylaw to be revoked: Wellington Consolidated Bylaw 1991: Part 17B (Smoking Ban in Cable Car Lane)
APPENDIX 6	Bylaw to be revoked: Wellington Consolidated Bylaw 1991: Part 16 (Reserves)
APPENDIX 7	Bylaw to be amended: Wellington Consolidated Bylaw 1991: Part 17 (Public Places)

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## Appendix 1 – Proposed Bylaw

### Wellington Consolidated Bylaw 1991 Part 17 – Public Places

*This part of the bylaw regulates a diverse range of activities. It seeks to maintain standards of public health and safety, protect the public from nuisances, minimise the potential for offensive behaviour and to manage various types of land associated with or under the control of the Wellington City Council for the well-being and enjoyment of the public in public places.*

#### 17.1 Definitions

In this Part:

“beach” means any beach which is from time to time vested in the Council or under its management or control;

“camping” means living or carrying out any other residential activity, whether temporary or permanent.

“cemetery” means any cemetery vested in or under the control of the Council from time to time.

“hoarding” means a board, including any frame or other supporting device, for displaying posters or notices announcing future events or for advertising or election purposes, but excludes sandwich boards.

“number” includes any alphabetic symbol attached to the number allocated by the Council.

“public place” means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward.

“refuse bin” includes skips, mini skips, wheelie bins, wheelie carts and any kerbside refuse and recycling containers.

“reserves plan” or “reserves management plan” has the same meaning as found in section 41 of the Reserves Act 1977.

“residential area” includes areas identified as residential in the Wellington City Council District Plan.

“street appeals” are coordinated and organised events by organisations who ask for, or seek, any subscription, collection or donation from members of the public. A street appeal will usually involve more than one collection person operating at the same time.

## **APPENDIX 1**

“street performance” is musical, dramatic or other performance, (including busking) involving musical, theatrical or circus performance skills including playing musical instruments, dancing, singing, clowning or juggling, pavement art, poetry or doing other acts of a similar nature in public places.

“trading” means the act of selling or trading, or offering to sell or trade goods or services, with or without use of a vehicle.

“vehicle access” means any section of legal road that facilitates the access of vehicles from private property to the formed carriageway, and includes that part of a driveway on private property that impacts on the point of entry onto or from legal road.

## Subpart 1 – Public Access

### 2. Council may set conditions

- |   | <i>Bylaw Reference<br/>(Part, Clause)</i> |
|---|---|
| 2.1 Subject to the provisions of this Bylaw, any other Act and any Instrument, all public places shall be open for use by the public at such times and at such charges and upon such conditions as the Council may prescribe or vary from time to time. | 16.3                                      |
| 2.2 The Council may set or vary conditions for use of a public place by resolution, or by licence with any person.  |   |
| 2.3 A person shall not use the public place in contravention of the conditions set by the Council regulating the use of the public place.   | 16.3.1<br>16.4.1                          |
| 2.4 A person shall not use a public place after closing hours.  | 5.10.1 (f)                                |

### 3. Restrictions affecting Public Access

- |  |        |
|--|--------|
| 3.1 The Council shall have the right to prevent any game being played or any other activity whatsoever being undertaken that is likely to damage the place or harm a person or which is otherwise undesirable, disorderly, or dangerous. | 16.5.1 |
| 3.2 The Council may close any public place at any time for the purpose of maintaining or improving it, or for holding sports matches or any other performances, or for any other purpose that the Council considers necessary or proper. | 16.5.2 |
| 3.3 The Council or a member of the police requested by the Council, may exclude or remove any person :   | 16.5.3 |
| a. Who has acted in a manner that is contrary to conditions of use set by the Council, or  |        |
| b. Who is not bona fide using the place for its normal intended purposes, or   |        |
| c. Who has contravened any of the provisions of this Bylaw, or   |        |
| d. For any good and sufficient reason relating to the efficient, reasonable, and fair management of the place.   |        |

### 4. Fees and Charges

- |   |  |
|---|--|
| 4.1 The Council may set fees and charges, either temporarily or permanently, as a condition for access to, or use of, any public place. Payment of such fees shall be a condition for access to or use of that place. | 5.20.1, 11.6.1,<br>11.11.1, 16.7.2,<br>16.7.3, 16.7.4,<br>17.5.2 (e) |
|---|--|

## Subpart 2 - Activities that require Council approval

### 6. Assembly

- 6.1 The organiser of an event, demonstration, competition, parade or procession, that is likely to interfere with traffic or pedestrian thoroughfare in a public place shall notify the Council as soon as reasonably practicable prior to the event. 17.3.1
- 6.2 After receiving notification, the Council will provide relevant traffic management information to the organiser and/or Police. 17.3.2

### 7. Activities in the road corridor

- 7.1 To minimise disruption to pedestrians and other users, written approval from the Council is required for the following activities: 17.2
1. Street Appeals and Charity Fundraisers
  2. Street Performances and busking
  3. Street events

*The Council's Footpaths Management Policy provides information on how to obtain approval for these activities in the road corridor.*

**See paragraph 3.2 of the Statement of Proposal regarding the review of clauses 6 and 7 of the proposed bylaw to clarify the controls for events that organisers want to hold in public places.**

### 8. Display of articles and trading

- 8.1 To minimise disruption to other users and enable the Council to manage public places written approval is required for the following: 17.5
1. Retails displays, kiosks and stalls 16.4.1. (m)
  2. Promotional signage
  3. Outdoor area special licences
  4. Trading
  5. Open air markets
  6. Private seating, furniture, etc associated with trading activities

*Note: The Council's Footpath Management Policy and / or its Trading in Public Places Policy provides information on how to obtain approval for these activities in public places.*

## **9. Hoardings, Posters and Notices**

- 9.1 Council approval is required for hoardings in public places. *17.4*
- 9.2 The approval of hoarding sites under this clause may be subject to conditions, including:
1. placement
  2. fees
  3. dates a hoarding may be erected
  4. approval of the hoarding design.
- 9.3 Hoardings erected without approval must be removed within 1 hour of being instructed to do so, or as otherwise specified by the Council.
- 9.4 Posters or notices displayed on hoardings shall be covered after the event and removed within 24 hours of the end of the event, or such other time as approved by the Council.
- 9.5 With the exception of approved hoardings under this clause, no one shall affix or place a poster or notice to any Council ornament, statue, structure, building, or facilities in a public place without the Council's prior approval. *16.4.1 g*
- 9.6 Responsibility for compliance with this part of the bylaw lies with the person who displayed the poster or notice, or the organiser, promoter or person in charge of the advertised good, service or event or, in the case of an election, the candidate or a delegate of that candidate.

## **10. Advertising for Commercial Sex Services**

- 10.1 Application must be made to the Council to place signage that advertises commercial sex services so as to be visible from any road or public place. *17A.3.1*
- 10.2 In exercising its discretion to grant permission, the Council may have regard to the following criteria:
1. the extent to which the signage depicts or implies sexual activity
  2. the extent to and manner in which the sign depicts nudity (the depiction of nudity is not encouraged)
  3. the size, number and cumulative effects of the signage
  4. the extent to which words and / or images could be offensive (The Council will decline applications for signage that are found to be offensive)
- 10.3 No person in a public place may tout for business or otherwise verbally advertise on behalf of any commercial sex services. *17A.5.1*
- 10.4 No person may distribute in any public place any handbills, writings or pictures of which the primary purpose, whether explicitly or implicitly, is to advertise, identify, or inform the public of commercial sex services. *17A.4.1*

## 11. Management of Adverse Effects

11.1 The following activities are prohibited in public places unless Council approval has been granted:

- |  |                        |
|--|------------------------|
| 1. Hunting game  | 16.4.1 (o)             |
| 2. Gathering food  | 16.4.1 (o)             |
| 3. Gathering firewood  | New                    |
| 4. Operating / driving a vehicle on a beach                              | 11.13.1                |
| 5. Carrying or discharging a firework, firearm, catapult or other weapon | 11.5.1 g<br>16.4.1 (r) |

**Note that these activities may be approved in a Reserve Management Plan**

## 12. Camping

12.1 A person must not camp in any public place except where a place has been set aside by the Council for the purpose of camping, or where the Council has issued written approval to camp, whether using a vehicle or not. 17.7

12.2 Applications will be considered for camping in public places for special purposes. Applications to the Council for prior written approval will be subject to the criteria outlined in this clause. The Council has a full discretion to determine whether approval should be granted for camping. Matters to be considered for camping applications:

1. the duration of occupation
2. the location (unless provided for in an applicable Management Plan, no camping is allowed in the Town Belt, parks and reserves, except for special purposes)
3. the number of people
4. the provisions to ensure that there is no damage or effects to the public place and
5. the reason why the camping is proposed.

*Note: The purpose of this clause is to address adverse effects of camping on public places. Specific issues relating to homelessness are addressed in the Wellington City Council Homeless Strategy.*

## **13. Road and Property Identification**

- 13.1 The Council shall have the right to cause to be painted or affixed on a building, the name of the road, private road or public place to which it has frontage. 17.8
- 13.2 The owner of every property, building or group of buildings forming part of a complex shall mark such property, building or complex with the number allocated by the Council, regardless of any other identification a property or building may have. The marking shall be:
1. at least 50mm in height and
  2. of a colour in contrast to its background and
  3. easily visible from the road to which it has frontage and
  4. maintained by the owner in a way that easily identifies the property at all times.
- 13.3 The requirement in this bylaw for an owner to mark a property, building or complex with the allocated number does not apply to:
1. property without buildings and
  2. property not allocated a number by the Council.
- 13.4 The owner of a newly subdivided property must inform a subsequent purchaser of the address allocated by the Council.
- 13.5 When the Council advises the owner of a property that an address needs to be displayed or changed, the owner must arrange to do so within 15 working days, or as otherwise instructed.

# APPENDIX 1

## 14. Traffic

- 14.1 The Council may under the provisions in this bylaw or under part 18 (Traffic) impose any controls relating to vehicles in a public place to give effect to the proper use and enjoyment of the place. *5.12*  
*5.10.1 (g)*
- 14.2 If a member of the police or an authorised Council officer believes it to be in the interest of safety or for the convenience or in the interest of the public or for the use and enjoyment, protection and preservation of the public place, he or she may direct the driver or person in charge of any vehicle in or on any public place to:
- remove the vehicle from any specified place, or *11.5.1 (g)*  
*11.5.1 (h)*
  - cease parking it in any specified or general place, or *11.13.1*
  - drive it in any area, *16.4.1 (a)*  
*16.4.1 (b)*  
*16.6*  
*17.13.1 (b)*  
*17.13.1 (h)*  
*17.13.1 (l)*
- 14.3 No person shall drive, stop, stand, or park any vehicle in any public place other than on any roadway or in any car park provided for the purpose, and then only in accordance with any controls or restrictions imposed by the Council.
- 14.4 No person shall drive, stop, stand, park or leave any vehicle in a public place in such a manner as to obstruct the normal or safe entry to, or exit from, or movement of other vehicles, or pedestrians within a public place.
- 14.5 Any vehicle, whether attended or not, in breach of this Bylaw or controls made under this bylaw may be removed by the Council in accordance with the Vehicle Removal provisions in Part 18 (Traffic) of the Consolidated Bylaw. *18.9*

## 15. Skateboards and Skates

- 15.1 Use of a skateboard, roller-skates or inline-skates in a public place is allowed, except in areas with signs stating otherwise. *17.6*
- 15.2 Every one who uses a skateboard, roller-skates or in-line skates shall ensure no damage is caused to Council property and shall show reasonable consideration for other persons using the public place.

## **16. Vehicle access**

- 16.1 The prior written approval of the Council will be required before any person constructs, repairs, removes, widens or narrows any vehicle access. 17.9
- 16.2 Before granting approval, the Council will consider what is reasonably necessary to:
1. ensure the safe and convenient use of the road by pedestrians and vehicles and
  2. protect the road (including any footpath or berm) adjacent to the vehicle access.
- 16.3 Approval granted by Council may be subject to conditions, including:
1. use of materials and dimensions
  2. timeframe for completion
  3. a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to the Council's property. The estimated cost of work shall be approved by the Council
  4. a requirement that the applicant is responsible for arranging the construction work to meet the approved conditions, and shall pay the costs
  5. a requirement that all construction work be carried out in compliance with the Wellington City Council Code of Practice for Working on the Road.
- 16.4 In setting conditions, the Council will have specific regard to the criteria in any codes of practice, Land Transport Safety Authority Guidelines or other standards that are currently in force within the Council's jurisdiction.
- 16.5 If the Council decides any vehicle access is in a bad or unsafe state of repair or there has been a significant deterioration or change in vehicle access use, the Council may by notice in writing, require the owner of the land which the crossing provides access to, to repair, reconstruct, renew or remove such access to the satisfaction of the Council.
- 16.6 It is the owner's responsibility to carry out any work required in the notice, and pay all costs.
- 16.7 If any vehicle access is constructed without the Council's prior written approval, or contrary to the terms of the Council's prior written approval, the Council may remove or alter that work located on the road. The Council's costs may be recovered from the person who undertook the work or the person(s) serviced by the vehicle access.

## **17. Encroachments**

- 17.1 No person shall put up any structure of any kind or undertake an excavation in a public place without prior written approval of the Council, and then only in compliance with any condition under which such approval may be granted. *17.12*  
*16.4.1. (l)*  
*5.8*
- 17.2 Any property owner ('the encroacher') may be authorised by the Council to occupy a public place controlled by the Council ('an encroachment'). The Council has discretion whether to authorise an encroachment by granting land owner consent and if required an encroachment licence to the applicant in accordance with any relevant Council policy. Relevant legal factors for the Council to consider when considering an application for an encroachment licence include whether the encroachment will: *17.10*
1. compromise the primary use of legal road to facilitate free pedestrian and traffic movement
  2. unreasonably interfere with a property owners' right of access to any road across the frontage between the road and private property.
- 17.3 An encroachment licence may authorise the occupation of the encroachment area for parking, boundary marking, airspace, subsoil or access structures, for the maintenance or beautification of the encroachment area, or any other purposes the Council considers desirable.
- 17.4 An encroachment licence issued by the Council shall be subject to such conditions that the Council considers appropriate, at the sole discretion of the Council.
- 17.5 The encroacher must own the land adjoining or in the vicinity of the encroachment area that benefits from the encroachment and continue to own this land for the period of the encroachment.
- 17.6 Any subsequent encroacher must complete a new encroachment licence with the Council in order to continue the occupation of the encroachment area.

## **18. Building work and excavations**

- 18.1 The prior written approval of the Council will be required before any person carries out building work or excavations on a public place. In setting conditions, the Council will have specific regard to the criteria in any codes of practice, Land Transport Safety Authority Guidelines or other standards that are currently in force within the Council's jurisdiction. *17.12*
- 18.2 Approval granted by the Council may be subject to conditions, including a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to the Council's property. The estimated cost of work shall be approved by the Council.
- 18.3 If any building or excavation work is carried out on a public place without the Council's prior written approval, or contrary to the terms of the Council's prior written approval, the Council may remove or alter that work. The Council's costs may be recovered from the person who undertook the work, or the person for whom the work was being done.
- 18.4 If any damage occurs to the place, the Council may require the place to be reinstated.

## **19. Fences, walls and stability of land**

- 19.1 The Council may require the owner of any land which has no fence, wall or retaining wall adjacent to a public place to erect a fence, wall or retaining wall if the Council considers that this is necessary for safety or other reasons relating to the use or administration of the public place. *17.11*
- 19.2 Where any fence, wall, retaining wall or land adjacent to a public place is in a condition or state of disrepair which could cause injury to persons or damage to a public place, the Council may give notice requiring the owner to repair, remove or replace the fence, wall or retaining wall, or make the land safe.

## 20. Animals

- 20.1 No person shall take any animal into a public place, except as provided in Part 3 of this Bylaw (Animals). 16.4 (f)  
5.10.2
- 20.2 No person shall ride or lead any horse or other animal in a manner likely to endanger any person. 11.5.1 (d)  
11.5.1 (e)

## 21. Litter and refuse

- 21.1 **Refuse collection services** 17.13.1 (g)  
No person shall collect or service refuse bins between 10pm and 7 am from a residential area or from sites that adjoin a residential area or face a residential area across a road.
- 21.2 **Cleaning of fish** 11.5.1 (i)  
No person shall, on any part of any public place clean or otherwise prepare any fish.

## 22. Sports and games

- 22.1 The organiser of any planned team games and sporting activities, marching drill, musical or other group activity in any part of a public place shall notify the Council as soon as reasonably practicable prior to commencing the activity. 16.4.1 (p)
- 22.2 The Council may require the organiser to agree to conditions for use of the public place.
- 22.3 A person must not, if contrary to any notice, or if expressly forbidden to do so by an authorised officer; 16.4.1 (u)
1. play a sport or game in a public place
  2. enter in or remain on any part of a public place marked out as a playing area for a sport or game while the sport or game is in progress

*Note: The purpose of this clause is to minimise conflict between users, ensure that a particular site is suitable for the proposed activity and enable the Council to manage any environmental impacts of the activity.*

## **23. Remove sand, soil or other matter**

- 23.1 No person may remove from a public place any soil, sand, gravel, rock, flora, fish, fauna, or any naturally occurring thing not previously left by that person without having obtained the prior approval from the Council. *11.5.1 (j)*  
*16.4.1 (k)*  
*16.4.1 (o)*  
*5.10.1 (c)*  
*17.13.1 (j)*

## **24. Smoking**

24.1 Smoking is prohibited in the following locations:

1. In proximity to dangerous goods in any public place, *11.13.6 (a)*
2. Cable Car Lane (except for the balcony extending from 284 Lambton Quay). *11.13.6 (b)*  
*17B*

## **Sub part 3 – Beaches**

## **25. Life saving equipment**

- 25.1 The Council may, at its discretion, authorise, on any beach, any volunteer life-saving club to: *11.10*
1. provide and use life-saving appliances and boats;
  2. use any such appliances and boats provided by the Council; and
  3. erect and, as may from time to time be necessary, remove from any place "Danger" notices

## **26. Protection of life saving equipment**

- 26.1 No person shall use, move or damage any appliance or signal provided by the Council or by any volunteer life-saving club, at any beach, except for the purpose of saving life or with the approval of the Council or the club. *11.9*
- 26.2 No person shall obstruct any member of a life-saving club in the conduct of their life-saving activities.

## Sub part 4 - Cemeteries

### 27. Preparation or maintenance of graves

- 27.1 All fences, enclosures, tombstones, vaults, headstones and other monuments on any plot shall be kept in proper order and repair by the purchaser of that plot or their representative. *5.7.1, 5.10.1 (b)*
- 27.2 Council may from time to time set the specifications for memorial hardware and structures that can be installed on plots.
- 27.3 Any memorial items, hardware or structures that do not comply with the Council's specifications or that have fallen into a state of decay or become broken or pose a hazard may, at any time, be removed from the cemetery by the Council.

### 28. Conduct in cemeteries

- 28.1 The following activities require Council approval. Council approval may be subject to such conditions as it deems necessary: *5.4, 5.7.3, 5.7.4, 5.8.1, 5.10.1 (a)*
1. Interments and disinterments
  2. Installing a fence, tombstone, vault or other monument on a plot
  3. Working in a cemetery

## Subpart 5 - Enforcement

### 29. Offensive behaviour

- 29.1 No person, in any public place, shall wilfully obstruct, disturb, annoy or interfere with any Council agent or officer in their work or any person in the use or enjoyment of any public place.
- 16.4.1 (n)*  
*5.10.1 (d)*  
*11.4.1 (f)*  
*11.4.1 (g)*  
*11.5.1 (a)*  
*11.5.1 (b)*

### 30. Offences

- 30.1 Every person who does not comply with any requirement or condition, or acts contrary to any prohibition, made in this bylaw, or made by resolution, commits an offence against the bylaw.

### 31. Exemptions

- 31.1 The prohibitions and restrictions contained in this part of the Bylaw shall not apply to any Council agent or officer when engaged in the performance of their regular duties.
- 31.2 An Iwi's customary rights are not affected by this bylaw.

## Appendix 2 - Bylaw to be revoked

### WELLINGTON CONSOLIDATED BYLAW 1991 PART 5 (CEMETERY AND CREMATION)

#### 5.1 INTERPRETATION

##### 5.1.1 In this Part:

"Beam Cemetery" means a cemetery where no enclosures, kerbings or monuments other than headstones shall be erected.

"Cemetery" means any cemetery vested in or under the control of the Council from time to time.

"Crematorium" means the crematorium maintained by the Council at the Karori Cemetery.

"Director" means the General Manager, Culture and Recreation Division, and includes his or her deputy.

"Double beam" means a beam of maximum 1020mm in width.

"Form" means a form contained in the Schedule to this Part.

"Grave" means any grave in any cemetery.

"Public holidays" means Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day, Boxing Day, New Year's Day and the day after New Year's Day, and Wellington Anniversary Day.

"Sexton" means any person for the time being appointed by the Council as Sexton and includes any person authorised by the Director or Council to undertake any of the Sexton's functions.

"Single beam" means a beam of maximum 800mm in width.

"Working hours" means the working hours Monday to Friday inclusive between the hours of 8.00am and 4.15pm.

#### 5.2 MANAGEMENT OF CEMETERIES AND THE CREMATORIUM

5.2.1 All cemeteries and the crematorium shall be under the management and control of the Director subject to the direction of the Council.

#### 5.3 BURIALS

5.3.1 Subject to this Part of the Bylaw, burials may be made in any cemetery.

5.3.2 In those parts of the Karori and Makara Cemeteries set aside as the Children's section, both burials and interments of ashes of persons of and under the age of 11 years are permitted.

#### 5.4 PROCEDURE FOR BURIALS

5.4.1 The person having management or control of an intended burial shall apply in Form N to the Sexton for the right to bury and shall deliver the application to the office of the Sexton at Karori Cemetery no less than 8 working hours before the time fixed for the burial.

## **5.5 BURIAL TIMES**

5.5.1 Normally, burial shall take place Monday to Friday inclusive between the hours of 8.00am and 4.15pm. Burials on Saturday 8.30am to 12.00noon, and Sunday 8.30am to 12.00noon provided that in the case of burials on Saturday, Sunday and Public Holidays, the Director may charge for the actual costs of the Council in providing its services with respect to that burial.

## **5.6 PURCHASE OF BURIAL PLOTS**

5.6.1 Any person may prepurchase a burial plot in the Beam Cemetery or Memorial Park at Makara Cemetery provided it adjoins an existing burial plot. Provided, however, that more than one plot may be prepurchased if the plots to be purchased adjoin the existing burial plot of a deceased relative of the purchaser. The location of the plot shall be in accordance with the conditions in Clause 5.13.

5.6.2 Subject to subclause 5.6.4, before a burial may proceed, application for the purchase of a plot shall be made on Form M or L as the case may be and lodged at the Sexton's Office, Karori Cemetery.

5.6.3 Any purchaser of the exclusive right of burial in any plot may, with the Council's consent, transfer his or her interest in that plot to any other person upon payment to the Council of the prescribed fee whereupon the Council shall issue a receipt in Form O, P or Q as the case may be.

5.6.4 Any application in Form M or L shall lapse unless purchase is completed by payment within one month from the date of the application.

5.6.5 Burial pursuant to clause 5.6.7 shall take place in such plot in the Karori Cemetery as the Sexton shall determine. No fence or headstone shall be erected on the plot unless the exclusive right of burial in perpetuity has been purchased. The ashes of any deceased poor person who has been cremated shall be disposed of in accordance with Form I, at the Karori Cemetery only.

5.6.6 Any relative or friend of a person so buried may, at any time within five years from the date of burial, or such longer period as the Director shall approve, purchase the exclusive right of burial in perpetuity in such plot.

5.6.7 Where the officer in charge of any hospital, or penal or other public institution, certifies that a deceased poor person from that institution has not left sufficient means to pay for his or her cremation or burial, the Director may permit the person to be buried or cremated at the prescribed reduced rate, and where a Justice of the Peace, Solicitor or the Public Trustee so certifies in the case of any other deceased poor person, in accordance with section 49 of the Burial and Cremation Act 1964, the Director shall permit the person to be buried or cremated free of charge.

## **5.7 PREPARATION AND MAINTENANCE OF GRAVES**

- 5.7.1 All fences, enclosures, tombstones, headstones and other monuments on any plot shall be kept in proper order and repair by the purchaser of that plot or his or her representatives or assigns, any such erections which are in a state of decay or broken down may, at any time, be removed from the cemetery by order of the Director.
- 5.7.2 No tree or plant shall be planted in any cemetery by any person without the prior approval of the Director.
- 5.7.3 A purchaser of the exclusive right of burial in the Karori, Bolton Street, or Sydney Street cemeteries may erect a fence, tombstone or other monument provided that a plan of it together with a copy of every proposed epitaph or other inscription shall have been submitted to the Director or approved by him in writing. All foundations for walls, fences, tombstones, headstones, monuments and vaults shall be laid to the Sexton's satisfaction. No wooden fence shall be erected unless of durable timber approved by the Director.
- 5.7.4 Subject to the preceding subclause, no person shall erect any structure in any cemetery without a permit in Form R and such permit may be issued subject to conditions as the Director may think fit.
- 5.7.5 No monumental mason or other person doing any work in any cemetery shall place any tools, planks, or other material, on any footpath or other part of the cemetery for a longer time than is reasonably necessary for the purpose of completing such work.
- 5.7.6 No person may, in any cemetery, remove any soil from any vacant plot for the purpose of filling in any other grave.

## **5.8 VAULTS**

- 5.8.1 Any purchaser of an exclusive right of burial in perpetuity in any plot may, by permission of the Director, excavate it to the boundaries of the plot for the purpose of constructing a vault. This clause shall not apply in the Makara Beam or Lawn cemeteries.
- 5.8.2 Before any work is commenced towards the construction of any vault, plans and specifications of the work shall be submitted to the Director for approval. No work shall be commenced until such written approval has been obtained.
- 5.8.3 The vault shall be lined so as to prevent the escape of any noxious exhalation, to the satisfaction of the Director. The purchasers of an exclusive right of burial or their representatives or assigns shall ensure that the entrance to the vault shall be securely fastened.
- 5.8.4 The purchasers or their representatives or assigns shall ensure that a duplicate key of each vault shall be deposited with the Sexton.
- 5.8.5 Any casket for a vault shall be lined with a minimum of 2 kilos (5lb) of lead

or other approved metal, and shall be firmly and securely soldered; but any casket not lined with lead or other approved metal may be laid in a vault or grave if it is sufficiently covered in with concrete to prevent any disagreeable smell or risk to public health.

- 5.8.6 All vaults shall be kept in proper order and repair by the purchasers or their representatives or assigns. If at any time any vault shall cease to be in proper order or repair, the Director may give the purchaser or his or her representatives or assigns, or such person who is the last known owner of the right of burial in the vault, 28 days notice to repair it, by posting such notice to, or leaving such notice at, his or her last known place of abode in New Zealand. If the purchaser or his or her representatives or assigns fails to do, or cause to be done, the required repairs within such 28 days, the Director may prohibit any further burial in the vault until the repairs have been made, and may brick up the entrance to the vault. Alternatively the Director, in his or her discretion, may do such repairs and recover the cost of them from the purchaser, his or her representatives, or assigns.

## **5.9 DISINTERMENTS**

- 5.9.1 Where an application for disinterment is received by the Council, the disinterment shall be conducted pursuant to Section 51 Burial and Cremation Act 1964 and shall be subject to the payment of the prescribed fee.

## **5.10 CONDUCT IN CEMETERIES**

- 5.10.1 Every person commits an offence against this bylaw who :  
Being other than the Sexton and his or her assistants
- (a) Digs any grave or opens the ground for burial in any cemetery.
  - (b) Fails to comply with a notice given under clause 5.8.6 requiring that person to repair a vault.
  - (c) Removes from any cemetery or from any grave in any cemetery any thing, or is in possession of any such thing previously in any cemetery, without the prior written approval of the Sexton.
  - (d) Obstructs, interferes with, interrupts, delays or detracts from the decent and solemn burial of any body, or the carrying out of any funeral service or ceremony.
  - (e) Films, photographs or videotapes any grave, vault or other part of the cemetery or crematorium, without the prior permission in writing of the Sexton.
  - (f) Enters by vehicle or otherwise, or remains in any cemetery after the hour of closing of the cemetery gates except with the prior written approval of the Director or Sexton.
  - (g) Exceeds the speed limit of 20 kilometres per hour in any cemetery.
  - (h) In any way damages or injures by painting, writing, carving or otherwise or causes or permits any damage or injury to any fence, headstone, monument, tablet, plaque, wall, vault or other thing situated in any cemetery.
- 5.10.2 No person shall take any dog or other animal into any cemetery or permit or cause such to remain in any cemetery, except at all times on a leash.

- 5.10.3 No child under the age of 8 years shall enter or be in any cemetery unless accompanied by an adult in charge of such child.

## **5.11 CEMETERY RECORDS**

- 5.11.1 Burial records and plans shall be open for inspection by the public during ordinary office hours at the Sexton's office at Karori, upon payment of a prescribed fee.
- 5.11.2 Receipts in Forms O, P and Q shall be conclusive evidence of the purchase and selection of a plot. The Director may give a duplicate receipt at any time upon satisfactory proof being tendered to him of the loss of the original and upon payment of the prescribed fee. If the original receipt is subsequently found, any person holding such duplicate shall at once return it to the Director for cancellation.

## **5.12 TRAFFIC IN CEMETERIES**

- 5.12.1 Every person driving any vehicle within any cemetery shall obey all signs and traffic directions including any direction of the Sexton and his/her assistants within the cemetery including those relating to stopping, speed, turning, parking and direction of travel.

## **5.13 BEAM CEMETERY OR MEMORIAL PARK**

- 5.13.1 In Makara Cemetery that part which has not been set aside as Lawn Cemetery shall be managed as a Beam Cemetery (also known as a Memorial Park).
- 5.13.2 No concrete or granite foundation for any headstone shall exceed 150mm in height at its centre measured from the surface of the single beam, provided that in any case where the Sexton is satisfied on reasonable grounds that there are topographical constraints to a plot, compliance with this part of the bylaw shall not be enforced.
- 5.13.3 Between the headstone base and the outside edge of the concrete beam, a space of not less than 120mm shall be left clear at the front and 220mm at the back.
- 5.13.4 No headstone, including its foundation, shall be erected of a greater width than 1000mm in the case of adult plots and 500mm in the case of children's plots. Any headstones erected for a double width (family) plot shall be no greater width than 1500mm.
- 5.13.5 No erected headstone shall be higher than 850mm in the case of adult plots and 450mm in the case of children's plots, above the base of a single beam including the concrete foundation referred to in subclause 5.13.2.
- 5.13.6 No headstone shall be erected of any material other than marble or granite unless the Director's prior approval has been obtained, and all foundations shall be finished in grey plaster cement, granite or marble.

- 5.13.7 Any vase or container for cut flowers required on any headstone shall be inserted into the foundation of the headstone in a manner to be approved by the Director.
- 5.13.8 Headstones shall be soundly constructed and aesthetically acceptable to the Director.

## **5.14 LAWN CEMETERIES**

5.14.1 In any Lawn Cemetery, which includes the extension of the Karori Cemetery :

- (a) No person shall erect any kerb, railing, fence, building or other structure on or around any plot or part thereof.
- (b) No person shall construct or place any tombstone, headstone, monument or structure upon any grave so that any part of it projects above the level of the ground immediately adjoining.
- (c) No person shall install or place any memorial plaque, memorial tablet or other thing on any grave without the written permission of the Director and subject to compliance with the following conditions:
  - (i) A memorial tablet or memorial plaque shall be of bronze or other metal approved by the Director.
  - (ii) Such tablet or plaque shall be secured and fixed to the ground to the satisfaction of the Director.
  - (iii) Such tablet or plaque shall measure 350mm by 250mm or such other size as may be approved by the Director.
  - (iv) All lettering and names of persons buried in each grave shall be placed on the one tablet or plaque.
  - (d) The dimensions of each plot shall measure 1070mm by 2800mm.
  - (e) No person shall, after two days from the burial, place any wreath or floral tribute on a grave except flowers and foliage not exceeding 400mm in height which shall be placed in a special receptacle of a type approved by the Council. Any wreath or floral tribute may be removed by the Sexton at any time after the fifth day from the last burial in that grave, or its placement on the grave pursuant to this subclause.
  - (f) The person installing the special receptacle at a grave shall install it adjoining the tablet or plaque on the side nearest the head of the grave. Every part of such receptacle shall be 50mm or more below the level of the adjoining ground surface. No responsibility for damage to receptacles will be accepted by the Council and the Sexton may, at any time, remove any damaged receptacle not approved by the Council and may also remove, at any time, dead flowers and dead foliage.
  - (g) No plastic flowers shall be placed in Lawn Cemeteries.

- 5.14.2 In Makara Lawn Cemetery the period of exclusive rights of burial shall be limited to a period of 50 years calculated from the date of burial. The following conditions also apply:  
(a) No pre-purchase of plots shall be permitted.  
(b) Only one interment shall be permitted in any one plot, provided that the Sexton may permit the ashes of any person to be interred in the plot.
- 5.14.3 Clauses 5.7.1 and 5.7.3 shall not apply to Makara Lawn Cemetery.

## **5.15 CREMATION**

- 5.15.1 No cremation shall take place in the city other than in the crematorium, except with the approval of the Medical Officer of Health.
- 5.15.2 No cremation shall take place in the crematorium unless the provisions of this Bylaw and the Cremation Regulations 1973 shall have been complied with.
- 5.15.3 The Funeral Director, or other person presenting the body for cremation, shall not present a casket which contains any bottle, can or other thing which may explode, cause harm or damage to persons or property on incineration of the body.

## **5.16 PROCEDURE FOR CREMATION**

- 5.16.1 Notice of an intended cremation, including the hour requested for the cremation, together with Form A, the application for cremation, Certificate of Medical Practitioner, Certificate as to Pacemakers, Permission to Cremate, and all other relevant forms under the Cremation Regulations 1973 completed to the satisfaction of the Sexton shall be given to the Sexton eight working hours before the day of the intended cremation.
- 5.16.2 The time arranged for the cremation shall be strictly observed provided that the Sexton may authorise cremation to take place upon less notice, as the circumstances at the Crematorium permit.
- 5.16.3 The Sexton may charge an additional prescribed fee for the cremation of a body which arrives at a time or in such a condition in/at which it is unable to be burnt within the ordinary hours of operation of the crematorium.
- 5.16.4 A funeral director shall provide at least two persons for carrying the casket into the chapel and depositing it on the bier. Unless this is done, the cremation may be delayed and any extra expense incurred shall be paid by the funeral director.
- 5.16.5 Two representatives of the deceased may see the body placed in the incinerating chamber after the service in the chapel, but no inspection of the actual process of the incineration is permitted.
- 5.16.6 No opening of the casket is permitted in the crematorium.

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## **5.17 CREMATION TIMES**

5.17.1 The ordinary hours of operation of the Crematorium are Monday to Friday inclusive between the hours of 8.00am and 4.00pm, excepting public holidays.

## **5.18 MATERIALS**

5.18.1 The casket shall be made of some readily combustible material approved by the Sexton, and shall contain combustible nails and screws.

5.18.2 The casket shall not be of lead or iron or polyurethane. If a metal case is necessary, in the Sexton's reasonable opinion, a thin zinc or galvanised iron lining shall be used.

5.18.3 There shall be no bars on the bottom of the casket, and all wooden pegs or screws in this part of it shall be carefully countersunk. Pitch shall not be put in the casket and, instead, other materials for the same purpose shall be used.

5.18.4 The casket shall not exceed 2520mm in length, 680mm in depth, 810mm in width.

## **5.19 URNS AND NICHEs**

5.19.1 An urn for receiving the ashes is provided.

5.19.2 On receipt of an application in Form J and on payment of the prescribed fee, the exclusive use of the niche shall be granted to the applicant and a certificate in Form K will be issued as proof of the existence of that exclusive right of use in perpetuity.

5.19.3 Any cleaning or polishing agent to be used on the Columbarium walls shall first be approved by the Sexton.

## **5.20 FEES IN RESPECT OF CEMETERIES AND THE CREMATORIUM**

5.20.1 No burial or cremation shall be permitted until the prescribed fee for such burial or cremation has been paid. However, in the case of a burial or cremation under the management or control of a funeral director, the director may, at his or her discretion, waive the foregoing requirement as to prior payment and charge the cost of the same against the funeral director concerned on the basis of a monthly account or such period as the Director decides.

## **5.21 BOLTON STREET AND SYDNEY STREET CEMETERIES**

5.21.1 Unless otherwise expressly provided, this part of the bylaw shall not apply to the Bolton and Sydney Street Cemeteries which are closed cemeteries. These cemeteries are administered by the Council in accordance with any approved management plan under the Reserves Act 1977 and in accordance with such other policies as may be resolved by Council from time to time.

PURSUANT to Section 17(1) of the Burial and Cremation Act 1964, the foregoing Cemetery and Cremation Bylaws of the Wellington City Council were sent to the Minister of Health on the 22nd day of February 1993, receipt having been acknowledged.

This bylaw was made by the Wellington City Council by Special Order passed at a Council meeting on 24 March 1993 and (in the meantime having been publicly notified) confirmed at a meeting on the 26th day of May 1993.

## Appendix 3 - Bylaw to be revoked

### Wellington Consolidated Bylaw 1991 Part 11 (Harbour, Beaches and Foreshore)

#### 11.1 Interpretation

##### 11.1.1 In this Part:

"Beach" or "foreshore" means any beach or foreshore which is from time to time vested in the Council or under its management or control;

"Director" means the Director of Parks and Recreation and includes any other person appointed by the Council from time to time to manage the harbour, beaches or foreshore.

"Marina" means the Evans Bay Marina and the Clyde Quay boat harbour.

"Wharf" means the wharves controlled by the Council at Seatoun, Karaka Bay and Greta Point.

#### 11.2 Clothing on Beaches and Foreshore

11.2.1 No person over the age of eight years shall be on, or swim at, any beach or foreshore that is, or is likely to be, open to public view, unless wearing a proper and sufficient swimsuit or is otherwise sufficiently dressed. No person shall remove any portion of his or her swimsuit or change from swimsuit to other clothing, or from such clothing to swimsuit in any such place unless sufficiently shielded.

#### 11.3 Dressing Sheds

11.3.1 No person of the one sex over the age of eight years shall enter or remain upon any part of a beach or dressing shed reserved exclusively for the other sex except for the purposes of rendering assistance in an emergency.

11.3.2 Dressing sheds may be closed for cleaning or maintenance from time to time and clause 11.3.1 shall not apply whilst the dressing shed is closed.

#### 11.4 Offences in Dressing Sheds

11.4.1 No person shall, in any shed or building erected or set apart on or in connection with any beach or foreshore for dressing or changing :

- a. Play games or loiter in the shed or in the immediate vicinity of a shed;
- or
- b. Use the same for any purpose other than dressing or changing or making proper use of the facilities therein provided; or
- c. Place or leave any rubbish or litter of any description, except in a receptacle provided; or
- d. In any way damage or disfigure the same, or write thereon; or
- e. Use in a wasteful manner any water supplied for use in connection therewith; or
- f. Behave in an indecent, disorderly or improper manner, or
- g. Use indecent or offensive language.

## **11.5 Offences in Respect of Beaches**

**11.5.1** No person shall, on any part of any beach or foreshore or in any waters adjacent thereto:

- a. Behave in an indecent, disorderly or improper manner; or
- b. Use indecent or offensive language; or
- c. Place or leave any rubbish or litter of any description including any dead animal or any part of any dead animal; or
- d. Ride or lead any horse or other animal; or
- e. Ride any horse or other animal in a manner likely to endanger any person; or
- f. Break or deposit any glass; or
- g. Ride, drive or propel any vehicle of any type whatsoever without the prior written permission of the Council; or
- h. Ride, drive or propel any vehicle in a manner likely to endanger any person; or
- i. Skin, clean or otherwise prepare any fish; or
- j. Remove any sand, gravel or rock without the prior approval of the Council; or
- k. Light any fire except in a fireplace provided for that purpose and in accordance with any enactment regulating or prohibiting fires.

## **11.6 Conditional Permission**

**11.6.1** In granting any such permission under paragraphs (g) or (j) of clause 11.5.1 the Council may impose such conditions as to charges, times, speeds, loads, erection of warnings or any other matter whatsoever as it shall deem necessary.

## **11.7 Swimming in Dangerous Places**

**11.7.1** No person shall swim in the near vicinity of any place which is indicated by a "Danger" board or notice as a place where it is dangerous to swim, or of any place after being warned by a Council officer or an authorised life-saving attendant that it is dangerous to swim at such a place.

## **11.8 Surfboards and Boats**

**11.8.1** The Council may from time to time by flags or other marks indicate the limits within which the use of surfboards is permitted in any waters adjoining any beach or foreshore. When such limits are so indicated no person shall use any surfboard in such waters except within the limits indicated.

**11.8.2** No person shall land any yacht or other boat on any beach or foreshore contrary to any Council notice prohibiting the same.

## **11.9 Protection of Lives and Property**

**11.9.1** No person shall use, move or damage any appliance or signal provided by the Council or by any volunteer life-saving club, at any beach or foreshore, except for the purpose of saving life or with the permission of the Council or the club.

**11.9.2** No person shall obstruct any member of a life-saving club in the conduct of their life-saving activities.

## **11.10 Council May Permit Life Saving Appliances etc**

**11.10.1** The Council may at its discretion authorise on any beach or foreshore any volunteer life-saving club :

- a. to provide and use life-saving appliances and boats;
- b. to use any such appliances and boats provided by the Council; and
- c. to erect and, as may from time to time be necessary, remove from any place "Danger" notices; provided that where an attendant employed by the Council is in attendance "Danger" notices shall only be removed with the approval of the attendant.

## **11.11 Fees**

**11.11.1** The Council may from time to time prescribe, vary or cancel the charges and conditions for the use of any changing and dressing sheds for the safe custody of valuables on any beach or foreshore.

## **11.12 Island Bay Controls**

**11.12.1** In this clause, "Prohibited area" means the area comprising those portions of the beach, foreshore and sea at Island Bay in the City bounded as follows :

Commencing at a point on the seaward boundary of the Island Bay Esplanade 142.3 metres along such seaward boundary north-west of its intersection with the extension of the western boundary of Melbourne Road, thence along such seaward boundary in a north-westerly direction for a distance of 107.6 metres, thence along such seaward boundary in a south-westerly direction for a distance of 273.4 metres to the next angle on the said seaward boundary and thence along the said seaward boundary in a slightly more southerly direction for a distance of 73.2 metres, thence along a straight line in an easterly direction to the point of commencement being a distance of 347.5 metres, the extremities of the last-mentioned straight line normally being indicated by signposts coloured red and white, bearing the words "Bathing area", all the aforesaid measurements being a little more or less.

**11.12.2** No person shall fish in the prohibited area.

**11.12.3** No person shall take, or permit or assist any sea-going vessel to be taken into the prohibited area, or drive, steer, or propel any such vessel in such area.

**11.12.4** No person shall deposit on any beach foreshore in the prohibited area, any fishing net, or any fish, or part of a fish.

**11.12.5** No person shall throw into or deposit in the prohibited area, or in the waters of the sea lying within a distance of 640 metres of Taputeranga Island, any fish, animal, or bird, or any part of any fish, animal or bird, or any refuse, rubbish of any bait or any other injurious or offensive matter whatsoever.

**11.12.6** No person shall, except by reason of weather conditions making it dangerous to do otherwise, land or unload any fish in the prohibited area.

**11.12.7** No person shall clean or leave any net or clean any boat in the prohibited area.

**11.12.8** The owner of any fishing-net, or of any fish found on any beach or foreshore in the prohibited area shall be guilty of an offence against this Part.

**11.12.9** No person shall damage, or remove, or in any way obstruct the view of the signposts, mentioned in subclause (1) of this clause, erected to define the prohibited area.

## **11.13 Wharves and Marinas**

**11.13.1** No person shall drive, park and leave any vehicle on a wharf or marina:

- a. without the permission of the Director, or
- b. contrary to signs regulating parking.

**11.13.2** The Director may direct that the wharves or marinas or any part thereof be closed. When the wharves or marinas, or any part thereof are closed by direction of the Director no person shall enter thereon unless with the permission of the Director.

**11.13.3** The Director may prior to the arrival or departure of any ship erect a barrier in the vicinity of the ship and no person shall unless with the permission of the Director pass through or beyond the barrier.

**11.13.4** Fishing shall be permitted from wharves or marinas except:

- a. in any area where there is a sign prohibiting fishing; or
- b. where fishing could interfere with operations of the wharf, marina, or a ship.

**11.13.5** No person owning or accompanying a dog shall permit it to be on any wharf or marina unless such dog is led by a leash. Any person owning or accompanying the dog shall on the direction of the Director immediately remove the dog from the wharf or marina.

**11.13.6** No person shall smoke :

- a. while in proximity to any dangerous goods on any wharf or marina or ship; or
- b. while in the vicinity of a notice prohibiting smoking.

**11.13.7** Vessels may use wharves for loading and unloading but may not remain moored for longer than 2 hours without the approval of the Director, unless by force of weather conditions.

**11.13.8** No person shall moor any vessel at any marina except in accordance with a licence issued by the Director.

## Appendix 4 - Bylaw to be revoked

### **Wellington Consolidated Bylaw 1991: Part 17A (Commercial Sex Premises)**

#### **17A.1 Interpretation**

##### **17A.1.1** In this Part:

"Commercial sex premises"

- 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, massage parlours required to be licensed under the Massage Parlours Act 1978, 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 required to be licensed under the Massage Parlours Act 1978.

"Courtenay precinct" means the following roads or parts of roads:

- a. that part of Courtenay Place from Cambridge Terrace to Taranaki Street; and
- b. Blair Street; and
- c. Allen Street; and
- d. that part of Tory Street from Courtenay Place to Wakefield Street.

"Public place" has the meaning given to that term in clause 1.4.1 of the principal Bylaw, but for the purposes of this Part, does not include the interior of any premises except to the extent that the interior of those premises is visible from a road.

"Signage" means any name, figure, image, character, outline, spectacle, display, delineation, announcement, poster, advertising device or appliance, or any other thing of a similar advertising nature, intended principally to attract attention, whether it is placed on or affixed to any land or building, or incorporated within the design of any building (whether by painting or otherwise) which is visible from a public place.

#### **17A.2 Commercial Sex Premises Banned from Courtenay Precinct**

**17A.2.1** No person may establish or operate a commercial sex premises in any building or on any site that has a road frontage in the Courtenay precinct.

**17A.2.2** A person who contravenes clause 17A.2.1 commits an offence against this bylaw.

**17A.2.3** Clauses 17A.2.1 and 17A.2.2 do not apply in respect of any commercial sex premises lawfully operating in any building or on any site that has a road frontage in the Courtenay precinct on the day on which this bylaw comes into force, provided that after this bylaw comes into force, the use or uses of any such commercial sex premises -

- a. do not change in character; and
- b. do not increase in scale or intensity.

#### **17A.3 Signage Advertising Commercial Sex Premises**

**17A.3.1** No person may place or allow to remain in place signage anywhere on or adjacent to a building or structure that has a road frontage, or in any other public place,

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which explicitly or implicitly advertises, identifies, or informs the public of commercial sex premises -

- a. subject to clause 17A.3.2, by any means other than words; or
- b. in an offensive manner; or
- c. in a manner which is not visually discreet due to the size, illumination, flashing, movement, cumulative effects or any other physical characteristic of the signage, or due to the repetition of any words or letters.

**17A.3.2** A person may apply to the Council for permission to place signage, or to allow signage to remain in place, anywhere on or adjacent to a building or structure that has a road frontage, or in any public place, being signage that does not comply with clause applications are deemed to have been lodged in respect of all existing signage that does not comply with clause 17A.3.1 as at 18 October 2001.

**17A.3.3** In assessing signage pursuant to clause 17A.3.1 (b) and 17A.3.1(c), and in exercising its discretion to grant permission under clause 17A.3.2, the Council may have regard to the following criteria:

- the extent to which the signage depicts or implies sexual activity;
- the extent to and manner in which the signage depicts nudity (the depiction of nudity is not encouraged);
- the level of detail in any image which depicts nudity or sexual activity;
- the size, number and cumulative effects of the signage.

**17A.3.4** person who contravenes clause 17A.3.1 commits an offence against this bylaw.

**17A.3.5** The Council may by written notice served on the owner or operator of any commercial sex premises require that owner or operator to remove or alter any signage which contravenes clause 17A.3.1 within the time specified in the notice.

**17A.3.6** If the owner or operator of any commercial sex premises has been served with a notice under clause 17A.3.5, that owner or operator must comply with that notice within the time specified in the notice.

**17A.3.7** If the owner or operator fails to comply with the notice under clause 17A.3.5 within the specified time, the Council may remove or alter the signage. The owner or operator is liable for the Council's costs in removing or altering the signage.

## **17A.4 Flyers, etc Advertising Commercial Sex Premises**

**17A.4.1** No person may distribute in any public place any handbills, writings or pictures of which the primary purpose, whether explicitly or implicitly, is to advertise, identify, or inform the public of commercial sex premises.

**17A.4.2** A person who contravenes clause 17A.4.1 commits an offence against this bylaw.

## **17A.5 Touting for Commercial Sex Premises**

**17A.5.1** No person may in any public place tout for business or otherwise verbally advertise on behalf of any commercial sex premises.

**17A.5.2** A person who contravenes clause 17A.5.1 commits an offence against this bylaw.

This Bylaw was made by the Wellington City Council by Special Order passed at a Council meeting on 5 September 2001 and (meantime having been publicly notified) confirmed at a meeting on 10 October 2001.

The common seal of the Wellington City Council was hereto affixed in the presence of: Mayor  
Councillor Chief Executive

## Appendix 5 - Bylaw to be revoked

### Wellington Consolidated Bylaw 1991 Part 17B (Smoking Ban in Cable Car Lane)

#### **Purpose**

The purpose of this part is to prohibit the activity of smoking in Cable Car Lane because it creates a public health and wellbeing issue and a nuisance.

**NOTE:** Adopted by Council on 20 November 2002. To apply from 1 February 2003.

#### **17b.1 Definitions**

**17b.1.1** In this part:

"Cable Car Lane" means the public place connecting Lambton Quay to the Cable Car terminal including all the land between 286-292 Lambton Quay and 280-284 Lambton Quay.

"smoke" means to smoke, hold, or otherwise have control over an ignited tobacco product or other similar substances intended for use by smoking, and "smoking" has a corresponding meaning.

"public place" has the same meaning as given in clause 1.4.1 of the principal Bylaw, but for the purposes of this part, does not include the interior of any premises.

#### **17b.2 Smoking banned from Cable Car Lane**

**17b.2.1** No person may smoke in Cable Car Lane at any time.

**17b.2.2** Clause 17b.2.1 does not apply to the balcony extending from 284 Lambton Quay.

**17b.2.3** A person who contravenes clause 17b.2.1 commits an offence against this bylaw.

#### **Explanatory note**

This new part bans smoking in Cable Car Lane.

If a person breaches the ban, the person commits an offence and is liable to a fine of up to \$500 as well as a further fine of \$50 per day for every day the breach continues. This is the effect of clause 1.14 of the Consolidated Bylaw. The Council is also able to apply to the District Court under section 683(2) of the Local Government Act 1974 for an injunction restraining the further continuance of the breach by that person."

This bylaw was made by the Wellington City Council by Special Order passed at a Council meeting on 2 October 2002 and (meantime having been publicly notified) confirmed at a meeting on 20 November 2002.

**Appendix 6 - Bylaw to be revoked**  
- note that the Council has already **completed** a process to revoke the swimming pool clauses in this part.

## **Wellington Consolidated Bylaw 1991 Part 16 (Reserves)**

### **16.1 Interpretation**

**16.1.1** In this part of the Bylaw unless the context otherwise requires :

"Custodian" includes any person for the time being appointed by the Council to assist in the management and control of any reserve.

"Director" means the `Director of Parks and Recreation' and includes his or her deputy.

"Reserve" includes any open space, plantation, park, lake, stream, lagoon, garden, the Newtown Zoological Gardens or ground (other than a beach or foreshore as defined in Part 11 of this Bylaw) intended by the Council to be used for public recreation which is from time to time under management or control of the Council, whether or not such is a "Reserve" within the meaning of the Reserves Act 1977.

### **16.2 Management of Reserves**

**16.2.1** All reserves shall be under the management and control of the Director subject to the direction of Council.

### **16.3 Availability of Reserves**

**16.3.1** Subject to the provisions of this Bylaw, the Reserves Act 1977 and any other Act and any Instrument, all reserves shall be open for use by the public at such times and at such charges and upon such conditions as the Council by resolution may prescribe or vary from time to time.

### **16.4 General Restrictions**

**16.4.1** No person, in any reserve, shall :

- a. Enter or leave it except through the openings, gateways, entrances, or exits provided.
- b. Wilfully obstruct any of its entrances, exits, thoroughfares, or walks.
- c. Damage, interfere with, or destroy any sign, notice of nameplate.
- d. Damage, interfere with, or destroy any swing or other play apparatus, any post, barrier, railing, seat, gate, bridge, building, structure, wall, fence or hedge within or enclosing any portion of a reserve.
- e. Place or leave any rubbish or litter of any description, except in any receptacle provided.
- f. Subject to clause 16.8.2, take into, or permit to remain in a reserve, any animal other than a dog. Dogs may be brought onto a reserve subject to provisions of Part 3 of this Bylaw (Animals).
- g. Place or stick up any placard, notice or poster without the prior written permission of the Director, nor without such permission distribute any leaflet or paper in, or at any of the entrances of any reserve

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- h. Swim in any stream, lake or lagoon.
- i. Light any fire except in a fireplace provided for that purpose or set fire to any plant or other growth.
- j. Bet or gamble.
- k. Remove or disturb any soil, uproot or injure any plant or other growth, or take any cuttings, or interfere with or pick any flower or other plant.
- l. Put up or erect any stall, tent, swing, or structure of any kind without prior written permission of the Director, and then only in compliance with any condition under which such permission may be granted.
- m. Hawk, sell or offer for sale any article of food or merchandise or liquor intoxicating or otherwise, or any kind of drink, or carry on any trade, pursuit or calling without the prior written permission of the Director and then only in compliance with any condition under which such permission may be granted.
- n. Wilfully obstruct, disturb, annoy or interfere with any person in the use or enjoyment of any reserve, or use any indecent or offensive language, or be intoxicated, noisy, or disorderly, or do or practice anything likely to insult, offend, annoy or injure any person.
- o. By any means destroy, injure, interfere with, or take any bird, bird's nest or bird's egg, or any animal or fish, or attempt so to do, without the prior written permission of the Director.
- p. Play or take part in any organised or team games, athletics sports, drill, marching, musical or other group activity in any part of a reserve which has not been set aside or approved by the Director as a ground for that class of game, sport or activity as the case may be. Any approval granted under this subclause may be given subject to any condition whatsoever.
- q. Interfere with or annoy any Custodian or any person working in the reserve.
- r. Climb or get up any fence or tree, throw any stone, or other missile (by hand or otherwise), take, use or carry any firearm, air-rifle, catapult, or any other weapon or other dangerous instrument, or let off any firework, without the prior written permission of the Director.
- s. Enter any enclosure or place set apart for the cultivation of plants, nor walk, or trample on any plantation or flower bed or on any lawn or grass boarder where a notice is placed forbidding the same.
- t. Fail to leave such reserve or any part of it, after being requested by a Custodian, who has reasonably formed the opinion that such reserve or any part of it is in a state rendering it unsuitable for use, or is likely to be damaged by any further use.
- u. Play or take part in, any game, sport or other activity, contrary to any notice prohibiting that activity within the reserve or part of it.
- v. Over the age of 14 years, use or occupy any swing, roundabout, see-saw or any other children's play apparatus.
- w. Be in or remain in any reserve or do anything or take part in any activity which is in breach of any condition or restriction pursuant to a resolution of the Council imposed under this Bylaw.

## **16.5 Management Powers**

**16.5.1** Any Custodian shall have the right to prevent any game being played or any other activity whatsoever being undertaken in any reserve which in his or her opinion is likely to injure any reserve or person or which in his or her reasonable opinion is otherwise undesirable, disorderly, or dangerous.

**16.5.2** The Director may close any reserve to the public at any time for the purpose of maintaining or improving it, or for holding sports matches or any other performances, or for any other purpose whatsoever which the Director considers necessary or proper.

**16.5.3** Any Custodian or any police officer requested by a Custodian, may exclude or remove from any reserve any person :

- a. Who has acted in an unlawful manner in or near any reserve, or
- b. Who is not bona fide using the reserve for its normal intended purposes, or
- c. Who has contravened any of the provisions of this Bylaw, or
- d. For any good and sufficient reason relating to the efficient, reasonable, and fair management of the reserve.

**16.5.4** The prohibitions and restrictions contained in this part of the Bylaw shall not apply to any Council officer when engaged in the performance of their regular duties.

## **16.6 Traffic**

**16.6.1** Any controls, restrictions, prohibitions, directions and charges which the Council may impose under Part 18 of this Bylaw (Traffic) in respect of the use of roads may be imposed by the Council from time to time by resolution in respect of any reserve. In addition the Council may from time to time by resolution impose any other controls, restrictions, prohibitions, directions or charges in respect of any traffic, whether pedestrian or vehicular, in any reserve to give effect to the proper use and enjoyment of the reserve.

**16.6.2** No person shall drive, stop, stand, or park any vehicle (other than a Council, service, emergency or other authorised vehicle) in any reserve other than on any roadway or in any carpark provided for the purpose, and then only in accordance with any controls or restrictions imposed under this Bylaw.

**16.6.3** Any traffic, police or Council officer may direct the driver or person in charge of any vehicle in or on any reserve to :

1. remove the vehicle from the reserve or any specified place, or
2. cease parking it generally or in any specified place, or
3. drive it along any specified line of traffic or direction, or
4. drive it at any specified speed

if such traffic police, or council officer believes on reasonable grounds that it causes an obstruction to the reserve or any part, or to any vehicle or pedestrian entrance, or that any of such directions are desirable in the interest of safety or for the convenience or in the interests of the public or the use and enjoyment, protection and preservation of the reserve.

**16.6.4** No person shall stop, stand, park or leave any vehicle in a reserve :

- a. On any regular, periodic or continuous basis.
- b. On any grassed or cultivated area.
- c. In such a manner as to obstruct the normal or safe movement of other vehicles, or pedestrians.

**16.6.5** No person shall abandon any vehicle in a reserve.

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**16.6.6** Any vehicle, whether attended or not, in breach of this Bylaw may be removed by any traffic, police or Council officer and impounded at the expense of the driver or the owner.

**16.6.7** No person shall drive, cause or permit any vehicle to be used or driven on any grassed or cultivated area in any reserve.

**16.6.8** The Council where practicable and reasonable shall place in any reserve in respect of which one or more of its Vehicle Resolutions have been imposed suitable signs, notices or road markings to set out the effect of such resolutions.

**16.6.9** It shall not be a defence to any charge that an offence has been committed against this part of this Bylaw (other than where compliance with a sign, notice or road marking is an ingredient of the offence) if no sign, notice or road marking was in place at the time such offence was alleged to have been committed.

**16.6.10** The Director may exempt any vehicle or driver from the provisions of this part of this Bylaw or any Resolution of the Council made thereunder for such time and upon such general or particular conditions as he shall think fit, without relieving any such driver of any obligation imposed on him by any other enactment or rule of law.

### **16.7 General**

**16.7.1** Any person in or about a reserve shall upon request give his/her correct name and address to the Custodian or any other duly authorised Council employee who has a good reason for requesting such information.

**16.7.2** Every person who on any day for which a charge is payable for admission to any reserve enters any such ground without paying the proper charge shall be guilty of an offence against this Bylaw.

**16.7.3** Every person who on any day for which a charge is payable for admission to any reserve has before the hour at which the exhibition, show, game or sport commences entered such reserve without paying the prescribed charge for admission shall before the commencement of such exhibition, show, game or sport either pay the proper charge for admission or leave the reserve.

**16.7.4** In addition to charges for admission to any reserve the Council may by resolution impose an additional charge for each person for admission to a stand or building or special enclosure in any reserve

## Appendix 7 - Bylaw to be amended

### Wellington Consolidated Bylaw 1991 Part 17 – Public Places

*This part of the bylaw regulates a diverse range of activities. It seeks to maintain standards of public health and safety, protect the public from nuisances, minimise the potential for offensive behaviour and to manage land associated with or under the control of the Wellington City Council for the well-being and enjoyment of the public in public places.*

*The Council facilitates a diverse range of activities in public places that allow for the expression of rights contained in the New Zealand Bill of Rights Act 1990 – such as freedom of expression, peaceful assembly, association and movement. The only restriction to those rights are some limited situations where prior permission from Council may be required for specified purposes. However, the limited situations where permission is required are primarily to ensure that the rights of others are not compromised and to consider any known safety issues.*

*This part of the bylaw does not duplicate statutory provisions. It simply supplements existing statutory provisions that may also affect public places such as under the Local Government Act 2002, the Resource Management Act 1991 and the Building Act 1991.*

#### **17.1 Definitions**

In this Part:

“camping” means living or carrying out any other residential activity, whether temporary or permanent.

“hoarding” means a board, including any frame or other supporting device, for displaying posters or notices announcing future events or for advertising or election purposes, but excludes sandwich boards.

“material or thing” includes clothing bins, containers for waste material, advertising or amusement devices, tables, chairs and display stands, but excludes:

- (i) vehicles; and
- (ii) any thing used for the purpose of refuse or other collections authorised by the Council.

“number” includes any alphabetic symbol attached to the number allocated by the Council.

“refuse bin” includes skips, mini skips, wheelie bins, wheelie carts and any kerbside refuse and recycling containers.

“residential area” includes areas identified as residential in the Wellington City Council District Plan.

“street appeals” are coordinated and organised events by organisations who ask for, or seek, any subscription, collection or donation from members of the public. A street appeal will usually involve more than one collection person operating at the same time.

“street performance” is musical, dramatic or other performance, (including busking) involving musical, theatrical or circus performance skills including playing musical instruments, dancing, singing, clowning or juggling, pavement art, poetry or doing other acts of a similar nature in public places.

“trading” means the act of selling or trading, or offering to sell or trade goods or services, with or without use of a vehicle.

“vehicle access” means any section of legal road that facilitates the access of vehicles from private property to the formed carriageway, and includes that part of a driveway on private property that impacts on the point of entry onto or from legal road.

## **17.2 Activities that require Council permission**

17.2.1 The following activities in public places are allowed, but will require the Council’s prior written permission. The process for obtaining the Council’s permission is outlined in Part 1 (Introduction) of this bylaw.

### **Street Performance**

(a) Any street performance, subject to:

- (1) The Wellington City Council Street Performance and Busking Policy permission procedures.
- (2) The conditions that may be imposed under this clause shall be limited to addressing the time and length of performance, noise limitations, location, use of dangerous goods and any restrictions to public thoroughfare in the public place. There is no charge for gaining permission under this clause.

### **Street Appeals**

(b) Any street appeal, subject to:

- (1) The Wellington City Council Street Appeals Policy permission procedures and conditions. The Council will generally issue permission for no more than one street appeal per week.

## **Articles and displays in public places**

- (c) Placing or leaving, or causing or allowing to be placed or left, any material or thing, on or over any public place, subject to:

(1) The Wellington City Council Footpath Management Policy permissions procedures and conditions.

### **17.3 Assembly**

17.3.1 The organiser of an event, demonstration, competition, parade or procession, that is likely to interfere with traffic or pedestrian thoroughfare in a public place shall notify the Council as soon as reasonably practicable prior to the event.

17.3.2 After receiving notification, the Council will provide relevant traffic management information to the organiser and/or Police.

### **17.4 Hoardings, Posters and Notices in Public Places**

17.4.1 The Council may supply hoardings in public places, or approve sites where hoardings can be erected in public places.

17.4.2 The approval of hoarding sites under clause 17.4.1 may be subject to conditions, including:

- (a) placement
- (b) fees
- (c) dates a hoarding may be erected
- (d) approval of the hoarding design.

17.4.3 Hoardings erected without approval must be removed within 1 hour of being instructed to do so, or as otherwise specified by the Council.

17.4.4 Posters or notices displayed on hoardings shall be removed or covered immediately after the event has taken place.

17.4.5 With the exception of approved hoardings under clause 17.4.1, no one shall affix or place a poster or notice to any Council ornament, statue, structure, building, or facilities in a public place without the Council's prior permission.

17.4.6 Responsibility for compliance with this part of the bylaw lies with the person who displayed the poster or notice, or the organiser, promoter or person in

charge of the advertised good, service or event or, in the case of an election, the candidate or a delegate of that candidate.

## **17.5 Trading in Public Places**

- 17.5.1 Trading or displaying goods or services for sale in any public place (excluding newspapers or magazines) including outside any shop, business, doorway abutting any public place or any footpath requires the Council's prior written permission.
- 17.5.2 Permission granted under clause 17.5.1 may be subject to conditions including:
- (a) location, date and times goods or services can be sold
  - (b) type of goods or services that can be sold
  - (c) use of advertising and other promotional devices
  - (d) vehicle use
  - (e) site rental.
- 17.5.3 If any traders in public places breach the conditions of a written permission issued by Council under this clause or do not have written permission under this clause, they shall stop trading if requested to do so by the Council

## **17.6 Skateboards and Skates**

- 17.6.1 Use of a skateboard, roller-skates or inline-skates in a public place is allowed, except in areas with signs stating otherwise.
- 17.6.2 Every one who uses a skateboard, roller-skates or in-line skates shall ensure no damage is caused to Council property and shall show reasonable consideration for other persons using the public place.

## **17.7 Camping in Public Places**

- 17.7.1 Subject to clause 17.7.2 the prior written permission of the Council will be required before any person camps in a public place, whether using a vehicle or not.
- 17.7.2 Applications will be considered for camping in public places for special purposes. Applications to the Council for prior written permission will be subject to the following criteria:
- (a) relevant matters to be considered in such applications will include the duration of occupation, the location, the number of people, the provisions to

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ensure that there is no damage or effects to the public place and the reason why the camping is proposed

- (b) unless provided for in an applicable Management Plan, no camping is allowed in the Town Belt, parks and reserves, except for special purposes
- (c) the Council has a full discretion to determine whether permission should be granted for camping.

*Note: The purpose of this clause is to address adverse effects of camping on public places. Specific issues relating to homelessness are addressed in the Wellington City Council Homeless Strategy.*

## **17.8 Road and property identification**

- 17.8.1 The Council shall have the right to cause to be painted or affixed on a building, the name of the road, private road or public place to which it has frontage.
- 17.8.2 The owner of every property, building or group of buildings forming part of a complex shall mark such property, building or complex with the number allocated by the Council, regardless of any other identification a property or building may have, and shall be:
  - (a) at least 50mm in height and
  - (b) of a colour in contrast to its background and
  - (c) easily visible from the road to which it has frontage and
  - (d) maintained by the owner in a way that easily identifies the property at all times.
- 17.8.3 The requirement in clause 17.8.2. for an owner to mark a property, building or complex with the allocated number does not apply to:
  - (a) property without buildings and
  - (b) property not allocated a number by the Council.
- 17.8.4 The owner of a newly subdivided property must inform a subsequent purchaser of the address allocated by the Council in accordance with clause 17.8.2.
- 17.8.5 When the Council advises the owner of a property that an address needs to be displayed or changed, the owner must arrange to do so within 15 working days, or as otherwise instructed.

## **17.9 Vehicle access**

- 17.9.1 The prior written permission of the Council will be required before any person constructs, repairs, removes, widens or narrows any vehicle access.
- 17.9.2 Before granting permission, the Council will consider what is reasonably necessary to:
6. ensure the safe and convenient use of the road by pedestrians and vehicles and
  7. protect the road (including any footpath or berm) adjacent to the vehicle access.
- 17.9.3 Permission granted by Council under clause 17.9.1. may be subject to conditions, including:
- (a) use of materials and dimensions
  - (b) timeframe for completion
  - (c) a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to the Council's property. The estimated cost of work shall be approved by the Council
  - (d) a requirement that the applicant is responsible for arranging the construction work to meet the approved conditions, and shall pay the costs
  - (e) a requirement that all construction work be carried out in compliance with the Wellington City Council Code of Practice for Working on the Road.
- 17.9.4 In setting conditions, the Council will have specific regard to the criteria in the following documents:
- (a) Wellington City Council Code of Practice for Land Development
  - (b) Wellington City Council Code of Practice for Working on the Road
  - (c) Land Transport Safety Authority Guidelines for Visibility from Driveways (RTS 6)
  - (d) Australian Standard 2890.1 and 2890.2 (1989).
- 17.9.5 If the Council decides any vehicle access is in a bad or unsafe state of repair or there has been a significant deterioration or change in vehicle access use, the Council may by notice in writing, require the owner of the land which the crossing provides access to, to repair, reconstruct, renew or remove such access to the satisfaction of the Council.
- It is the owner's responsibility to carry out any work required in the notice, and pay all costs.
- 17.9.6 If any vehicle access is constructed without the Council's prior written permission, or contrary to the terms of the Council's prior written permission, the Council may remove or alter that work located on the road. The Council's costs may be recovered from the person who undertook the work or is serviced by the vehicle access.

## **17.10 Encroachments**

- 17.10.1 Any property owner ('the encroacher') may be authorised by the Council to occupy an area of road owned and controlled by the Council ('an encroachment'). The Council has discretion whether to authorise an encroachment by granting land owner consent and if required an encroachment licence to the applicant in accordance with any relevant Council policy. Relevant legal factors for the Council to consider when considering an application for an encroachment licence include whether the encroachment will:
- (a) compromise the primary use of legal road to facilitate free pedestrian and traffic movement
  - (b) unreasonably interfere with a property owners' right of access to any road across the frontage between the road and private property.
- 17.10.2 An encroachment licence may authorise the occupation of the encroachment area for parking, boundary marking, airspace, subsoil or access structures, for the maintenance or beautification of the encroachment area, or any other purposes the Council considers desirable.
- 17.10.3 An encroachment licence issued by the Council shall be subject to such conditions that the Council considers appropriate, at the sole discretion of the Council.
- 17.10.4 The encroacher must own the land adjoining or in the vicinity of the encroachment area that benefits from the encroachment and continue to own this land for the period of the encroachment.
- 17.10.5 Any subsequent encroacher must complete a new encroachment licence with the Council in order to continue the occupation of the encroachment area.

## **17.11 Fences, walls and stability of land**

- 17.11.1 The Council may require the owner of any land which has no fence, wall or retaining wall adjacent to a public place to erect a fence, wall or retaining wall if the Council considers that this is necessary for safety or other reasons relating to the use or administration of the public place.
- 17.11.2 Where any fence, wall, retaining wall or land adjacent to a public place is in a condition or state of disrepair which could cause injury to persons or damage to a public place, the Council may give notice requiring the owner to repair, remove or replace the fence, wall or retaining wall, or make the land safe.

## **17.12 Building work and excavations affecting public places**

- 17.12.1 The prior written permission of the Council will be required before any person carries out building work or excavations on a public place, unless prescribed

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otherwise in the Wellington City Council Code of Practice for Working on the Road.

- 17.12.2 The Wellington City Council Code of Practice for Working on the Road sets out the permission procedures and requirements for all work undertaken on the road.
- 17.12.3 Permission granted by the Council under clause 17.11.1 may be subject to conditions, including a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to the Council's property. The estimated cost of work shall be approved by the Council.
- 17.12.4 If any building or excavation work is carried out on a public place without the Council's prior written permission, or contrary to the terms of the Council's prior written permission, the Council may remove or alter that work. The Council's costs may be recovered from the person who undertook the work, or the property owner for whom the work was being done.
- 17.12.5 If any damage occurs to the road, the Council requires the road to be reinstated by the person who caused the damage, or the property owner for whom the work was being done, in accordance with the requirements of the Wellington City Council Code of Practice for Working on the Road.

## **17.13 Offences**

- 17.13.1 Every one commits an offence who:
- (a) carries out any activity before obtaining the prior written permission from the Council as required by this part of the bylaw
  - (b) obstructs an entrance to, or exit from, a public place
  - (c) places, leaves or carries any materials, thing or substance on a public place that could cause any obstruction or danger to a person or property in that public place
  - (d) leaves any work, hole or excavation in or adjacent to a public place in a manner that could endanger anyone using that public place
  - (e) allows vegetation to grow over any public place and overhang a street light, obstruct or interfere with the free movement of persons using that public place or cause danger to any person or traffic in a public place
  - (f) organises, participates in any assembly or combines with other persons in a public place in such a way as to obstruct pedestrian or vehicular traffic or to prevent or hinder access to properties adjoining the public place
  - (g) collects or services refuse bins between 10pm and 7am from residential areas or from sites that adjoin a residential area or face a residential area across a road

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- (h) causes or allows to be done any act that alters or damages any public place or any property in a public place
- (i) damages, interferes with, destroys or removes any grass plot, flower bed, tree, shrub, plant or other natural feature or any inscription or label relating to it
- (j) removes any sand, soil or other naturally occurring material found in a public place
- (k) damages, defaces, disfigures, pollutes, interferes with or applies graffiti to (whether by painting, drawing, spraying or writing) any Council ornament, statue, structure, building or facilities
- (l) drives or parks any vehicle in an area of a public place that is not specifically set aside for the driving or parking of vehicles
- (m) opens any drain or sewer on any public place.