

23 March 2017

Memo to: Mayor and Councillors

Memo from: Administration Advisers

Subject: COUNCIL– 23 MARCH 2017 – LATE ITEM

1. Late Item: City Amenity Bylaw

4 - 13

Document R7278

A report titled City Amenity Bylaw is attached and to be considered as a major late item at this meeting.

Section 46A(1)-(6) of the Local Government Official Information and Meetings Act 1987 and Standing Order 2.15.8 require that agendas are distributed with the associated reports. As this report was not distributed with the agenda for this meeting, it must be treated as a major late item to be considered at this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the item was not on the agenda is because it was awaiting a decision from the Planning and Regulatory Committee to refer the matter to Council.

In accordance with section 46A(7)(b)(ii) the reason why discussion of this item cannot be delayed until a subsequent meeting is because a resolution on the matter is required before the next scheduled meeting of the Council to enable a timely decision to be made.

Recommendation

That the Council

Considers the item regarding City Amenity Bylaw at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable a timely decision to be made.

2. **Late Item: Draft City Amenity Bylaw Proposed for Consultation**

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Document R7352

A report titled Draft City Amenity Bylaw Proposed for Consultation is attached and to be considered as a major late item at this meeting.

Section 46A(1)-(6) of the Local Government Official Information and Meetings Act 1987 and Standing Order 2.15.8 require that agendas are distributed with the associated reports. As this report was not distributed with the agenda for this meeting, it must be treated as a major late item to be considered at this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the item was not on the agenda is because it was awaiting a decision by Council at its meeting on 23 March 2017.

In accordance with section 46A(7)(b)(ii) the reason why discussion of this item cannot be delayed until a subsequent meeting is because a resolution on the matter is required before the next scheduled meeting of the Council to enable a timely decision to be made.

Recommendation

That the Council

Considers the item regarding Draft City Amenity Bylaw Proposed for Consultation at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable a timely decision to be made.

3. Late Item: Mayor's Report

Document R7384

A public excluded report titled Mayor's Report is to be considered as a major late item at this meeting. This report was listed as item 6 on the public excluded agenda for the Council meeting on 23 March 2017 to ensure elected members were aware that it would be presented to this meeting.

Section 46A(1)-(6) of the Local Government Official Information and Meetings Act 1987 and Standing Order 2.15.8 require that agendas are distributed with the associated reports. As this report was not distributed with the agenda for this meeting, it must be treated as a major late item to be considered at this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the item was not on the agenda is because it came to hand after the agenda had been distributed.

In accordance with section 46A(7)(b)(ii) the reason why discussion of this item cannot be delayed until a subsequent meeting is because it relates to an item on the Council agenda for 23 March 2017 – the receipt of minutes of the Chief Executive Employment Committee meeting held on 28 February 2017.

Recommendation

That the Council

Considers the public excluded item regarding Mayor's Report at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable a decision to be made which relates to another item on the Council agenda for 23 March 2017 - the receipt of minutes of the Chief Executive Employment Committee meeting held on 28 February 2017.

City Amenity Bylaw

1. Purpose of Report

- 1.1 To determine, in accordance with section 155 of the Local Government Act 2002 (LGA), whether a bylaw is the most appropriate way of addressing the perceived problems in the Nelson City Centre.

2. Summary

- 2.1 Nelson City Council (NCC) has a number of bylaws for issues related to Parking and Vehicle Control, Speed Limits, Trade Waste, Navigation Safety, Control of Dogs, Water Supply, Wastewater, and Urban Environments. The Urban Environments Bylaw 2015 contains some provisions about amenity values and public order, for example regulation of busking, trading in public places and use of rubbish bins.
- 2.2 Recent events have revealed a gap in the NCC bylaws regarding safety, placement of things in public places, occupation of public places, ability to limit and remove rubbish and material placed in public places and generally maintain the ambience of the City Centre.
- 2.3 The New Zealand Public Places Model Bylaws ('Model Bylaws') NZ Standards 1999 provide guidance on provisions councils may wish to include in their bylaws, although some of the models have not been updated to align with recent legislation.
- 2.4 Councils throughout New Zealand have various bylaw provisions dealing with the issues mentioned above in paragraph 2.2.
- 2.5 Section 155 of the Local Government Act ('the LGA') requires the following:

Determination whether bylaw made under this Act is appropriate

- (1) *A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
- (3) *No bylaw may be made which is inconsistent with the [New Zealand Bill of Rights Act 1990](#), notwithstanding [section 4](#) of that Act.*

- 2.6 This report outlines the first step of the formal bylaw making process as required by section 155(1).
- 2.7 The New Zealand Bill of Rights Act 1990 (NZBORA) and bylaws were considered in the High Court in the case of *Wadsworth and Bright v Auckland Council and the Attorney General* [2013] NZHC 413. This case provides a methodology by which bylaws can be assessed in light of NZBORA and will be detailed in a subsequent report to Council.

3. Recommendation

That the Council

Receives the report City Amenity Bylaw (R7278) and its attachment (A1726829); and

Determines in accordance with section 155(1) of the Local Government Act 2002, that a bylaw is the most appropriate way of addressing the issues in the Nelson City Centre; and

Confirms in recognition of the community interest in this matter, that the bylaw development process, including hearings and deliberations, be considered by full Council, noting that the Planning and Regulatory Committee referred to Council its powers relating to a City Amenity Bylaw at its meeting on 23 March 2017.

4. Background

- 4.1 On 15 December 2016 the Council directed a bylaw be prepared to address the problems of public disorder and loss of amenity value in the City Centre. This report takes the first step in the process of drafting a bylaw namely assessment in accordance with section 155 of the LGA.
- 4.2 The circumstances giving rise to this assessment arise, originally, from problems in dealing with the activities of Mr Lewis Stanton and also from the subsequent behaviour of members of the public as well as the impact on amenity values.
- 4.3 The problems are well known. They began in 2011 and have culminated in Mr Stanton protesting from a possibly permanent site on Trafalgar Street outside Farmers Department Store: Mr Stanton lives and sleeps on the site, including cooking and hanging out his washing.
- 4.4 This has resulted in:
- Impact on the ambience of the City Centre;

- An accumulation of materials on the footpath;
- Anti-social behaviour by members of the public; and
- Safety concerns for the protester and for members of the public.

4.5 The matter has become one of public concern with members of the public and retailers upset by the occupation and demanding that "something be done"; some members of the public feel intimidated; others support the occupation.

4.6 The Police have made arrests and taken action under the Crimes Act in relation to assaults where tempers flared at the occupation site.

4.7 Existing CCTV that operates 24/7 has not deterred anti-social behaviour.

4.8 The Nelson Resource Management Plan includes objectives and policies which seek to maintain amenity values within the City Centre as follows:

- Policy IC1.8 - Activities at ground floor level in main pedestrian areas are to be attractive and interesting to pedestrians and promote rather than inhibit pedestrian flow;
- Objective IC2 - Streets and public areas are pleasant and attractive for people to visit and use;
- Policy IC4.1 - Offer a diversity of activities that do not adversely affect the environment is sought.
- Policy IC4.2 – Activities should not rise to levels of noise, smell, dust, and smoke, or traffic, landscape, aesthetic or other adverse effects which will detract from the character being sought for the City Centre and City Fringe areas.

4.9 The Council has explored various options to resolve the problems but attempts to negotiate a solution have reached an impasse and actions in trespass and obstruction (Summary Offences Act) have not been successful.

4.10 Consideration has been given to other remedies using the Public Works Act, breach of bylaw provisions against begging, civil action of trespass, nuisance, Freedom Camping Act 2011 (FCA), Local Government Act (section 357), and the Resource Management Act: none are particularly suitable.

4.11 Nelson City does not have bylaws that can deal with the issues that have arisen. The development of a bylaw to provide remedies appears to be the most appropriate manner in which to address the problems.

5. Discussion

5.1 Bylaws must address a perceived problem and be proportionate.

5.2 The LGA allows Councils to make bylaws to:

- Protect the public from nuisance; protect, maintain and promote health and safety; and minimise offensive behaviour in public places (section 145);
- Regulate waste water, waste management, trade wastes, trading in public places, solid waste, keeping of animals, bees and poultry (section 146 (a));
- Manage, regulate against, or protect from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure as listed in section 146 (b);
- To prevent the spread of fires, subject to the Forest and Rural fires Act 1977, (section 146 (c)); and
- Control alcohol (section 147).

Will a Bylaw Address the Perceived Problem?

5.3 Nelson has no regulatory provisions to address the issues listed in paragraph 4.4. The problems identified impact on the usual amenity values found in a City Centre and can be addressed through a bylaw. By introducing a bylaw the Council will be in a position to make appropriate decisions that preserve the amenity value of the City Centre.

5.4 In order to address the problems a bylaw will have to include provisions that allow the Council to:

- Make decisions providing for the safety of protesters and members of the public;
- Make appropriate decisions that regulate use of a public place for events or protests (as compared to the usual use of roads to pass and repass);
- Prevent or limit the accumulation of rubbish and material within the City Centre; and
- Remove accumulated things, rubbish and material.

5.5 The Model Bylaws provide guidance on provisions councils may wish to include in their bylaws and include provisions prohibiting the following:

- Placing things or materials in a public place that are likely to be hazardous or injurious, or create a nuisance (cl 202.1 (a))
- Deposit of household or trade refuse in a public litter bin (cl 202.1 (b))
- Causing or allowing any material or thing to be deposited on a public place or road (cl 202.1 (c))

- Erecting a structure on a public place except in compliance with a bylaw (cl 202.1 (n))
- Obstruction of a public place (cl 203)
- Placement of any “material or thing, including signage, amusement devices or items for sale or hire, on any public place unless” authorised by Council (clause 205 (1))
- Assembly in a public place (cl 209)

5.6 Relevant excerpts of the Model Bylaws are found in Appendix 1.

5.7 Many Councils in New Zealand have provisions of the type found in the Model Bylaws (with appropriate amendments to suit their circumstances, recent legislation, and case law). The provisions are designed to address the type of problems Nelson City is experiencing.

Is the introduction of a bylaw proportionate to the perceived problem?

5.8 The gap in the Nelson City bylaws has been highlighted by Mr Stanton’s actions and those of others since the situation began. The right to protest is not questioned.

5.9 Nelson City has attempted to resolve the issues in a number of different ways, as detailed above. However, in order to properly address future problems of the kind identified at paragraph 4.4 a new bylaw is required.

5.10 The proposed bylaw will be directed at the general public and it is proposed that it will introduce a framework for decision-making by officers to enable appropriate decision-making in each case.

5.11 The criteria set out in the decision-making framework will be based on case law (particularly the *Wadsworth case* referred to above and existing provisions used by other New Zealand Councils). The decision-making framework will allow Council to make appropriate decisions where, if it is necessary to do so, reasonable limits will be placed on the freedoms contained in NZBORA (see further discussion below). Protests and events are not banned outright.

5.12 A bylaw provision requiring landowners to allow the provision of lighting under the verandas of the City Centre will also be drafted. Such a provision will address problems of security and improve amenity values. Lighting and line-of-sight are regarded as important values in reducing crime through environmental design and thereby improving safety.

Other Considerations:

Amenity values

- 5.13 The Nelson Resource Management Plan aims to maintain amenity values within the City Centre such that:
- Activities at ground floor level in main pedestrian areas are to be attractive and interesting to pedestrians and promote rather than inhibit pedestrian flow;
 - Streets and public areas are pleasant and attractive for people to visit and use;
 - Diverse activities do not adversely affect the environment.
- 5.14 In addition, Nelson has mechanisms in place (such as regular rubbish removal, street cleaning, and gardening) to ensure the City Centre is neat and attracts shoppers and visitors.
- 5.15 Whilst the right to protest, within reasonable limits, is not incompatible with the amenity values, the accumulation of the things on the footpath that are associated with day-to-day living is inconsistent with the amenity values of a City Centre.

Compatibility with existing bylaws

- 5.16 There are already provisions for the use of public spaces in the City Centre for sandwich boards, retail displays, washing of vehicles, and advertising. The new bylaw will be drafted in a manner to ensure that it is consistent with existing bylaws.

Camping

- 5.17 The Freedom Camping Act 2011 ('the FCA') allows freedom camping within a District unless it is restricted or banned by a Council bylaw. The definition of freedom camping includes *"to camp (other than at a camping ground) within 200 m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200 m of a formed road or a Great Walks Track, using 1 or more of the following:*
- (a) a tent or other temporary structure:*
 - (b) a caravan:*
 - (c) a car, campervan, housetruck, or other motor vehicle."*
- 5.18 Freedom camping and a potential bylaw is separately reported to the 23 March Council meeting.

Consultation:

- 5.19 Consultation on the draft bylaw will use the special consultative procedure. This will ensure that all interested parties are given an opportunity to submit their views to Council.

Enforcement of Bylaws

- 5.20 If the proposed bylaw is adopted, Council will have a choice as to how to enforce it. More importantly, Council will have a framework by which it can work with people wishing to use publicly owned space in the City Centre or wishing to exercise their freedoms under NZBORA within reasonable limits.

6. Options

- 6.1 Council may confirm the development of a new bylaw that addresses problems of public disorder, safety and loss of amenity values within the City Centre, taking into account the provisions of NZBORA. A new bylaw will enable Council to properly address and regulate these activities.
- 6.2 The alternative is to abandon the bylaw option which will leave the problems currently experienced in the City Centre at the status quo.

Option 1: confirm development of bylaw	
Advantages	<ul style="list-style-type: none">Allows for further community discussion
Risks and Disadvantages	<ul style="list-style-type: none">Cost of developing the BylawDissatisfaction in members of the community who support Mr Stanton
Option 2: decide not proceed with development of bylaw (status quo)	
Advantages	<ul style="list-style-type: none">Requires no further resourcing
Risks and Disadvantages	<ul style="list-style-type: none">Perceived problems in the City Centre are likely to continue to impact the City Centre amenity valueDissatisfaction in members of the community who wish to see the City Centre problems solved.

7. Conclusion

- 7.1 A new bylaw is the most appropriate manner in which to address the perceived problems in the Nelson City Centre. The proposed bylaw will be directed at the general public and will introduce a framework for decision-making by officers to enable appropriate reasonable decision-making in each case.

Clare Barton

Group Manager Strategy and Environment

Attachments

Attachment 1: Model Bylaw excerpts (A1726829) [↓](#)

Important considerations for decision making

1. Fit with Purpose of Local Government

The development of a new bylaw is the most cost effective manner in which to enable Council to address the perceived problems in the Nelson City Centre.

2. Consistency with Community Outcomes and Council Policy

The recommendation in this report is consistent with Council's Community Outcome 'Our urban and rural environments are people-friendly, well planned and sustainably managed'.

3. Risk

The perceived problems in the City Centre are likely to continue to affect the City amenity value unless a new bylaw is developed to enable Council to address the problems.

4. Financial impact

Development of a new bylaw and statement of proposal for consultation will require officer time.

5. Degree of significance and level of engagement

The decision to develop a bylaw is of low significance.

However, the draft City Amenity bylaw (if developed) will be of high significance due to community interest and will be consulted on.

6. Inclusion of Māori in the decision making process

Māori have not been specifically consulted on this report.

7. Delegations

The Planning and Regulatory Committee referred to Council its powers relating to a City Amenity Bylaw at its meeting on 23 March 2017.

Appendix 1

Model Bylaw excerpts

Clause 202.1 Public Safety and Nuisances

Except with the prior permission of Council or an authorized officer a person shall not on any public place:

- a) Place or leave litter or any materials or thing or substance which are likely to be hazardous or injurious to any person or likely to create a nuisance;*
- b) Deposit in or around a public litter receptacle any household or trade refuse;...*
- e) Cause or allow any material or thing to be deposited onto a public place or road;...*
- n) Erect or place any structure on, over or under the public place except in compliance with any other Part of this bylaw.*

Clause 203 Obstructing Public Places

A person shall not:

- a) Obstruct the entrances to or the exits from a public place;*
- b) Place or leave any material or thing, including signage, on a public place that could obstruct the public right of passage, without the permission of an authorized officer and then only in accordance with such conditions as may be imposed;...*

Clause 205.1 Placing of Articles on, and Damage to Public Places

A person shall not place or leave or cause or permit to be placed or left any material or thing, including signage, amusement devices or items for sale or hire, on any public place unless:

- a) Such action has first been approved by Council or an authorized officer, and then only in accordance with such conditions as he or she may impose; or*
- b) Such action is taken for the purpose of regular refuse or other collections...*
- c) Such action is permitted pursuant to any other Part of this bylaw.*

Clause 209 Assembly

A person shall not, without the prior consent of an authorized officer:

- a) Participate in any assembly or associate with other persons in a public place in such a way as to impede pedestrian or vehicular traffic or to prevent or hinder ready access to shops or premises facing onto a public place;*
- b) Organise or conduct any meeting, gathering, demonstration, parade, procession, or competition in a public place.*

Draft City Amenity Bylaw Proposed for Consultation

1. Purpose of Report

- 1.1 To approve the draft City Amenity Bylaw for consultation.

2. Summary

- 2.1 Sections 145 and 151 of the Local Government Act ('the LGA') allow Council to make bylaws that address concerns about nuisance, health and safety and offensive behaviour and provide broad powers of enforcement.
- 2.2 The Council has determined that Nelson requires a more complete set of bylaws to allow appropriate and proportionate decision-making to improve safety, limit and/or remove the placement of unauthorised things in public places, manage the occupation of public places, limit rubbish and material placed in public places and generally maintain the ambience of the Central City and Suburban Commercial Zones.
- 2.3 The Council has determined in accordance with section 155, that a bylaw is the most appropriate way of addressing the perceived problems affecting the city amenity values in the CBD.
- 2.4 The next steps in the bylaw making process, as set out in section 155 of the LGA, are to determine whether the proposed bylaw is the most appropriate form of bylaw and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990 ['the NZBORA'].
- 2.5 The draft City Amenity Bylaw is attached at Appendix [1] for consideration.
- 2.6 The proposed bylaw must be consulted on using the special consultative procedure (s. 156 LGA). The Statement of proposal is attached at Appendix [2].

Recommendation

That the Council

Receives the report Draft City Amenity Bylaw Proposed for Consultation (R7352) and its attachments (A1729361, A1729616 and A1729360); and

Determines that the proposed City Amenity Bylaw (A1729361) is the most appropriate form of bylaw; and

Determines that the proposed City Amenity Bylaw affects freedoms provided by the New Zealand Bill of Rights Act 1990 and those limits on freedoms are reasonable and proportional; and

Approves the Statement of Proposal (A1729360) and the draft City Amenity Bylaw (A1729361) for consultation using the special consultative procedure; and

Agrees that the Mayor, Deputy Mayor and Chief Executive be delegated to approve any minor amendments required to the draft Bylaw or Statement of Proposal prior to consultation starting.

4. Background

4.1 Nelson City does not have bylaws that allow it to deal with problems such as:

- Activities that negatively impact on the ambience of the Central City,
- Accumulation of material and things on the footpath
- Occupation of public places, such as during an event or protest,
- Anti-social behaviour on the part of members of the public, and
- Safety concerns.

4.2 The LGA contemplates that such bylaws can be made by conferring powers to local authorities to make bylaws to protect the public from nuisance; protect, promote and maintain public health and safety; and minimise the potential for offensive behaviour in public places (section 145).

4.3 Section 151 provides that Councils may adopt bylaws that:

- Require anything to be done in any manner, or within any time, that is required by the local authority or by a person referred to in the bylaw;
- Leave any matter or thing to be regulated, controlled, or prohibited by the local authority by resolution either generally, for any specified classes of case, or in a particular case; or provide for
- The licensing of persons or property, payment of reasonable licence fees, or recovery of costs incurred by the local authority in relation to an activity licensed under a bylaw.

5. Discussion

5.1 The Council has determined in accordance with section 155(1), that a bylaw is the most appropriate way of addressing the perceived problems.

5.2 The next steps in the bylaw making process, as set out in section 155 of the LGA, are to determine whether the proposed bylaw is the most appropriate form of bylaw and whether it gives rise to any implications under the NZBORA.

Form of the Bylaw

5.3 The proposed bylaw is the most appropriate form of bylaw. The proposed bylaw follows that of other bylaws for Nelson City. It takes into account the Model Bylaw provisions, avoids ambiguities and inconsistency, provides definitions where necessary and includes criteria by which officers can make appropriate decisions.

Implications under NZBORA

5.4 In accordance with section 155(2)(b) if Council determines that a bylaw is the most appropriate way of addressing the perceived problem, it must before making the bylaw, determine whether the proposed bylaw gives rise to any implications under the NZBORA.

5.5 Whether bylaw provisions restricting activities in a public area are invalid because the bylaw restricts rights enshrined in NZBORA was considered by the High Court of New Zealand in *Wadsworth and Bright v Auckland Council and the Attorney General* [2013] NZHC, 413 ('**Wadsworth**').

5.6 The Court considered Auckland Bylaw 20 in light of the occupation of Aotea Square in Auckland by the "Occupy" movement. The movement had occupied and camped in Aotea Square without a permit as required under the bylaw.

- 5.7 The Court in Wadsworth found that the bylaw did interfere with the rights conferred under NZBORA but that the bylaw provisions constituted a justified limit on those rights (paragraph 84 of the case report).
- 5.8 It is important to note that in Wadsworth the bylaw already existed and the bylaw was not complied with. The Court also placed weight on a line of international cases noting the need for the regulatory body to have criteria or a policy by which decisions under the bylaw are proportional to the approval sought. The Auckland bylaw contained guidance on issuing of event permits that allowed Council officials to have discretion (as opposed to the Bylaw making a blanket ban). A new bylaw cannot operate retrospectively.
- 5.9 The proposed bylaw will be directed at the general public and it is proposed that it will introduce a framework for decision-making by Officers to enable appropriate decision making in each case.
- 5.10 The proposed bylaw provision relating to lighting under the verandas of the Central City will address problems of security and improve amenity values. Lighting and line-of-sight are regarded as important values in reducing crime through environmental design, thereby improving safety.
- 5.11 A bylaw provision for lighting under verandas is not considered to be an infringement of rights covered by NZBORA.

The Proposed Bylaw

- 5.12 The proposed bylaw aims to address the problems referred to in paragraph [2.2] above.
- 5.13 The proposed bylaw includes provisions based on appropriately updated Model Bylaws provided by Standards New Zealand. Table 1 in attachment [3] provides a guide to the topics covered by the Model Bylaws and that are also included in the proposed bylaw.
- 5.14 The matters covered in the proposed bylaw and the Model Bylaws have long been recognised as part of the usual regulatory framework of Councils and reference problems that are likely to occur at a local level.
- 5.15 The proposed bylaw also includes the following provisions which are not in the Model Bylaws:
- 5.15.1 Clause 6 imposes a general responsibility on members of the public to act in a manner that does not cause nuisance, that promotes public health and safety, and that minimises potential for offensive behaviour. The provision reflects the bylaw making power as set out in section 145 of the LGA and sets the overall tone of the bylaw.
- 5.15.2 Clause 7 requires owners of buildings in the Central City to keep the property frontage clean, well maintained and clear of weeds, rubbish, accumulated dirt or materials. This provision is based on a provision in the Model Bylaw for Solid Waste which bans the accumulation of refuse

on any property. It aims to encourage owners of buildings to meet the amenity values embraced by Nelson City.

- 5.15.3 Clause 8.3 requires users of the footpath to leave at least 2 metres of footpath width for pedestrians to pass to and fro. Provisions of this type are widely used in bylaws and are designed to allow the footpath to be used for things other than walking, for example for al fresco dining, whilst ensuring that that families with prams and pushchairs or disabled people in wheelchairs or the blind can easily negotiate the footpath.
- 5.15.4 Clause 9 introduces a provision that allows the Council to install lighting under verandas. Verandas protrude, with Council permission, into the public space over a footpath and installing lighting under the verandas will increase security. The principles of crime prevention through environmental design include lighting and clear lines of sight.
- 5.15.5 Clause 10 requires that nothing shall be placed in front of window displays such that a person cannot stand within 500mm so as to view the display. The provision is designed to complement the provisions of the Nelson Resource Management Plan, to support the expectations of retailers that their window displays can be viewed, and to assist members of the public who wish to view such displays or signage.
- 5.15.6 Clause 12 introduces a regulatory framework for events in the Central City. Events are defined as including protests. The provisions have been drafted after consideration of relevant case law relating to the NZBORA, the context of those cases and the need for reasonable decisions to be made in each circumstance. The policies and bylaws of other Cities have also been taken into account. Clause 12 aims to enable the Council to manage events, and protests, as they arise from time to time. The clause requires the issue of a permit based on criteria such as duration, location, health and safety, noise, litter and the possibility of damage. Protests and events are not banned outright.
- 5.15.7 Clause 13 is drafted to be consistent with clause 12 so that where there is an event of long duration appropriate arrangements can be made for sleeping, but it addresses casual sleeping on the footpath.

Consultation

- 5.16 A proposed new bylaw must be consulted on using the special consultative procedure if the bylaw is of significant public interest or has a significant impact on the public.
- 5.17 The proposed bylaw has broad consequences in relation to the public, will be of interest to the community and it potentially places limits on freedoms contained in NZBORA.
- 5.18 For these reasons, use of the special consultative procedure is appropriate in order to ensure that as many interested parties as possible are able to make submissions on the proposal.

- 5.19 The Statement of Proposal is attached as Appendix [2] The Statement contains a summary of information about the bylaw, includes the decisions made by the Council under section 155 LGA, explains how interested parties can make submissions, specifies the consultation period (not less than 1 month), and informs submitters of their right to be heard.
- 5.20 The Statement of Proposal and the proposed bylaw will be made available in the libraries, the Customer Service Centre and on the Nelson City Council website.

Enforcement

- 5.21 Adopting a bylaw does not mean that all breaches of a bylaw will cease. Most members of the public respect reasonable regulatory provisions, however there may be occasions when an enforcement process is required. This means prosecution in the District Court. There are no infringement offences for breach of bylaws.
- 5.22 The proposed bylaw aims to encourage compliance through a permit process that will take account of the circumstance of each situation.
- 5.23 The LGA provides the following powers and penalties where there is a breach of a bylaw:
- Section 242 LGA provides for fines of up to \$20,000.
 - Section 163 of the LGA allows removal or alteration of works or things in breach of a bylaw.
 - Section 162 allows Councils to apply for an injunction.
 - Sections 164-168 provide for the Council to seize and impound property (which may be subsequently returned or disposed of).
 - Section 176 covers cost recovery.

6. Options

- 6.1 Council can proceed with the bylaw making process by approving the draft bylaw for consultation, the preferred option or decide not to proceed with the bylaw making process.

Option 1: Proceed with bylaw making process	
Advantages	<ul style="list-style-type: none"> • Provides a clear indication of Council's intention to address the problems in the Central City • Allows for community engagement • If adopted, the bylaw will enable Council to address problems affecting the amenity values within the Central City

Risks and Disadvantages	<ul style="list-style-type: none"> • The consultation process will require staff resources • The adoption of a new bylaw does not guarantee that the problems will cease and Council may be required to take further action in response to breaches of the bylaw.
Option 2: Decide not to proceed with bylaw making process	
Advantages	<ul style="list-style-type: none"> • No further staff resources will be devoted to the bylaw making process
Risks and Disadvantages	<ul style="list-style-type: none"> • If no bylaw is adopted, the problems affecting the amenity values within the Central City are likely to continue until an alternative method to address the problems is found • The opportunity to engage with the community is lost

7. Conclusion

- 7.1 There is a gap in the Council bylaws in relation to maintaining the city amenity values and it is appropriate that Council take steps to address this gap.

Clare Barton

Group Manager Strategy and Environment

Attachments

Attachment 1: A1729361 - Draft bylaw - City Amenity - March 2017 [↓](#)

Attachment 2: A1729616 -Table1 - Model Bylaw topics included in proposed bylaw - City Amenity [↓](#)

Attachment 3: A1729360 - Statement of Proposal City Amenity Bylaw - March 2017 [↓](#)

Important considerations for decision making	
1. Fit with Purpose of Local Government	The proposed bylaw is the most appropriate and cost-effective manner in which to address the problems which are affecting the amenity value within the Central City. The consultation on the proposed bylaw will enable Council to take into account the views of the community in relation to the bylaw.
2. Consistency with Community Outcomes and Council Policy	The recommendation in the report aligns with our Community Outcomes: - <i>'Our urban and rural environments are people-friendly, well planned and sustainably managed'</i> , <i>'Our communities are healthy, safe, inclusive and resilient'</i> and <i>'Our Council provides leadership and fosters partnerships, a regional perspective, and community engagement'</i>
3. Risk	If steps to address the gap in the bylaws are not taken, the problems affecting amenity values in the Central City are likely to continue until an alternative method to address the problems can be found. The adoption of a new bylaw does not automatically guarantee that the problems will cease. Council may be required to take further action in response to breaches of the new bylaw.
4. Financial impact	Staff resources will be required in order to manage the special consultative procedure.
5. Degree of significance and level of engagement	This matter is of high significance because the issues are visible in the community and are polarising. The Special Consultative Procedure will be used in consulting on this matter.
6. Inclusion of Māori in the decision making process	Māori will be involved in the consultation on the proposed Bylaw.
7. Delegations	The Planning and Regulatory Committee resolved to refer decisions on a City Amenity Bylaw to Council. The hearing and deliberation of submissions will also go to full Council.



Nelson City Council

te kaunihera o whakatū

City Amenity Bylaw (No. [to be inserted])

[date to be inserted if adopted]

DRAFT

The COMMON SEAL of the
NELSON CITY COUNCIL
Was hereto affixed in
The presence of:



_____ Her Worship the Mayor

_____ Chief Executive

This ____ of _____ 2017.

CONTENTS

City Amenity Bylaw

- Part 1 Administration**
- Part 2 Definitions**
- Part 3 Amenity of the City centre**
- Part 4 Events and Camping**

DRAFT

CITY AMENITY BYLAW

PART ONE - ADMINISTRATION

1. Title

1.1. The title of this bylaw is the "City Amenity Bylaw 2017".

2. Commencement and Review Date

2.1. The bylaw came into effect on [date to be inserted] and will be reviewed by [date + 5 years]

3. Purpose

3.1. This bylaw has one or more of the following purposes:

- i. To protect, promote and maintain public health and safety in Nelson's city centre;
- ii. To maintain and enhance the amenity and security of Nelson's city centre and to protect the public from activities that may constitute, or have the potential to constitute, a nuisance.
- iii. To minimise activities that may cause an obstruction on footpaths and roads;
- iv. To minimise the potential for disorder or offensive behaviour within Nelson's city centre;
- v. To regulate the conduct of events, including protests, within the city centre;
- vi. Restrict sleeping on roads or footpaths in the city centre.

Explanatory note: The provisions in this bylaw are in addition to provisions found in the Urban Environments Bylaw affecting the city centre and in particular Chapter Four "Urban Amenity" and Chapter Five "Trading in Public Places".

4. Exemption

4.1. Nothing in this bylaw shall prevent or restrict lwi from carrying out activities which are provided for in the legislation enacting their individual Deeds of Settlement.

5. Breach of Bylaw

5.1. Any person who breaches this Bylaw must, on verbal or written request by an Enforcement Officer, immediately stop the activity.

5.2. Any person failing to promptly comply with a request under clause 5.1 commits a further offence against this Bylaw.

Explanatory note: Powers and penalties available to Council if a bylaw is breached: Section 242 of the Local Government Act 2002 (LGA) provides for fines of up to \$20,000. Section 163 of the LGA allows removal or alteration of works or things in breach of a bylaw. Section 162 allows Councils to apply for an injunction. Sections 164-168 provide for the Council to seize and impound property (which may be subsequently returned or disposed of). Section 176 covers cost recovery.

PART TWO - DEFINITIONS

- **Authorised officer** means any member of the staff of the Council, a Police Officer or any other person appointed by the Council to act on its behalf and within its authority;
- **City Centre** means that area of the City which is zoned "Inner City" and the "City Fringe" and including the Suburban Commercial Zone under the Nelson Resource Management Plan (NRMP) or any other resource management plans which replace the NRMP after this Bylaw is adopted;
- **Chief Executive** means the person for the time being exercising the functions of the Chief Executive of the Council;
- **City** means the territory contained within the City of Nelson as defined by Schedule 2 of the Local Government Act 2002;
- **Commercial Services** means the soliciting of patronage for, or provision of, any service which is offered or provided, on payment of a fee, charge or other valuable consideration, either on a casual basis to passers-by or any other service of any kind whatsoever;
- **Council** means the Nelson City Council as constituted by the Local Government Act 2002;
- **Enforcement Officer** means a person appointed by the Council pursuant to section 177 of the Local Government Act 2002 to exercise the powers of an enforcement officer in relation to offences against this Bylaw;
- **Event** is something that takes place in or along a defined area for a particular purpose and includes a protest whether that protest is organised by a group or the protest of one person; events that are street markets, street stalls or busking are excluded from this Bylaw and are covered by the Urban Environments Bylaw;
- **Footpath** means so much of any road as is laid out or constructed by authority of the Council primarily for pedestrians, and includes the edging, kerbing and channelling thereof, and includes any area of land owned or controlled by the Council which is set aside for the convenience of pedestrians generally, as a square, place, plaza, pedestrian precinct or public accessway;
- **Nuisance** has the same meaning as section 29 of the Health Act 1956 and includes a person, animal or thing or circumstance causing unreasonable interference with the peace, comfort or convenience of another person whether or not that person is in a public place;

- **Public Place** means any public place within the city centre and includes all roads, streets, footpaths and public car parks owned or controlled by the Council, and all parks and gardens and reserves within the city centre;
- **Reserve** means any land which is owned by or under the control of the Council and which is set aside for public enjoyment as a reserve, park, garden, open space. It does not include a road reserve.
- **Retail** means any shop that provides goods for sale to the public;
- **Road or Street** means the whole of any land which has been laid out by or vested in the Council for the purposes of a road, footpath or street and includes every place, square, accessway, or service lane that is vested in the control of the Council intended for use by vehicles;
- **Sign** means any structure, board, writing or other thing which has as its purpose the disseminating of a message, providing directions to or attracting the attention of passers-by to a site, building, event, available goods or services, or any combination thereof and includes an advertising leaflet or flyer;
- **Window display** means goods displayed in the window frontage of any retail or commercial premises to attract the attention of passers-by and to advertise the goods or services available in those premises.

PART THREE - AMENITY OF THE CITY CENTRE

6. All persons using public places must take reasonable steps to:

- 6.1. Protect the public from nuisance,
- 6.2. Protect, promote, and maintain public health and safety, and
- 6.3. Minimise the potential for offensive behaviour in public places.

7. The owner of any building in the city centre with frontage abutting a public place must ensure the property frontage is clean, well maintained and kept clear of weeds, rubbish, accumulated dirt or materials.

8. Use of Public Amenities

8.1. Except with the permission of the Council or an authorised officer no person shall:

- a. Cause or permit to be done any act whatsoever by which damage is caused to any public place, or any work or thing in, on, over or under the public place;
 - b. Damage or interfere with any natural feature, animal or plant;
 - c. Pollute, damage, deface or disfigure, apply graffiti, posters or advertising devices to or interfere with any ornament, statue, building, structure or facilities except in accordance with clauses 5.19 – 5.23 of the Urban Environments Bylaw;
 - d. Use any vehicle or be in control of an animal in any manner so that it damages any part of a public place;
 - e. Damage, interfere with, destroy or remove any grass plot, flower bed, tree, shrub, or plant or any inscription or label relating to it;
 - f. Drive or park any vehicle in a public place except in an area set aside for the driving or parking of vehicles;
 - g. Open any drain or sewer on, or disturb or remove the surface of, any public place.
- 8.2. Any person carrying out authorised works on a public place shall reinstate the works to a standard approved by an authorised officer.
- 8.3. Notwithstanding any other provisions of this bylaw and subject to the permission of the Council or an authorised officer no person shall:
- a. Use a footpath in the city centre in such a manner as to prevent pedestrians to pass and repass and at least 2 metres width of the footpath shall be assigned for pedestrians to pass and repass; and
 - b. Use a road or footpath in such a manner as to prevent emergency services access, unless
 - c. Adequate, safe and alternative temporary forms of access are provided.
- 8.4. Except with the prior permission of the Council or an authorised officer no person shall on any public place:
- a. Place or leave or cause or permit to be placed or left any material or thing on any public place; or
 - b. Cause or allow any material or thing to be deposited onto a public place or road; or
 - c. Erect or place any structure on, under or over any public place except in compliance with this or any other bylaw; or
 - d. Place any other items on, under or over any public place except in compliance with this or any other bylaw and in accordance with the following provisions.
- 8.5 Subject to clause 11 of this Bylaw, the Council may issue a permit to any person proposing to place items that would otherwise be in contravention of this bylaw provided that:

- i. The permit is applied for and issued by an authorised officer prior to the activity (unless the action is already permitted by another bylaw); and
- ii. The applicant has provided evidence of consent from the owner or Manager of retail or commercial premises adjacent to the proposed action; and
- iii. The proposed action complies with and continues to comply with the provisions of the permit, this or any other bylaw, regulation or enactment.

9. Security

- 9.1. The Council may install and maintain under veranda lighting in the city centre to provide security for retail and commercial premises.
- 9.2. Installation of under veranda lighting will be notified to the owners and tenants of retailer and commercial premises giving at least 7 days' notice that such work will be undertaken.
- 9.3. Any such work shall not affect access into or exit from retail and commercial premises or prevent pedestrians from passing and repassing along the footpath in the work area.

10. Window Displays

- 10.1. Except with prior permission of an authorised officer, no person will obstruct the ability of the public to view signage or window displays of retail and commercial premises in the city centre.
- 10.2. Except with prior permission of an authorised officer, no person shall place items on the footpath such that signage or window displays of retail or commercial premises in the city centre may only be viewed from a distance of greater than 500mm.
- 10.3. The Council may issue a permit for temporary obstruction of a window display taking into account safety, health, the duration of the proposed obstruction and any other relevant matters, provided that window cleaning and any works affecting the site and that have been granted consent under the Building Act 2004 and/or the Resource Management Act 1991 are exempt from requiring a permit.

Explanatory note: retailers and commercial premises expect that pedestrians can stop to easily survey the items they have placed in window displays and/or signage. The CITY CENTRE is designed to attract retail and commercial activity and ensure that the public can

easily use the services provided. Use of retail and commercial services includes the information and enjoyment created by signage and window displays.

11. Permits

- 11.1. Except as otherwise provided, use of the road or footpath for an activity shall be in accordance with the following conditions:
- a. To allow members of the public to use any public place, road or footpath without hindrance in accordance with clause 8 of this bylaw, or
 - b. For any other use, as may be authorised by this or other bylaws, or
 - c. As may be permitted by an authorised Council officer, prior to the activity.
 - d. A permit may be issued with conditions after taking into account:
 - i. The duration of the proposed activity,
 - ii. The location of the proposed activity,
 - iii. Any reasonable safety considerations,
 - iv. The impact of the proposed activity emitting noise, odour or other offensive emission,
 - v. Likelihood of damage to public places and public property, and
 - vi. That the activity is consistent with bylaw provisions.
- 11.2. The authorising officer may only issue a permit prior to the activity taking place and subject to reasonable conditions. A permit shall not be unreasonably withheld.

PART FOUR – EVENTS AND CAMPING

12. Events

- 12.1. Any person proposing to organise or undertake an event within the city centre must apply to the Council for a permit. The authorising officer shall consider the following matters:
- a. Duration of the event,
 - b. Location of the event,
 - c. Consent of adjacent retailers (which shall in the opinion of the authorising officer not be unreasonably withheld)
 - d. Safety considerations,
 - e. Health considerations including the provision for collection of litter and clean-up of the site after the event,
 - f. Likelihood of noise, odour or other emissions,
 - g. Likelihood of damage to public places and public property,
 - h. Consideration of Part 3 of this Bylaw, and

- i. Such other matters as the authorising officer may reasonably take into account considering the nature of the event.

12.2. If the event is a protest the authorising officer shall also take into account:

- a. The rights and freedoms provided for in the New Zealand Bill of Rights Act 1990, and may impose reasonable limits on the protest in accordance with the matters contained in clause 11, and
- b. The general nature of the protest and involves occupation of a public place (such as an assertion of customary rights under the Treaty of Waitangi).
- c. If a protest falls within clause 12.2.b consideration will be given to appropriate conditions whereby the protester or protesters may continuously occupy a specified area for a specified period of time and the Council may decide to renew the specified period of time from time to time.
- d. In all other protest actions there is no right to occupy a public place overnight.

12.3. Events shall not:

- a. Allow the persons forming the protest to obstruct or impede the free movement of pedestrians along the footpath or way or public place,
- b. Use language or behaviour which is abusive, insulting, threatening or offensive, or
- c. Undertake or perform any activity which generates any noise that in the opinion of any Police or enforcement officer unreasonably interferes with the peace, comfort and/or convenience of any person or persons.

12.4. The authorising officer may issue a permit for an event subject to reasonable conditions imposed in accordance with this and any other Nelson City Bylaw.

Explanatory Note: see Part 2 Definitions for the definition of events.

13. Sleeping in the city centre

13.1. No person shall sleep overnight on a footpath or on the road within the city centre unless permitted to do so for a specified period in accordance with this Bylaw.

Explanatory Note: for further information about camping in Nelson see the website nelson.govt.nz

Appendix 3

Table 1: Model Bylaw topics also included in the proposed bylaw

Model Bylaws	Proposed Bylaw
	Part 1 – standard administrative clauses
	Part 2 – Definitions Consistent with other Nelson Bylaws and regulatory provisions
	Part 3 Amenity of the CBD
-	CI.6 General responsibilities of the public re nuisance, public health and safety, and offensive behaviour
Similar to clause 606 Solid Waste Bylaw	CI 7 Owners of buildings to keep frontage clean and tidy
	CI 8 Use of Public Amenities:
CI 204.1.d	Damage to public places and works
CI 204.1.c	Damage to plants and environment
CI 204.1.b	Pollute, damage, deface
CI 204.1.e	Vehicles, animals causing damage
CI 204.1.f	Drive except where permitted
CI 204.1.h	Open drains, sewers, etc
CI 204.2	Reinstatement of works
- (similar provisions used in other NZ bylaws to regulate activities, e.g. al fresco dining)	Appropriate use of roads and footpaths, 2m width
CI 202.1	Items left on/in roads, footpaths and public places
CI 202.1.l	Structures on public place

A1729616

Compare CI 105 Introductory Bylaw (imposes fees and officers have broad discretion to generate conditions)	Permit to place items – compliance requirements and criteria officers must consider
-	CI 9 Security
-	CI 10 Window Displays
Compare CI 105 Introductory Bylaw (imposes fees and officers have broad discretion to generate conditions)	CI 11 Permits – lists matters officers must consider, requires reasonableness.
	Part 4 Events and Camping
CI 209 (but taking into account NZBORA and case law)	CI 12 Events Requirement for permits; Matters that officers must take into consideration; Standards of behaviour
CI 202.3 (also Freedom Camping Act)	CI 13 Sleeping on footpaths or roads in CBD only allowed if permitted by Council.

A1729616

Statement of Proposal

City Amenity Bylaw

Council proposes to adopt a new bylaw to ...

This proposal is now open for public consultation

Summary of Information

Nelson City Council has prepared a City Amenity Bylaw to provide the Council with powers to:

- Manage the risk of damage being done to public places, public works and installations, gardens and trees
- Require authorised works to reinstate the area affected to an appropriate standard
- Ensure that any use of the footpath leaves at least 2 metres for pedestrian use
- Use of the road or footpath must not prevent access by emergency services unless adequate alternatives are provided
- Regulate the placement of things or structures on roads or footpaths, whether intentionally or unintentionally, unless permitted to do so by Council
- Provide criteria by which Council officers can assess applications for permits and make reasonable decisions taking into account the circumstances of each application
- Permit the Council to install under-veranda lighting
- Ensure that no obstruction prevents window displays and signage from being viewed from within 500mm of the display or signage (unless permitted)
- Require organisers of events to apply for a permit
- Introduce criteria by which event permits may be issued
- Restrict rights to sleep overnight on a footpath or road unless permitted so to do.

The proposed bylaw applies to the City Centre (defined as the “Inner City” and “City Fringe” zones) and Suburban Commercial Zones.

The Nelson City Council has determined that the provisions are the most appropriate way to respond to the likelihood of the matters listed above. In making this determination it has taken into account other legislative powers, the New Zealand Model Bylaws and the bylaw provisions other Councils have adopted and weighed those powers against the needs of the City. The Council has also noted that the bylaws represent limitation on the rights and freedoms contained in the New Zealand Bill of Rights Act and, taking into account recent case law, it has determined that the limits proposed are reasonable and will enable officers of the Council to take account of each case on its merits.

The draft bylaw is attached and the public is invited to make submissions.

How to make a submission

Any interested person or body is welcome to make a submission or comment on the proposed bylaw [Do we need to include details on any other options that were considered?]

Written submissions may be made from xxx until xxx

Council will take account of all submissions when making decisions on the proposed bylaw. There will be hearings on xxx for those submitters who indicate they wish to speak in support of their submission.

Copies of this statement of proposal may also be viewed on, and downloaded from, the Council's website. [Copies available at library?]

Submissions can be made by;

- Visiting the Council website www.nelson.govt.nz "Submissions and Feedback" and clicking on the link which will take you to the online submission form for the City Amenity bylaw
- Emailed to submissions@ncc.govt.nz
- Dropping your submission form into Civic Offices, 110 Trafalgar Street, Nelson
- Posting your submission form to:
Draft City Amenity Bylaw
Nelson City Council
PO Box 645
Nelson 7040

All submissions, including name and contact details of the submitter, will be made available to the public and media on Council's website, unless you specifically request that your contact details are kept private. Council will not accept any anonymous submissions.

All enquiries should be directed to the Council's Customer Services Centre on 546-0200 or via email at enquiry@ncc.govt.nz

Attachments

1. Submission Form
2. Draft City Amenity

Submissions close on xxx.

Clare Hadley
Chief Executive