

8. OUTDOOR DINING LICENCES

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The purpose of this report is to seek the Council's approval to a proposed course of action in respect of existing outdoor dining licences and a delegation in the event that enforcement action is necessary following completion of all other steps in the decision making process of the Public Street Enclosure Policy.

BACKGROUND

At the September 2002 Council Meeting, the Council resolved:

1. That the Public Street Enclosure Policy be adopted.
2. That the delegations set out in Appendix 1 of the Policy be adopted.
3. That the Central City Streets Subcommittee receive a comprehensive monitoring report in approximately 18 months time on the operation of the Policy.

A copy of Appendix 1 of the Policy is attached.

The Council presently has 55 outdoor dining licences in place. These can be divided into two categories:

1. Existing licences which are for a fixed term, and the term is yet to expire.
2. Existing licences which were for a fixed term, but the term has now expired.

In the second category, the licences continue in place but are terminable by either party giving notice in writing to the other. The notice period is normally one month but in some cases it is longer. The Council has a number of licences which fall into the second category as the existing licences have been allowed to run on pending adoption of the Public Street Enclosure Policy.

Most outdoor dining licences have been based on a precedent document which lists the furniture which is permitted on the licensed area. One of the standard clauses of the deed of licence (clause 10.3) specifies that:

'The design and location of the permitted furniture is subject to the prior written approval of the Council, such consent not to be unreasonably withheld.'

Under the existing licences, the permitted furniture is generally defined to be 'tables and chairs, umbrellas, planter boxes'. Sometimes a specified number of heat lamps are also defined as permitted furniture.

PROPOSED PROCESS

Now that the Public Street Enclosure Policy is in place, officers propose writing to all existing licensees on the following basis:

1. For licences where the term has not yet expired and approval has not already been given, licensees will be asked to seek the Council's approval to the design and location of their furniture pursuant to clause 10.3 of their deed of licence. Licensees will be provided with a copy of the Public Street Enclosure Policy and advised that the Council will be considering their application in light of that Policy. Licensees will also be advised that they could seek a variation to their existing licence to have the range of permitted furniture expanded. As mentioned above, most existing licences only allow tables and chairs, umbrellas and planter boxes. However, the Public Street Enclosure Policy contemplates that licensees may want additional kinds of furniture and/or structures on their licensed area.
2. For licences where the term has expired, licensees will be asked to apply for a new licence. That application, like any other application for the grant of a new licence, would be considered in accordance with the process set out in Appendix 1 of the Public Street Enclosure Policy. Again, licensees will be provided with a copy of the Public Street Enclosure Policy and advised that the Council will be considering their application in accordance with that Policy.

All licensees will be asked to reply by 10 February 2003. A reminder letter will be sent immediately after that date to all licensees who do not apply by 10 February 2003.

Licensees will be asked in writing to remove all unauthorised furniture, structures and/or enclosures if:

- (a) They do not apply for approval or a new licence (as applicable) by 1 March 2003; or
- (b) Any furniture, structures and/or enclosures are not authorised by Council following completion of the decision making process set out in Appendix 1 of the Public Street Enclosure Policy; or
- (c) A licence is not entered into within a reasonable time of the licensee receiving a deed of licence for signing.

If that request is not met, consideration would need to be given to enforcement action.

Paragraph 7 of Appendix 1 of the Public Street Enclosure Policy states that:

'Enforcement action will be taken against businesses placing any furniture or erecting any enclosures on the public pedestrian precinct or street for which the necessary licensing consents have not been obtained.'

Officers seek a delegation authorising the Sustainable Transport and Utilities Committee to take such enforcement action, on behalf of Council, as it considers reasonably necessary when furniture, structures and/or enclosures are located on the public pedestrian precinct or street and the necessary licence and/or consents have not been obtained within a reasonable time and a written warning has been given. Enforcement action may include removal of unauthorised furniture, structures and/or enclosures or termination of the licence.

CONCLUSION

The Public Street Enclosure Policy will provide a balanced approach to determining the appropriate levels of street enclosure and types of street furniture for outdoor dining in Christchurch. To ensure that this approach to outdoor dining is implemented as quickly and smoothly as possible, officers would like to undertake the process outlined in this report and have a delegation in place for any necessary enforcement action.

- Recommendation:**
1. That the proposed process outlined in this report be approved.
 2. That the Sustainable Transport and Utilities Committee be given delegated authority to take such enforcement action as it considers reasonably necessary in respect of any furniture and/or structures and/or enclosures located on the public pedestrian precinct or street for which the necessary licence and consents have not been obtained. This delegation excludes any power to institute proceedings in the High Court that are not injunctive proceedings.