

8 BUSINESS

8.1 Deliberations on the proposal to remove the begging and rough sleeping provisions from the Street Use and Public Places Bylaw 2018

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PURPOSE OF THE REPORT

1. To deliberate and recommend to Council any changes to the begging and rough sleeping provisions contained in the Street Use and Public Places Bylaw 2018.
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RECOMMENDATIONS

That the Policy Committee recommend to Council:

- (a) To revoke the begging and rough sleeping provisions (clauses 20.2 and 20.3) in the Street Use and Public Places Bylaw 2018.
 - (b) The Street Use and Public Places Bylaw 2018 as amended by above is the most appropriate form of bylaw and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
 - (c) The revocation of clauses 20.2 and 20.3 shall come into force on 6 March 2020.
 - (d) Delegate to staff the authority to make any typographical changes or correct any minor editorial changes for the purposes of correction or clarity before the Bylaw comes into force.
 - (e) Action be taken to investigate:
 - (i) Ways to continue to support and resource agencies in Tauranga working with people experiencing homelessness in alignment with the Western Bay of Plenty Homelessness Strategy; and
 - (ii) Options to resource the need for enforcement of the Street Use and Public Places Bylaw.
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BACKGROUND

2. Council on 20 November 2018 adopted the current Street Use and Public Places Bylaw 2018 ("bylaw"). The bylaw came into force on 1 April 2019. **Attachment A** contains a copy of the current bylaw.
3. The wording of the current bylaw includes the following begging and rough sleeping provisions:
 - 20.2 No person shall beg in a public place within 5 metres of a public entrance to retail premises within defined areas in the CBD, Greerton and Mount Maunganui (using current maps in the Bylaw attachments and enable these to be changed by Council resolution based on evidence of the problem).
 - 20.3 No person shall rough sleep within five metres of a retail premises within defined areas in the CBD, Greerton and Mount Maunganui (using current maps in the Bylaw

attachments and enable these to be changed by Council resolution based on evidence of the problem).

The defined areas of the CBD, Greerton and Mount Maunganui are set out in Attachment C of the bylaw (in **Attachment A**). The bylaw defines “begging” and “rough sleeping” as follows:

- Begging means soliciting for money or goods for private benefit.
 - Rough Sleeping means sleeping in a public place on the streets, pavements or anywhere other than in approved accommodation, with the exception of where Council has given approval.
4. The bylaw covers a wide range of issues to manage public places for the wellbeing and enjoyment of the public. This includes setting out the rules relating to election signs, signs, the use of footpaths for tables and chairs and retail displays, skateboarding, scooters, and busking. The bylaw also addresses nuisances and obstructions on footpaths over and above the begging and rough sleeping provisions in clause 20.2 and 20.3 of the bylaw.
 5. The bylaw also provides definitions for Public Place, Retail and Nuisance. These definitions are set out on page 3 of the bylaw in **Attachment A**.
 6. The Tauranga Housing Advocacy Trust (“Trust”) has filed Judicial Review proceedings in the High Court challenging the rough sleeping and begging provisions of bylaw. The Trust raises several concerns with these provisions, including that the current wording goes further than necessary to address the perceived problem of begging and rough sleeping in Tauranga and that it is inconsistent with the New Zealand Bill of Rights Act 1990 (“NZBORA”).
 7. At its 19 November 2019 meeting the Policy Committee resolved that a bylaw was not the most appropriate way of addressing the perceived problem and resolved to publicly consult on revoking the begging and rough sleeping provisions of the Bylaw.
 8. As a result of this decision to consult, the Trust agreed to amend the Court’s timetable directions for the filing of further documents, and the original 5 March 2020 hearing date has been rescheduled to 20 and 21 April 2020. The Trust is required by 28 February 2020 either to file a notice of discontinuance or advise the Court that a hearing is required and therefore that further evidence will be filed.
 9. Public consultation took place from 20 November 2019 to 20 December 2019. 375 submissions were received through the public submission process. Hearing of submitters took place on 29 January 2019. 20 people spoke at the hearings. A copy of all submissions received are included in the 29 January 2019 agenda and can be found on the Council website.

STRATEGIC / STATUTORY CONTEXT

10. Maintaining bylaws is part of the core functions of Council under the Local Government Act 2002.
11. Under section 145 of the Local Government Act 2002 (“the Act”), Council may make (or amend) bylaws for one or more of the following purposes:
 - (a) Protecting the public from nuisance
 - (b) Protecting, promoting and maintaining public health and safety
 - (c) Minimising the potential for offensive behaviour in public places.
12. Before commencing the process for making (or amending) a bylaw, Council must under section 155(1) of the Act, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
13. If a bylaw is considered the most appropriate way of addressing the perceived problem, Council must under section 155(2) of the Act, before making the bylaw, determine whether

the proposed bylaw is the most appropriate form of bylaw (i.e. the proposed words are the most appropriate words) and whether it gives rise to any implications under NZBORA.

14. Under section 155(3) of the Act no bylaw may be made which is inconsistent with NZBORA. Under section 5 of NZBORA the rights or freedoms contained in NZBORA can be limited, but only if that limit can be demonstrably justified in a free and democratic society.

THE PERCEIVED PROBLEM (LGA SECTION 155)

15. As mentioned above, Council initially needs to determine whether a bylaw is the most appropriate way of addressing the perceived problem. Council determined on 12 June 2018 that a bylaw was the most appropriate way of addressing the perceived problem of the impacts on businesses and the wider community of begging and rough sleeping in public places. Since the bylaw was developed and adopted in 2018, the begging and rough sleeping situation in Tauranga has changed to the point where a bylaw may no longer be the most appropriate way of addressing the perceived problem, or the perceived problem is no longer quite the same, or as significant, as when the bylaw was developed and adopted.
16. In the report to the 19 November 2019 Policy Committee the perceived problem was defined as the nuisance and other negative impacts of begging and rough sleeping in public places. The Committee decided (as required by section 155(1) of the LGA) that a bylaw was not the most appropriate way to address the perceived problem and resolved to consult on removing the begging and rough sleeping provisions from the bylaw.
17. We are currently aware of approximately 71 people rough sleeping in Tauranga, 6 of whom are within the enforcement area of the current bylaw. This is an increase from approximately 51 in November 2019, which is not unexpected due to increases which generally occur over the summer months. It is important to understand that not all rough sleepers are beggars, and not all beggars are rough sleepers. The number of beggars in Tauranga is difficult to establish.
18. A copy of the number of complaints Council has received since April 2018 is contained in **Attachment B**. These complaints are simply the number of complaints received and do not represent the number of beggars. Many of the complaints received are from multiple people about the same person or issue. Complaints relating to begging have been steady, however the increase of complaints that occurred in April 2019 can be attributed to the introduction of the bylaw with the level of complaints then declining to a similar level prior to the bylaw. Further, some of the complaints raise issues on private property or issues which are not begging or rough sleeping and are criminal offences which only the Police are able to address.
19. The complaints received show that there is an increase in complaints regarding rough sleeping over the summer months. However, these complaints are primarily located in areas outside of the area targeted by the bylaw provisions.
20. The problem of nuisance and other negative impacts of begging and rough sleeping in Tauranga is exacerbated by several causal and precipitating factors including the:
 - Impact of housing shortage in Tauranga, both rental and home ownership options
 - Impact of housing affordability.
 - Lack of transitional/emergency housing.
 - Lack of medium to long term social housing.
 - Lack of residential services to support mental health and addictions.
 - Lack of client uptake in detoxification services.
 - Lack of options for responding to and supporting victims of family harm.

- Lack of support available for families and individuals experiencing housing stress, prior to becoming homeless, and the costs associated with accessing support services.
- Lack of awareness of where to go for support when faced with any of the above circumstances.

CONSULTATION THEMES

21. Through consultation the following themes were raised:
 - (a) General support for keeping the begging and rough sleeping provisions in the bylaw
 - (b) Feeling of being unsafe and intimidated by beggars and rough sleepers
 - (c) Fear that Greerton will return to previous situation with reports of serious anti-social behaviour occurring.
 - (d) The need to have a plan in place to address concerns before removing the provisions
 - (e) The type of behaviour occurring is largely a Police matter
 - (f) Need to care for and about and understand people in these situations rather than regulate. Look for longer-term solutions rather than short-term.
22. The concerns raised by submitters and complainants to Council highlight serious safety concerns and behaviour that is not acceptable in Tauranga. Examples of these are drug use and dealing, stealing, vandalism, fighting and other aggressive behaviour. It is important to note, however, that not all anti-social and nuisance behaviours are undertaken by those who are rough sleeping or begging, and that these behaviours are often pertaining to other community members across Tauranga. These behaviours are issues more appropriately dealt with by the Police.
23. There is also an assumption from submitters that Council is in a position to address these more serious anti-social behaviours. While Council is concerned about the behaviour occurring, these are criminal offences which the Police are able to respond to, and it would not be appropriate for Council staff to attend complaints when a person is being aggressive.

THE LOCATION OF THE PERCEIVED PROBLEM

24. Another aspect regarding the perceived problem, is where the nuisance and negative impacts of begging and rough sleeping is occurring. The submissions highlight that the begging and rough sleeping issue is not a city-wide issue and is of more concern for the residents and retailers of Greerton. Greerton is raised by most submitters as an area of concern for begging and to some extent rough sleeping.
25. The complaints received by Council do not show that rough sleeping is currently causing a nuisance in Greerton and that begging activity is currently minimal.
26. 75 submitters raise concerns regarding begging and rough sleeping in the CBD and six submitters specifically mention Mount Maunganui. Some complaints highlight the CBD as an issue for rough sleeping, but very few complaints are received regarding Mount Maunganui for either begging or rough sleeping.
27. Reports from our enforcement team and Police suggest that there appears to be a problem with rough sleeping in our parks and reserves. Support services have advised that this is a growing concern as it isolates these vulnerable people further from support services, and the passive surveillance the more public areas provide. By removing rough sleepers from public spaces, they are moving to areas without camera surveillance and adequate lighting, something that has protected the rough sleepers from becoming victims of crime, and in particular protecting women who are rough sleeping. Furthermore, the concern expressed by support services is that a bylaw has encouraged rough sleeping to be a 'hidden' issue where support services are less likely to locate them for referral and intervention.

BYLAW MOST APPROPRIATE?

28. Council must under section 155(1) of the Act, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
29. Since the initial review of the bylaw began in November 2017, work to support those experiencing homelessness in Tauranga has continued to grow. These organisations include Awhina House which opened in April 2019, the People's Project which have housed 55 long term rough sleepers between June 2018 and January 2020, Tauranga Housing Community Trust, and Takitumu House, which have together housed a total of 25 long term rough sleepers over this period. Enforcement Officers have noticed that since certain individuals have been housed by these support organisations that the number of rough sleepers particularly in Greerton have diminished. The achievements of these organisations suggest that there may be more appropriate ways of addressing the perceived problem than a bylaw.
30. The housing of chronic rough sleepers over the same period as the current bylaw was developed and implemented has suggested to submitters that the bylaw has worked. However, it is our opinion that the work of these social sector support agencies which have managed to house rough sleepers has led to Council seeing far fewer complaints of rough sleeping. In addition, with the removal of organised begging through Police efforts, a feeling of safety has been returned to Greerton and other parts of Tauranga. Councils' staff consider these improved outcomes are more likely attributable to the work of the social sector support agencies and others, (as opposed to the begging and rough sleeping provisions in the bylaw).
31. A number of submitters raised the issue that the begging and rough sleeping provisions should not be removed from the bylaw until a plan to address the safety concerns is in place. As discussed above, the support of the social sector in housing those experiencing homelessness has been ongoing throughout the development of the bylaw. There are also several actions already underway which include the Safer Communities project and the development of the Western Bay of Plenty Homelessness Strategy. There are however gaps in solutions which include housing stock and temporary arrangements for rough sleepers both at night and during the day.
32. Begging and rough sleeping are complex issues, which require a long-term strategic solution. A Western Bay of Plenty Homelessness Strategy is currently being developed in a collaborative approach between central government agencies, social service providers, and community housing trusts with the support of regional funding agencies. Tauranga City Council is a key partner in the development of this strategy which aims to formulate a sub-regional plan so that when homelessness does occur, there are tools available to ensure that it is rare, brief and non-recurring. This cross-agency strategy will include an evaluation and monitoring framework to ensure that work undertaken in the future is monitored for impact and outcomes. The strategy development is due for completion in March 2020.
33. Council is also part of the Safer Communities project which was underway during the development of the bylaw. Tauranga Western Bay Safer Communities lead the implementation of the Tauranga WBOP Safer Communities Strategic Plan. We are an international Safe City under the World Health Organisation model. The priority safety goals for the current Tauranga Western Bay Safer Communities Strategic Plan are:
 - (a) Communities and agencies in Tauranga and Western Bay of Plenty are supportive and connected,
 - (b) Public spaces are used freely and without fear (crime prevention),
 - (c) People are free from drug-related harm,
 - (d) Vulnerable whanau/families are free of violence and fear.
34. The aim of Tauranga Western Bay Safer Communities is to facilitate an inclusive, empowering and progressive process of safety promotion, injury and violence prevention within Tauranga and Western Bay of Plenty communities. In 2018 a City Safety Action Plan

was developed in conjunction with the City Centre Safety Forum. The plan was resourced through the current long-term plan.

35. The current actions of the City Safety Action Plan include:
- Additional support and surveillance in the City Centre and Greerton Library through the Maori Wardens and Police Volunteer partnership with Toi Ohomai,
 - Extra CCTV surveillance and camera room staff via Tauranga Transport Operations Centre (TTOC),
 - The People's Project being established,
 - Better city street lighting,
 - A new graffiti management plan and contract,
 - "Your Help May Harm" resource being developed.
36. An action plan specifically for Greerton is currently being developed with the Police, social agencies and Council to address the safety concerns of retailers and residents of the area. This Action Plan includes the following key actions:
- (a) Key messaging around who to contact and when. An issue that has been highlighted is the language complainants use when contacting the Police as they refer to "beggars" as opposed to the intimidatory behaviour. An action that has been highlighted is educating people on notifying the Police of behaviour e.g. they are feeling intimidated by a person outside their store, rather than a beggar is in front of their store.
 - (b) An individual case management approach for those with high and complex needs.
 - (c) Joint media approach between Council and Police clarifying the roles and responsibilities.
37. There are regulatory alternatives to a bylaw under the Summary Offences Act 1981. The Summary Offences Act 1981 can address, although at a higher threshold to those in the Bylaw, the following:
- (a) disorderly behaviour in a public place (s3). Penalties include a maximum three-month prison term or a \$2,000 court fine.
 - (b) offensive behaviour or language in a public place (s4). The penalty is a maximum \$1000 court fine.
 - (c) obstructions in a public place likely to cause injury, not nuisance (s12). Penalties include a maximum three-month prison term or maximum \$2,000 court fine.
 - (d) intentional intimidation of any person in any public place including stopping, confronting or accosting (s21). Penalties include a maximum three-month prison term or a \$2,000 court fine.
 - (e) obstructions in a public way (unreasonably impedes normal passage) including every road, street, path, mall, arcade, or other way over which the public has the right to pass and repass (s22). The penalty is a maximum \$1,000 court fine.
38. The Police are responsible for enforcing the Summary Offences Act 1981, they are not responsible for enforcing the bylaw. The Police have highlighted that there is confusion for the public as to when an incident is a Police matter or a Council one. **Attachment C** provides a copy of correspondence received from Clifford Paxton, Inspector, Area Commander, WBOP outlining the Police's role. Staff are continuing to work with the Police which includes the sharing of information and developing the action plan for Greerton.
39. A suggestion was made through consultation regarding providing the retailers with a licence to occupy (LTO) part of the footpath directly in front of their retail stores. This was with the

view that this would allow for the retailers to serve trespass notices. However, a trespass notice can only be issued if the owner/occupier has exclusive use of the area, an LTO in and of itself will not provide exclusive use. Even if Council did provide an exclusive use type LTO to the retailers, the retailers would still need to contact the Police for enforcement of a trespass notice.

40. The approach by Wellington City Council has been suggested by submitters as an example of an alternative approach to a bylaw. Wellington City Council has a homelessness strategy to try and address the underlying issues of begging and rough sleeping. Wellington City Council have also resourced staff called “Local Hosts” who as part of their role act as a point of contact for retailers and people on the street to gain access to support services. Other New Zealand councils have a similar approach to the nuisances associated with begging and rough sleeping. **Attachment D** contains a breakdown of other councils’ approaches to resourcing of this type of role. These councils do not have a bylaw specifically addressing begging and rough sleeping, but some have regulation that target nuisance/offensive behaviours. Council could investigate whether it is appropriate to have a resource that was like that of these other councils. This would provide a physical presence in the community that some submitters suggest is lacking.
41. Another suggestion raised by Street Kai in their submission is a vision for a “Wellbeing Hub”. This Wellbeing Hub would include a drop-in centre to allow for a place for those experiencing homelessness to have a shower, wash clothes, eat, get internet access, a place to sit and rest. This would also be a place that would be used to help engage with and support those experiencing homelessness to feel safe to explore work options. This includes engaging with support services, meet with health providers, WINZ etc. This concept of a Wellbeing Hub is still being investigated and at the time of this report the financial implications were not known. However, this option could be investigated together with the other alternatives to a bylaw raised in this report.
42. One of the issues raised is about getting the message across to the community about appropriate behaviour. There are alternative ways to sending a message to the public of the standard of behaviour that is acceptable in Tauranga other than through a bylaw. Hamilton, Hutt City, Napier and Wellington councils promote on their website what to do if you feel unsafe on the streets due to begging activity and through their dedicated staff resource on the street. Our Council website is being updated to provide information on who to contact regarding begging and rough sleeping behaviour or what to do when you feel unsafe on the street. A physical resource to this effect will be developed in 2020 to support educating retailers and wider community.
43. The position of the service sector is that a more effective way of getting the message across is focusing on the support services available to refer people rather than a short-term punitive focus. The ‘He Awhina Mou – Need a Hand?’ flyer is a brochure produced by Council that incorporates information about support services available for referral (through services or self-referral), including services to support access to food, accommodation, legal information, support groups, health services, financial assistance and emergency help.

ENFORCEMENT OF THE BYLAW

44. A bylaw made under section 145 of the Act has limited enforcement options, which contrasts with those bylaws made under the Freedom Camping Act or under section 147 of the Act relating to alcohol control. The general bylaw making provision which the begging and rough sleeping provisions are made under do not allow Council to issue any infringement notices or allow the Police to arrest someone who refuses to leave a particular location (unlike say when alcohol ban bylaws are breached). A bylaw made under section 145 is also not automatically enforceable by the Police, unlike an alcohol ban bylaw under section 147. If Council wishes to physically move people breaching the begging or rough sleeping provisions in the bylaw this requires a Court Order, which takes time and would increase the cost of enforcement, with little to no change to the outcome. Those begging or rough

sleeping are unlikely to have the means to pay any Court imposed fines, and fines can further exacerbate and marginalise those who are experiencing homelessness.

45. Since the bylaw came into force Council's enforcement approach on begging and rough sleeping has moved from a proactive approach to a reactive one.
46. Enforcing a bylaw is broader than prosecuting or issuing fines. Bylaws Officers when responding to a complaint regarding rough sleeping or begging will ascertain whether the complaint is a breach of the bylaw, which includes assessing first if the complaint is an incident occurring within 5 metres to a retail premises and secondly if it is occurring on public land. Bylaws Officers will also assess whether there are any suggestions of substance abuse, aggressive or unlawful behaviour involved in which case the matter is reported and referred to the Police.
47. The impact of the begging and rough sleeping provisions includes educating those people who are sleeping rough where they can sleep that would not be a breach of the bylaw, e.g. by moving them from one open retail front to an empty store or elsewhere. It is less about addressing the underlying issues which have led to someone rough sleeping. As mentioned above, moving people around rather than addressing the issue is leading to increased concerns about their safety in less visible locations.
48. Bylaws Officers will attend the complaint as soon as possible and engage with the individual(s) involved. They will provide education on the bylaw and where begging and rough sleeping is allowed. If an individual is breaching the bylaw, they are encouraged to move from within 5 metres of a retail premises. Council does not have the power to issue infringements or remove individuals who are breaching the bylaw. If individuals do not move willingly the only option is for Council to take Court action.
49. Currently we have only two bylaws officers who are responsible for monitoring and enforcing the Freedom Camping Bylaw, Litter Act, Beaches Bylaw, Alcohol Control Bylaw, Prostitution Bylaw and the Street Use and Public Places Bylaw across Tauranga.
50. Where time and resources have permitted, Bylaws Officers have continued to offer support to those most vulnerable in our community and refer them to community resources and outreach services within Tauranga. This approach was taken prior to the bylaw being enacted and would continue if the current provisions were removed. However, due to reduced resources, as mentioned in this report, these types of complaints must be balanced with other responsibilities. Engaging and providing support to those experiencing homelessness who are not breaching the bylaw is time consuming and would be considered more the work of a social worker rather than an enforcement officer. A similar approach is taken by some of the councils as outlined in **Attachment D**.
51. In addition to the concerns regarding our most vulnerable in our community, there is still a need to enforce the existing obstruction provisions in the bylaw. There is an opportunity to provide a resource which could enforce the bylaw as well as provide support for those most vulnerable in our community.
52. The Police, like our enforcement team, need to prioritise their resources. The offending occurring in Greerton and other parts of Tauranga may not be responded to by the Police as quickly as members of our community would like given this lack of resourcing. Due to this delay in attending, Council is being asked to fill this gap. The current wording of the bylaw has raised the expectation in the community that Council are able to address the behaviour in the same way as the Police. However, this is not possible under the current legislative framework, and it is not appropriate for Council staff to attend situations for which they are not necessarily trained to address the issues of those who are on the street with mental health and addiction issues.

APPROPRIATE FORM OF BYLAW

53. If Council determine a bylaw is the most appropriate way of addressing the perceived problem, then under section 155(2) of the Act, before making the bylaw, it must determine whether the proposed bylaw is the most appropriate form of bylaw (i.e. the proposed words are the most appropriate words). This means that the wording only goes as far as necessary to address the perceived problem.
54. The begging and rough sleeping provisions in the bylaw (clauses 20.2 and 20.3, and the definitions of begging and rough sleeping) currently do not refer to nuisance or offensive behaviour, which would create a link to the perceived problem discussed in this report. If (notwithstanding the recommendation in this report) the Council determine a bylaw is the most appropriate way of addressing the perceived problem, then in officers' view the most appropriate form of bylaw is one that targets nuisance and offensive behaviour (i.e. the wording in options 3 and 4 below) rather than the current wording of clauses 20.2 and 20.3.
55. The current wording of the begging and rough sleeping provisions of the bylaw are not linked to the nuisance or offensive behaviour which would link it to the perceived problem discussed in this report.
56. The other issue is that the current wording targets the CBD, Mount Maunganui and Greerton. However, from submissions and the complaints received, the bylaw covering the CBD and Mount Maunganui arguably could be going further than necessary to address the perceived problem, as there is limited evidence which shows there is currently a problem in this area. This can be balanced against the issue that begging and rough sleeping in our main retail centres is more likely to cause a nuisance or to be offensive, and the potential for displacement of begging and rough sleeping to occur if this behaviour is restricted in only one part of the city. Other retail areas such as Papamoa Plaza or the Bethlehem Shopping Centre are largely located on private land and therefore the bylaw would not be able to apply to those areas

BILL OF RIGHTS ACT IMPLICATIONS

57. Under section 155(3) of the Act no bylaw may be made which is inconsistent with NZBORA. Under section 5 of NZBORA the rights or freedom contained in NZBORA can be limited under a bylaw, but only if that limit can be demonstrably justified in a free and democratic society. It is difficult to establish when a restriction on a right or freedom would be considered a justified limitation.
58. The current wording of clause 20.2 relating to begging gives rise to NZBORA implications as it impinges on the right of freedom of expression. It could be argued that the limitation on the right of freedom of expression is unreasonable and not demonstrably justified because it is disproportionate to the "problem" as summarised on this report. In particular it could be argued that the restriction currently in place does not target behaviour that is considered a nuisance, but restricts all begging and rough sleeping; and also applies to a geographically broader area than is required.
59. Staff have considered the application of NZBORA and whether the current restrictions of clause 20.3 on rough sleeping would engage any of the following NZBORA rights: freedom of movement; freedom of expression; freedom from discrimination. Having done so, it is considered that none of these freedoms would be engaged. As a result, clause 20.3 is not considered to have any implications under NZBORA.

OPTIONS

Decision one:

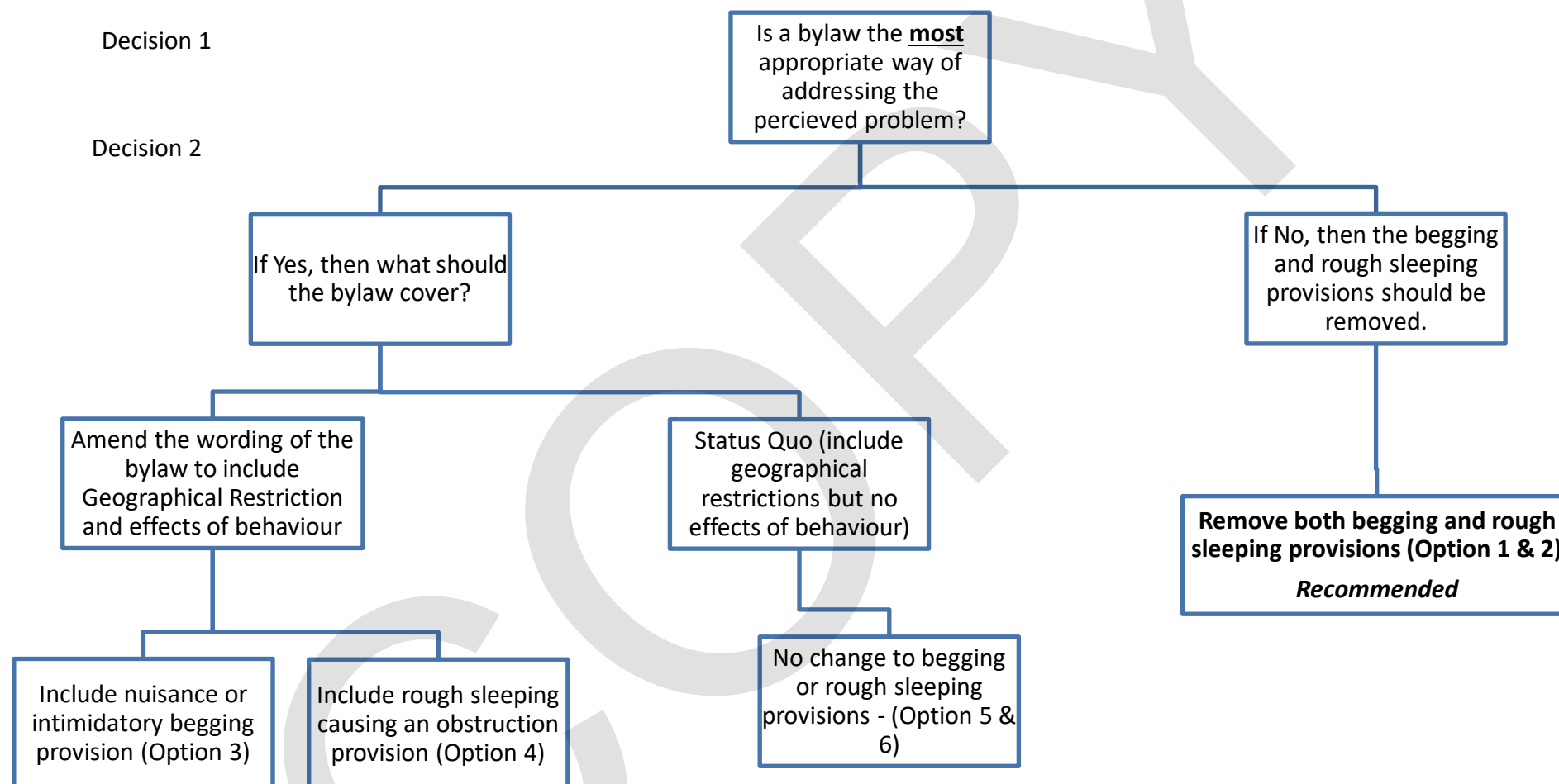
60. Council will need to determine under section 155(1) of the Act whether or not a bylaw is the most appropriate way of addressing the perceived problem, namely the nuisance and other negative impacts of begging and rough sleeping in public places.

61. If Council determine that a bylaw **is not** the most appropriate way of addressing the perceived problem, clauses 20.2 and 20.3, along with the definitions of “begging” and “rough sleeping” should be removed from the bylaw.

Decision two:

62. If Council determine that a bylaw **is** the most appropriate way of addressing the perceived problem, then Council will need to decide on the form of that bylaw.
63. If the Council favours the status quo i.e. clauses 20.2 and 20.3 as they stand, nothing further is required.
64. If a bylaw is the most appropriate way of addressing the perceived problem, but the wording of the begging and rough sleeping provisions of the bylaw needs to be amended to more closely address the perceived problem, whether public consultation is required will depend on the level of change proposed. If the amended wording prohibits behaviour which is considered a nuisance or offensive (such as the clause contained in options 3 and 4 below) further consultation would not be necessary. However, if the proposed wording was broader than the clauses contained in options 3 and 4 below, further consideration of whether consultation is required would need to be undertaken.
65. In the 19 November 2019 report to the Committee an option to remove the geographical restrictions and include the behaviour restrictions was included. This option has not been included in this report as through public consultation this option did not appear viable. It also opened up the previously stated risk of moving people to even less visible locations and therefore into unsafe situations.

66. The below diagram outlines the decisions and the consequential options:



OPTIONS

67. The options, and their main advantages and disadvantages, are outlined below:

	Option	Advantages and disadvantages
1.	Remove the bylaw restriction on begging (i.e. revoke clause 20.2 and the definition of “begging”) (Recommended)	<ul style="list-style-type: none"> • Council can rely on the other provisions in the bylaw regarding nuisances and obstructions on footpath (clause 6 of the bylaw), and the ongoing work of Council staff and social agencies, to address the impacts of begging in public places. • This option, accompanied by the removal of the rough sleeping provision, would address concerns raised by some social agencies like the Tauranga Housing Advocacy Trust and, while not directly relevant, if adopted would likely resolve the present judicial review • Reinforces that where begging involves threatening or offensive behaviour this is primarily a Police issue. • Moving or forcing beggars to relocate outside the city or away from retail areas (as occurs currently) will not address the underlying issues that lead to begging. The current clause 20.2 may have the effect of moving begging to areas which are not monitored or receive passive surveillance raising a serious safety concern for those most vulnerable in our community. • This option provides no risk of legal challenge under sections 145 or 155 of the Act. • Council are unable to physically move or fine those breaching the current bylaw without a Court Order which makes enforcement difficult.
2.	Remove the bylaw restriction on rough sleeping. (i.e. revoke clause 20.3 and definition of “rough sleeping”) (Recommended)	<ul style="list-style-type: none"> • This option would rely on the current bylaw provisions regarding nuisances and obstructions on footpath (clause 6 of the bylaw), as well as the ongoing work of Council staff and social agencies, to address the impacts of rough sleeping in public places. • Prohibiting rough sleeping using regulatory means is contradictory to the objectives and initiatives in the draft Community Wellbeing Strategic Plan 2018-2021 and to the collaborative partnerships that Council has been building to address the wider issue of homelessness. • The current bylaw restriction on rough sleeping raises the community’s expectation that Council enforcement team are able to move people, when Council is unable to do this without obtaining a Court Order. • The current bylaw causes confusion between the Police, the community and Council as to whose role/responsibility these issues are.

		<ul style="list-style-type: none"> • This option, accompanied by the removal of the begging provision, would address concerns raised by some social agencies like the Tauranga Housing Advocacy Trust and, while not directly relevant, if adopted would likely resolve the present judicial review proceedings against the Council.
3	<p>Amend clause 20.2 to cover nuisance or intimidatory begging:</p> <p><i>“No person shall beg within 5 metres of the public entrance to a retail premises within defined areas of CBD, Greerton and Mount Maunganui in a manner that is likely to cause a nuisance, intimidation, harassment, alarm or distress to any reasonable person”</i></p>	<ul style="list-style-type: none"> • Allows for passive begging across Tauranga but prohibits nuisance or intimidatory begging in certain parts of Tauranga within 5 metres of retail premises. • While not tested in Court, this approach would be less restrictive on the right of freedom of expression in NZBORA and is likely within the scope of the bylaw-making power in section 145 of the Act. • This option, accompanied by amendments to the rough sleeping provision, would address concerns raised by some social agencies like the Tauranga Housing Advocacy Trust and, while not directly relevant, if adopted would likely resolve the present judicial review proceedings against the Council. • The Act requires Council to consider whether the wording of the bylaw is the most appropriate form of bylaw to address the perceived problem. The option would address the perceived problem as it is limited to nuisance and intimidatory begging and is confined to areas where such begging is more likely to be considered a nuisance. There is some evidence to suggest that begging, which is considered a nuisance, has previously occurred in Greerton and some suggestion of begging considered a nuisance continuing in the CBD. However, at time of writing this report there is limited evidence that begging which is considered a nuisance is occurring in Mount Maunganui. However, it could be argued that it is appropriate to target those areas where, when nuisance begging occurs, it is more offensive. • Officers have considered the application of the NZBORA and whether the proposed wording of this option would engage any of the NZBORA rights. The restriction on begging could be considered a limitation on freedom of expression. There is a risk that the limitation may not be considered reasonable and demonstrably justified because it is aimed at areas where there is limited evidence of a problem. To some extent this is mitigated by the fact that the clause will only cover begging which meets the threshold of nuisance or intimidation, and it may be appropriate to pre-empt potential displacement from other areas. • Potential difficulties for enforcement as where people are unwilling to comply with directions, Enforcement Officers are unable to physically remove people (without a Court order) and a fine can only be imposed following prosecution through the Court system. • Creates confusion between the Police, the community and Council as to whose

		<p>role/responsibility to respond to these issues.</p> <ul style="list-style-type: none"> Costs for enforcement, which include Enforcement Officers engaging with people are required. There is a lack of resourcing in this area.
4	<p>Amend clause 20.3 to cover rough sleeping which causes an obstruction :</p> <p><i>“No person shall rough sleep within 5 meters of a retail premises within defined areas of CBD, Greerton and Mount Maunganui in such a way as to cause an obstruction of a public way or of an entrance to a retail premises”</i></p>	<ul style="list-style-type: none"> Bylaw already contains provisions about no person causing an obstruction of the pedestrian way or the entrance to or exit from a Public Place, so potentially duplicates other clauses of the bylaw (Clause 6 of the bylaw). Officers have considered the application of the NZBORA and whether proposed option would engage any of the following NZBORA rights: freedom of movement; freedom of expression; freedom from discrimination. Having done so, it is considered unlikely that any of these freedoms would be engaged. As a result, the clause is not considered to have any implications under NZBORA. This option, accompanied by amendments to the begging provision, would address concerns raised by some social agencies like the Tauranga Housing Advocacy Trust and, while not directly relevant, if adopted would likely resolve the present judicial review proceedings against the Council. The Act requires Council to consider whether the wording of the bylaw is the most appropriate form of bylaw to address the perceived problem. This option would potentially address the perceived problem as it limits the restriction to rough sleeping near retail premises in areas where the behaviour is regarded to be a nuisance and/or offensive arises. There is some evidence to suggest that rough sleeping which is considered a nuisance and/or offensive is occurring in the CBD. However, at the time of writing this report there is little evidence that rough sleeping which is causing a nuisance and/or offensive is occurring in Greerton or Mount Maunganui. Potential difficulties for enforcement as for people unwilling to comply with directions, Enforcement Officers are unable to physically remove people (without a Court order) and imposing a fine requires prosecution through the Court system. It raises the community expectation that Council can physically move people on when they are lying or sitting in a public place, when Council is unable to do so without a Court Order. Creates confusion between the Police, the community and Council as to whose role/responsibility to respond to these issues. Costs for enforcement, which include Enforcement Officers engaging with people are required.

		There is a lack of resourcing in this area.
5	<p>Status quo – keep the current wording of clause 20.2:</p> <p><i>“No person shall beg in a public place within 5 metres of a retail premises within defined areas in the city centre, Greerton and Mount Maunganui. (using current maps in the Bylaw attachments and enable these to be changed by Council resolution based on evidence of the problem).”</i></p>	<ul style="list-style-type: none"> • Does not allow for any begging within 5 metres of retail or hospitality within defined areas of the city centre, Greerton and Mount Maunganui. • Would not resolve current Judicial Review proceedings against the Council. • Potential difficulties for enforcement as for people unwilling to comply with directions, Enforcement Officers are unable to physically remove people (without a Court order) and can only impose a fine following prosecution through the Court system. • Creates confusion between the Police, the community and Council as to whose role/responsibility to respond to these issues. • Costs for enforcement, which include Enforcement Officers engaging with people are required. There is currently a lack of resourcing in this area.
6	<p>Status quo – keep the current wording of clause 20.3:</p> <p><i>“No person shall rough sleep within five metres of a retail premises within defined areas in the CBD, Greerton and Mount Maunganui (using current maps in the Bylaw attachments and enable these to be changed by Council resolution based on evidence of the problem)”</i></p>	<ul style="list-style-type: none"> • Does not allow for any rough sleeping within 5 metres of retail premises within defined areas of the city centre, Greerton and Mount Maunganui. • Would not resolve current Judicial Review proceedings against the Council • Potential difficulties for enforcement because if people are unwilling to comply with directions, Enforcement Officers are unable to physically remove people (without a Court order) and imposing a fine requires prosecution through the Court system. • It raises the community expectation that Council can move people on when they are lying or sitting in a public place causing an obstruction, when Council is unable to do so without a Court Order. • Creates confusion between the Police, the community and Council as to whose role/responsibility to respond to these issues. • Costs for enforcement, which include Enforcement Officers engaging with people are required. There is currently a lack of resourcing in this area.

68.

FINANCIAL CONSIDERATIONS

69. The expected future costs to be incurred in relation to the bylaw are as follows:
- (a) Estimated external legal costs: \$110,000.00 (If hearing proceeds)
 - (b) If the Council is unsuccessful in defending the proceedings, it will need to cover the costs of the Trust. These costs are estimated to be \$30,539 + disbursements (based on allowances set out in the High Court Rules, the most likely categorisation of the proceedings in terms of complexity, and assuming all documents and attendance at the hearing is required).









CONSULTATION / ENGAGEMENT

70. Public consultation took place from 20 November 2019 to 20 December 2019. 375 submissions were received, with one submission being withdrawn and another being received after the submission period closed. Hearings were held on 29 January 2020 with 20 people speaking to the Committee.
71. The consultation was advertised widely through Council Libraries, in the Weekend Sun on 29 November 2019 and 6 December 2019, advertised on Sunlive website, on the Council website and through social media.
72. Targeted consultation was also carried out with a number of key stakeholders including the Homelessness Provider Network and the Mainstreet organisations. Those that had previously submitted to Council on the issue of begging or rough sleeping were also notified of the consultation.
73. Staff attended the Homelessness Provider Network meeting on 10 December 2019 and encouraged those organisations to submit and to hear their concerns regarding the proposal to revoke the begging and rough sleeping provisions.
74. Staff also contacted the mainstreet organisations for Tauranga, Greerton, Mount Maunganui and Papamoa seeking their interest in a meeting to discuss the proposal to revoke the begging and rough sleeping provisions. A meeting was held with the Greerton Village Community Association and retailers on 4 December 2019.

SIGNIFICANCE

75. Under the Significance and Engagement Policy 2014, the amendment or revocation of the begging and rough sleeping provisions in the Bylaw is of medium significance and a medium level of engagement with the community was undertaken using the Special Consultative Procedure

NEXT STEPS

76. Council to adopt the recommendation from the Policy Committee on 27 February 2020. The outcome of Council's decision will then be provided to submitters.
- 1. **Attachment A - Street Use and Public Places Bylaw 2018 - A9514495**  
 - 2. **Attachment B - Begging and Rough Sleeping Complaints - A11188728**  
 - 3. **Attachment C - Correspondence from NZ Police - A11157504**  
 - 4. **Attachment D - Other Council's Approach - A11215185**  

COPY

STREET USE AND PUBLIC PLACES BYLAW (2018)



First adopted	<i>8 December 2005</i>	Minute reference	M05/142
Revisions/amendments	<i>18 March 2013 20 November 2018</i>	Minute references	M13/12 M18/101.6
Review date	<i>2028</i>		
Engagement required	<i>Special Consultative Procedure</i>		
Associated documents	<i>Beaches Bylaw 2018</i>		
Relevant legislation	<i>This bylaw is made under the Local Government Act 2002, the Health Act 1956 and the Litter Act 1979.</i>		

1. TITLE

- 1.1 This Bylaw is the Street Use and Public Places Bylaw 2018.

2. COMMENCEMENT

- 2.1 This Bylaw comes into force on 1 April 2019.

3. APPLICATION

- 3.1 This Bylaw applies to Tauranga. Except as herein expressly provided this Bylaw shall apply to the whole of the District.
- 3.2 Every schedule to the Bylaw and the several parts thereof shall be deemed to form part of this Bylaw.

4. PURPOSE

- 4.1 The purpose of this Bylaw is to ensure public health and safety is maintained, protect the public from nuisances, minimise the potential for offensive behaviour and to manage Public Places for the wellbeing and enjoyment of the public.

It covers a diverse range of activities including commercial activity such as trading and the promotion of goods and services, begging, rough sleeping, busking and entertainment activities and events, and the use of Footpaths for tables and chairs and retail displays.

5. DEFINITIONS

- 5.1 For the purposes of this Bylaw words which refer to the singular include the plural and the plural includes the singular.
- 5.2 For the purposes of this Bylaw the following definitions shall apply:

Term	Definition
Bylaw	refers to the Tauranga City Council Street Use and Public Places Bylaw.
Begging	means soliciting for money or goods for private benefit.
Community Event Sign	means any Sign advertising an event (regardless of frequency) or community message.
Council	means Tauranga City Council or any Committee, Sub Committee or elected member of Council or officer or other person authorised to exercise the authority of Council.
District	means the district of Tauranga City Council.
Enforcement Officer	means any person appointed and/or authorised by Council for the purpose of enforcing the provisions of this part of the Bylaw.
Election Sign	means any Sign identifying or promoting a person or political party in a parliamentary or local authority election. That may be a Local Election Sign or a General Election Sign.
Filming	means the recording of images, moving or still, for commercial purposes or at a scale that might unduly obstruct use of a public place.
Food and Beverage Business	means any business such as a café, restaurant or bar that produces and sells food and/or beverages for consumption on its premises.
Footpath	means a path or way principally designed for and used by pedestrians and includes a footbridge.
Frontage	means the area directly between the Shop Front and the road kerb.
Furniture	means tables, chairs and umbrellas that businesses are permitted to place on the Footpath. It does not include temporary fencing or furniture cordons.
General Election Signs	means any Sign identifying or promoting a person or political party for a parliamentary election under the Electoral Act 1993. Election signs are hoardings and include vehicles parked for the purposes of advertising.
Local Election Signs	means any Sign identifying or promoting a person for a local body election. This includes Council elections, Regional Council elections, and District Health Board, or other local body election. Election signs are hoardings and include vehicles parked for the purposes of

	advertising.
Magazine Sign	means any portable Sign independently supported by means such as a post or wall.
Mainstreet	means an organisation that represents the interests of businesses in a geographically defined town centre, that has an agreement with Council for the provision of outcomes in support of that centre and that has authority to levy a rate on businesses for the delivery of those outcomes.
Merchandise	means any goods offered for sale, and includes both food and non-food items.
Mobile Shop	means a vehicle from which Merchandise can be sold.
Nuisance	has the same meaning as Section 29 of the Health Act 1956 and includes a person, animal, 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.
Person	includes a corporation sole, a body corporate, and an unincorporated body.
Pedestrian Way	means the thoroughfare along a Footpath for use by pedestrians which, unless otherwise specified by Council in any particular case, is the part of the Footpath 2.5 metres in width measured 1.5 metres from and running parallel to any adjacent Shop Front.
Public Place	means a place under the control of Council that at any time is open to or is being used by the public, whether free or for payment of a charge and includes every road, street, Footpath, court, alley, pedestrian mall, cycle track, lane, accessway, thoroughfare, Reserve, park, domain, beach, foreshore, and any other place of public recreation or resort.
Reserve	means a reserve under the Reserves Act 1977.
Reserve Management Plan	means a plan prepared under section 41 of the Reserves Act 1977.
Retail	is defined as those businesses primarily selling goods and services to final consumers this includes hospitality businesses.
Rough sleeping	means sleeping in a public place on the streets, pavements or anywhere other than in approved accommodation, with the exception of where council has given approval.
Shop Front	means the common boundary between the legal road and the adjacent shop or other business.
Sign	means any display or device whether or not placed on land or affixed to a building, stationary vehicle or structure, intended to attract attention for the purposes of directing, identifying, and informing, or advertising, and which is visible from a public place.

6. OBSTRUCTIONS IN PUBLIC PLACES

- 6.1 A person shall not obstruct:
- (a) the Pedestrian Way
 - (b) the entrance to or exit from a Public Place.
- 6.2 Except where otherwise provided in this Bylaw, no person shall place or leave any material or thing, including a Sign, in a Public Place without the written permission of Council and then only in accordance with any conditions imposed by Council.

7. OUTDOOR SEATING

- 7.1 All businesses operating from fixed premises are permitted to place Furniture on the Footpath, subject to the following conditions:
- (a) subject to clauses 7.2 and 7.3, each business may place a maximum of 2 tables, each with 1 umbrella and 4 chairs
 - (b) the Furniture can only be placed in the Frontage of the business
 - (c) the Furniture must not be placed in or otherwise obstruct the Pedestrian Way
 - (d) the Furniture may only be placed on the Footpath during the business's hours of operation
 - (e) the tables and chairs must be made available for use by any member of the public
 - (f) unless otherwise authorised by Council, the Furniture may not be placed:
 - (i) within 1.5 metres of any tree trunk or any Council street furniture (e.g. public bench)
 - (ii) within 1 metre of any road kerb
 - (g) the Furniture shall not obstruct access to parking meters, rubbish bins, blind guidance strips, bus stops or shelters, mobility spaces, pedestrian crossings, vehicular entrances or hinder visibility to or of road traffic
 - (h) the Furniture shall not encroach into the frontages of adjacent businesses unless all parties concerned agree in writing and have provided written notification to Council of their agreement
 - (i) the Furniture must be removed from the Footpath:
 - (i) outside the business's hours of operation
 - (ii) between the hours of 3am and 7am
 - (iii) when requested by Council to facilitate street works, services, repairs, or other public utilities, or to ensure the health and safety of the public
 - (j) any business placing Furniture on the Footpath must:
 - (i) keep the Furniture clean and in good order and repair
 - (ii) ensure that all waste, water and rubbish on or near the Furniture is removed
 - (iii) comply with all statutes, regulations and ordinances regarding the conduct of the business and the use of the Footpath for that purpose.

7.2 Food and Beverage Businesses

- (a) Food and Beverage Businesses, excluding Mobile Shops, may place tables, chairs and umbrellas on the Footpath:
 - (i) additional to those permitted by clause 7.1 (a), but subject to compliance with clauses 7.1(b) to (j) in respect of the additional Furniture as well
 - (ii) during Council approved special events, where permitted by Council and with no rental charge applied for the additional area occupied.

7.3 Food and Beverage Businesses – Licence to Occupy Locations

- (a) Notwithstanding clauses 7.1 and 7.2 above, Council may by resolution determine locations in the District where no business shall place furniture on the Footpath without first obtaining a licence to occupy the Footpath from Council.
- (b) To avoid doubt, all clauses of this Bylaw apply to businesses granted a licence pursuant to clause 7.3 (a), except that:
 - (i) despite clauses 7.1 (d) and (i), a business which holds a licence to occupy the Footpath may leave its Furniture on the Footpath outside the business's hours of operation
 - (ii) despite clause 7.1 (e), a business which holds a licence to occupy the Footpath shall have exclusive use of its tables and chairs.

8. MERCHANDISE DISPLAY

- 8.1 Merchandise may only be displayed within the Frontage of the business to which the Merchandise relates.
- 8.2 Subject to clauses 8.5 and 8.6, Merchandise displays shall not exceed a total floor area of 1.5 square metres and shall not protrude more than 1.5 metres from the Shop Front of the business.
- 8.3 Merchandise displays shall not obstruct the Pedestrian Way.
- 8.4 Merchandise displays shall not obstruct access to parking meters, rubbish bins, blind guidance strips, bus stops or shelters, mobility spaces, pedestrian crossings or vehicular entrances, and shall not hinder visibility to or of road traffic.
- 8.5 Council may grant a licence for Merchandise displays to exceed 1.5 square metres, subject to payment of the amount set by Council for rental of the additional area occupied. Clauses 8.3 and 8.4 must be complied with in relation to any such extended Merchandise display.
- 8.6 Merchandise displays may exceed 1.5 square metres on a Mainstreet organised or Council approved market days or events provided that clauses 8.3 and 8.4 are complied with.
- 8.7 Merchandise displays must be removed from the Footpath:
 - (a) outside the business' hours of operation
 - (b) between the hours of 3am and 7am
 - (c) when requested by Council to facilitate street works, services, repairs, or other public utilities, or to ensure the health and safety of the public.

9. SKATEBOARDS AND SCOOTERS

- 9.1 No person shall ride or use a skateboard, scooter, roller skates or similar device in any Public Place in such a manner as to be dangerous or cause a nuisance.
- 9.2 Council may by resolution determine areas where riding or using a skateboard, scooter, roller skates or similar device is prohibited (a **Prohibited Area**). Council may prohibit one or more of these wheeled recreational devices for example, skateboards but not scooters.
- 9.3 No person shall ride or use a skateboard, scooter, roller skates or a similar device in any Prohibited Area.
- 9.4 A fine of \$55 is applicable for any breach of clauses 9.1 or 9.3.

10. GENERAL REQUIREMENTS FOR SIGNS

- 10.1 Except as provided for elsewhere in this Bylaw, no Sign shall be displayed in any Public Place without the written permission of Council. This includes Signs attached in any way to poles, fences, street furniture or other public utilities on or in any Public Place.
- 10.2 All Signs and their supporting structures shall be constructed, fixed, placed and maintained in a manner so they do not pose a danger to property or the public. This shall be the responsibility of the Sign owner and the owner of the building on which the Sign is placed.
- 10.3 Signs attached beneath street verandas shall have a minimum of 2.5 metres clearance from the Footpath below.
- 10.4 No Sign shall be placed or shall remain in a Public Place where in the opinion of Council that Sign would:
 - (a) obstruct or be likely to obstruct the view of any corner, bend, intersection, vehicle crossing, traffic sign or traffic signal
 - (b) distract unduly or be likely to distract unduly the attention of road users
 - (c) constitute or be likely to constitute in any way a danger to road users.
- 10.5 Council may by notice in writing (or without notice if the Sign is deemed to be dangerous by an Enforcement Officer), require the owner or user of any non-complying or unsafe Sign to remove the offending Sign from any Public Place.

11. BUSINESS SIGNS

- 11.1 Businesses operating from fixed premises are permitted to place Signs on the Footpath subject to compliance with clauses 11.2 and 11.3.
- 11.2 Siting of Business Signs:
 - (a) businesses with one street front entrance shall be permitted one Sign in addition to Magazine Signs
 - (b) businesses with more than one street front entrance may have a maximum of two Signs in addition to Magazine Signs
 - (c) Magazine Signs shall be placed against the Shop Front
 - (d) Signs, other than Magazine Signs, shall be located:

- (i) within the frontage of the shop or business being advertised
- (ii) in the area within 1.5 metres from the Shop Front or within 1 metre from the kerb line
- (iii) in no case within the Pedestrian Way
- (e) businesses using common entrance ways may only have a composite Sign encompassing all businesses therein unless individual businesses within the arcade or mall have their own street frontage.

11.3 Dimensions of Business Signs

- (a) the maximum size of a free standing Sign (including a composite Sign) shall be 1200mm high x 800 mm wide
- (b) the maximum size of an upright fabric banner style Signs shall be 1200mm high x 800 mm wide
- (c) the maximum size of a Magazine Sign shall be 0.5 square metres.

12. MOBILE SHOP SIGNS

- 12.1 Mobile Shops are permitted to have two roadside Signs displayed. Any other advertising must be directly attached to the Mobile Shop. Mobile Shop Signs must meet the general requirements for Signs in Clause 10 of this Bylaw.
- 12.2 Mobile Shop Signs shall be no larger than one square metre and must not be located further than 100 metres from the Mobile Shop.

13. REAL ESTATE SIGNS

- 13.1 Real Estate Signs may only be placed directly outside the property to which the signage refers and as close to the street front boundary of that property as practicable. To avoid doubt, Real Estate Signs include flags attached to parked vehicles outside the property advertising an auction of real estate or open home.
- 13.2 In addition to the above, real estate "open home" and "auction" Signs are permitted in Public Places in the period starting 3 hours prior to the open home or auction and finishing at the end of the open home or auction, provided clauses 10.2 to 10.5 of this Bylaw are met.
- 13.3 Real Estate Signs must be removed two weeks after the property has sold.

14. ELECTION SIGNS

- 14.1 Approval must be obtained from Council for the siting of Election Signs on or in a Public Place.
- 14.2 The maximum size of any Local Election Sign shall be 1.5 square metres in area.
- 14.3 Local Election Signs must comply with:
 - (a) clause 10 of this Bylaw
 - (b) Council's Local Elections Policy.
- 14.4 General Election Signs must:

- (a) comply with clause 10 of this Bylaw
- (b) only be displayed between the period nine weeks before polling day and the close of the day before polling day.

15. COMMUNITY SIGNS

- 15.1 Council may, on application, permit the display in a Public Place of Community Event Signs publicising charitable and non-commercial events or events where (in Council's opinion) the benefit to the community outweighs any commercial considerations.
- 15.2 Community Signs can only relate to events taking place in the Tauranga City Council and/or Western Bay of Plenty District Council districts.
- 15.3 Approved Community Signs may only be erected at sites or on frames specifically reserved by Council for that purpose. Signs must comply with Reserve Management Plans and any specifications for reserve signage.
- 15.4 An application for permission to display a Community Sign must be made in writing to Council and in granting permission Council may impose conditions including payment of fees for hiring the site or frame, and removal and maintenance of signs.

16. GARAGE SALE SIGNS

- 16.1 Subject to clause 16.2, Signs advertising garage sales are permitted in a Public Place provided clauses 10.2 to 10.5 of this Bylaw are complied with.
- 16.2 Signs advertising garage sales are only permitted to be displayed in the period starting 24 hours prior to the commencement of the garage sale and finishing at the end of the garage sale.

17. TRADING IN A PUBLIC PLACE

- 17.1 Except as provided elsewhere in this Bylaw, no person shall use any portion of any Public Place to display, distribute, provide, sell or offer for sale any goods or services or solicit subscriptions or collect donations without first obtaining written permission of Council. This includes promotional activities offering free goods and services, and filming. In granting permission, Council may impose conditions, including payment of a fee.
- 17.2 Permission will generally not be granted for commercial activities except where such activities are:
 - (a) part of a Council approved event
 - (b) part of a Council approved market (see ***Operation of Markets and Stalls Policy***)
 - (c) a Mobile Shop (see ***Operation of Mobile Shops Policy***)
 - (d) a permitted activity on a reserve site through a lease or licence agreement from Council (in accordance with the Reserves Act 1977)
 - (e) a permitted activity in accordance with Council's Temporary Commercial Activities on Reserve Land Policy
 - (f) undertaken for the specific purpose of fundraising for a community or charitable

organisation – such as a sausage sizzle or the sale of raffle tickets

(g) predominately public entertainment in nature such as busking.

- 17.3 No person shall distribute printed or written advertising material in any Public Place without prior written permission from Council.
- 17.4 No person shall within the District wash or clean the windows of any vehicle or vehicles that are temporarily stopped on any roadway for payment donation or subscription.

18. MARKETS

- 18.1 No person may organise or operate a market in a Public Place without first obtaining written permission of Council. In granting permission, Council may impose conditions, including payment of a fee.
- 18.2 The organiser of such a market is responsible for ensuring all stall holders comply with any conditions issued by Council to the market organiser that are relevant to the operation of the stall. Market organisers are to ensure all stall holders hold any licences that they may be required to have including those relating to food handling, food registration and alcohol.

19. MOBILE SHOPS

- 19.1 Subject to clause 16.3, trading from Mobile Shops may occur in Public Places provided the operator of the Mobile Shop has obtained a licence from Council to do so. The terms and conditions of the licence will be set by Council from time to time, including any fee. The licence must be made available for inspection upon the request of an Enforcement Officer.
- 19.2 A Mobile Shop licence is personal to the licensee and may not be transferred.
- 19.3 Council may, by publicly notified resolution from time to time:
- (a) Prohibit all operators of Mobile Shops from trading or carrying on business in any specified road or part of a road or Public Place within the District
 - (b) Limit the hours or day or days of the week during or on which operators of Mobile Shops may carry on business
 - (c) Vary, revoke or alter any such prohibitions or restrictions including the terms of the Mobile Shop Policy.

20. NUISANCE, PUBLIC SAFETY AND DAMAGE TO PUBLIC PLACES

- 20.1 No person, without the prior written permission of Council shall:
- (a) cause or allow any material or thing to be deposited or dropped onto a Public Place
 - (b) place or leave any materials or thing or substance in a Public Place which is likely to be hazardous or injurious to any person, or likely to create a nuisance
 - (c) deposit in or around a public litter receptacle any household, business or trade

refuse

- (d) preach, sing, make or perform music, lecture or busk in a Public Place
 - (e) damage, interfere with, destroy or remove any natural feature, grass plot, flower bed, tree, shrub or plant or any inscription or label relating to it in a Public Place
 - (f) pollute, damage, deface or disfigure, apply posters, stickers or advertising devices to, or interfere with any ornament, statue, building, Footpath, kerb, road (including road berm), structure, or facilities in a Public Place
 - (g) 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
 - (h) use any vehicle or be in control of an animal which damages any part of a Public Place
 - (i) ride or take a bicycle or motorcycle or any other vehicle on or around Mauao (The Mountain).
- 20.2 No person shall beg in a public place within 5 metres of a public entrance to retail premises within defined areas in the CBD, Greerton and Mount Maunganui (using current maps in the Bylaw attachments and enable these to be changed by Council resolution based on evidence of the problem).
- 20.3 No person shall rough sleep within five metres of a retail premises within defined areas in the CBD, Greerton and Mount Maunganui (using current maps in the Bylaw attachments and enable these to be changed by Council resolution based on evidence of the problem).
- 20.4 No person may light any fire in any Public Place without first obtaining approval from Council. This provision shall not apply to barbecues (meaning a fixed or portable electric or gas fired appliance or device, designed or intended for the cooking of food in the open air); or fireworks (having the same meaning as the Hazardous Substances (Fireworks) Regulations 2001); or emergency flares; or fires lit in accordance with the Beaches Bylaw 2018, subject to prohibitions or restrictions on the lighting of fires imposed by Fire and Emergency New Zealand.

21. FENCES AND TREES ADJACENT TO A PUBLIC PLACE

- 21.1 Where any fence, wall or retaining wall adjacent to a Public Place is in a state of disrepair as to be in the opinion of an Enforcement Officer dangerous to persons passing within the Public Place, the Enforcement Officer may give notice in writing requiring the owner or occupier of the land to repair or remove the fence, wall or retaining wall to the satisfaction of the Enforcement Officer. The owner or occupier shall comply with such a notice.
- 21.2 No owner or occupier of land shall allow trees or shrubs growing on such land to overhang or encroach by their roots or branches onto any Public Place so as to obstruct access to the Public Place or cause a nuisance. At the discretion of an Enforcement Officer, such trees or shrubs may be trimmed back to the property boundary.

22. EVENTS, PARADES AND ASSEMBLY

- 22.1 No person shall in any Public Place, without the prior written permission of Council, combine with other persons or take part in any assembly or organise, hold or conduct any public meeting, gathering, demonstration, or any parade or procession (whether

in vehicles or on foot), or organise or conduct any display or event (referred to below as an activity) in such a way as to:

- (a) impede pedestrian or vehicular traffic access to or along any Public Place or to any shops or premises facing on to any Public Place
- (b) cause a public nuisance
- (c) endanger public health and safety (including traffic safety)
- (d) be offensive.

22.2 Permission will not be unreasonably withheld and reasons will be given by Council where permission is refused. Permission may be refused in circumstances where Council reasonably believes the activity will or is likely to:

- (a) unreasonably impede pedestrian or vehicular traffic access
- (b) cause a public nuisance
- (c) endanger public health and safety (including traffic safety)
- (d) be offensive
- (e) conflict with another activity for which permission has already been granted.

22.3 In determining whether or not to grant permission Council may consider any relevant matter including:

- (a) the time, location and duration of the activity
- (b) the expected number of participants in, and any spectators of, the activity
- (c) the impact the activity may have on the normal use of the Public Place including other users of that Public Place
- (d) cumulative effects of activities
- (e) whether the activity may give rise to some public disorder for example whether, viewed objectively, it may have a reasonable likelihood of dissuading others from enjoying their right to use the Public Place (by entering or remaining in it).

22.4 Council shall also consider whether any proposed refusal of permission is demonstrably justifiable in light of:

- (a) the rights and freedoms protected by the New Zealand Bill of Rights Act 1990
- (b) the significance of the problem being addressed (namely the impeding of access or the public nuisance or danger to public health or safety or offensiveness)
- (c) whether the proposed refusal is a proportionate response to that problem
- (d) whether that response interferes with any relevant right or freedom as little as is reasonably possible in the circumstances.

23. BUILDING AND STRUCTURES

23.1 No person without the prior written consent of Council, shall, except where otherwise provided for in the City Plan or relevant Reserve Management Plan.

- (a) erect, construct, or place any building, dwelling or other structure or erection whatsoever, or any part thereof under, on, above, or across any Public Place

- (b) put any veranda, projecting window, balcony, wall, lamp, door-step, cellar door, signboard, window shutter, gate-post, curtain, awning, blind or other obstruction, enclosure or projection of any kind whatsoever in such a position as to interfere with or cause obstruction in any Public Place
- (c) hang, or allow to be hung, any door or gate abutting on any Public Place so as to render it capable of being swung over or across such Public Place. This clause 20.1 (c) does not restrict any fire or emergency access as required by any Act or Regulation
- (d) omit or neglect to secure and maintain the foundations of any building or any wall or fence, or cause or permit any encroachment by any building, wall, or fence abutting on any Public Place, in a way that the Public Place is or may be damaged or obstructed
- (e) mix concrete or carry out any other work upon any Public Place so as to deface or create an obstruction in the Public Place.

24. ROAD AND BUILDING IDENTIFICATION

- 24.1 No person shall give any name to or affix, set up, or paint any name on any street, or Public Place without the prior permission in writing of Council.
- 24.2 Council may from time to time cause to be painted or affixed on a conspicuous part of some house or building at or near the end, corner, or entrance of every street, and in the direction of the line of such street, the name of such street.
- 24.3 The owner or occupier of every building shall mark such building in the way specified in clause 24.4 with such numbers as Council shall direct or approve, and shall renew the numbers as often as they are obliterated or defaced, or as Council shall order or direct, replacement but no longer than one month from the date of Council ordering such replacement.
- 24.4 The size of the numbers required to mark every building shall be not less than 50mm in height for residential dwellings and not less than 150 mm in height for all other buildings. The numbers shall be displayed in such a position as to be readily visible from any street fronted by that building or access way to that building.
- 24.5 Council shall have power at any time to:
 - (a) alter the number of any building where it may be in Council's opinion necessary or advisable to do so
 - (b) affix or apply a number to any premises in such manner and position as it thinks fit.
- 24.6 No person shall wilfully or maliciously destroy, pull down, obliterate, or deface the name of any street, or the number of any building.

25. COUNCIL FACILITIES

- 25.1 Council may display at the main entrance to any Public Place, Library, Public Swimming Pool or other Council facility, rules regulating the use by members of the public. Every person shall comply with such rules or the reasonable request of an Enforcement Officer about conduct at these facilities.

26. LICENCES

- 26.1 The form of any application for and grant of any permission, licence or approval required under this Bylaw will be determined by Council.
- 26.2 Council may attach to any permission, approval or licence any terms or conditions as it thinks fit.
- 26.3 No application for a licence from Council, and no payment of or receipt for any fee paid in connection with such application or licence, shall confer any right, authority or immunity on the person making such application or payment.
- 26.4 Suspending or Revoking Licences:
- (a) Council may revoke or suspend a licence granted under this Bylaw if it reasonably believes the licence holder:
 - (i) has acted or is acting in breach of the licence
 - (ii) is unfit in any way to hold such a licence.
 - (b) Council may require the licence holder to attend a hearing to explain why the licence should not be revoked or suspended. Council may revoke or suspend the licence at its discretion if either:
 - (i) the licence holder does not attend the hearing
 - (ii) if after the hearing Council is satisfied the licence holder has been in breach of the licence or is unfit to hold the licence.
 - (c) Council may suspend any licence granted under this Bylaw for a period not exceeding 72 hours during the staging of any special event, by giving the licence holder 10 days' notice in writing. Council may suspend any such licence for the purposes of protecting the public from nuisance or for protecting, promoting or maintaining public health and safety.

27. FEES

- 27.1 Council may in accordance with section 150 of the Local Government Act 2002 prescribe fees or charges payable for any certificate, licence, approval, permit or consent form or inspection made by Council under this Bylaw.

28. NOTICES

- 28.1 Council may give notice to any person in breach of this Bylaw to carry out any remedial action in order to comply with the Bylaw and every such notice shall state the time within which the remedial action is to be carried out, and may be extended from time to time.

29. ENFORCEMENT POWERS

- 29.1 Council may use its powers under the Local Government Act 2002, the Litter Act 1979, and the Health Act 1956 to enforce this Bylaw.
- 29.2 **Removal of material or things**
- (a) In addition to the powers conferred on it by any other enactment, Council may

remove or cause to be removed from any public place any material or thing using that public place in breach of the Bylaw.

- (b) Council may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing.

29.3 Removal of construction

Council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this Bylaw and may recover any costs of removal or alteration from the person who committed the breach.

30. OFFENCES AND PENALTIES

- 30.1 A person who fails to comply with this Bylaw commits a breach of this Bylaw and is liable to a penalty under the Local Government Act 2002.
- 30.2 A person who commits a breach of this Bylaw that is an offence under the Litter Act 1979 is liable to a penalty under that Act.
- 30.3 A fine of \$55 is applicable for any breach of clauses 9.1 or 9.3.

31. DISPENSING POWERS

- 31.1 Council may waive full compliance with any provision of this Bylaw in a case where Council is of the opinion that full compliance would needlessly cause harm, loss or inconvenience to any person or business without any corresponding benefit to the community. Council may in its discretion impose conditions of any such waiver.

32. SERVING OF NOTICES AND DOCUMENTS

- 32.1 Except as otherwise expressly provided for in any Act, where any notice, order, or other document is required to be served on any person for the purposes of Bylaw, Council may serve notice by:
- (a) delivering it personally
 - (b) sending it by messenger
 - (c) sending it by registered post to the person's last known place of residence or business.
- 32.2 If that person is absent from New Zealand, the notice may be sent to his or her agent instead of to that person.
- 32.3 If that person has no known name or address or is absent from New Zealand and has no known agent, and the notice relates to any land or building, the notice may be served on the occupier, or if there is no occupier the notice may be put on some conspicuous part of the land or building without the notice naming the owner or occupier.
- 32.4 If that person has died, the notice may be served on his or her personal or legal representative or executor.
- 32.5 Where a notice is sent by registered post it will be sent to arrive in the normal course

no later than the notice is required to be served and will be deemed to have been served at the time when the registered letter would be delivered in the ordinary course of post.

COPY

ATTACHMENTS TO TAURANGA STREET USE AND PUBLIC PLACES BYLAW 2018

The Tauranga Street Use and Public Places Bylaw 2018 allows Council by resolution to determine:

- (a) areas where riding or using a skateboard, scooter, roller skates or a similar device are prohibited (Prohibited Areas)
- (b) areas where a license to occupy is required to place tables, chairs and umbrellas on the Footpath (Licence to Occupy Areas).
- (c) Areas where begging and rough sleeping are prohibited.

These proposed attachments are provided for information only and do not form part of the Bylaw itself.

ATTACHMENT A

Council resolution: 20 November 2018

By Council resolution under clause 9.2 of the Bylaw riding or using the following wheeled recreational device:

Skateboard or Roller Skates

Are prohibited in the following areas:

Tauranga Central Area:

Prohibited on Road and Footpath:

1. Hamilton Street from Durham Street to Willow Street (inclusive)
2. Wharf Street from Durham Street to Willow Street (inclusive)
3. Spring Street from Durham Street to Willow Street (inclusive)
4. Civic Centre Arcade including public thoroughfares
5. Spring Street Carpark Building
6. Elizabeth Street Carpark Building
7. Hamilton/Harington Carpark Building.

Prohibited on Footpath only:

1. Wharf Street from Willow Street to the Strand (inclusive)
2. Grey Street from Elizabeth Street to Spring Street (inclusive)
3. Devonport Road from Elizabeth Street to Spring Street (inclusive)
4. The Strand from Spring Street to Harington Street (inclusive).

Mount Maunganui Central Area:

Prohibited on Footpath only:

1. Maunganui Road from Pacific Avenue to its intersection with Tawa Street
2. Prince Avenue from Victoria Road to Maunganui Road.

Greerton Commercial Area:

Prohibited on Road and Footpath:

1. Cameron Road from intersection with Cornwall Street to intersection with Pooles Road
2. Chadwick Road from intersection with Mitchell Street to intersection with Hayes Avenue
3. Greerton Road from intersection with Emmett Street to northern boundary of the Greerton Road carpark
4. Greerton Road carpark



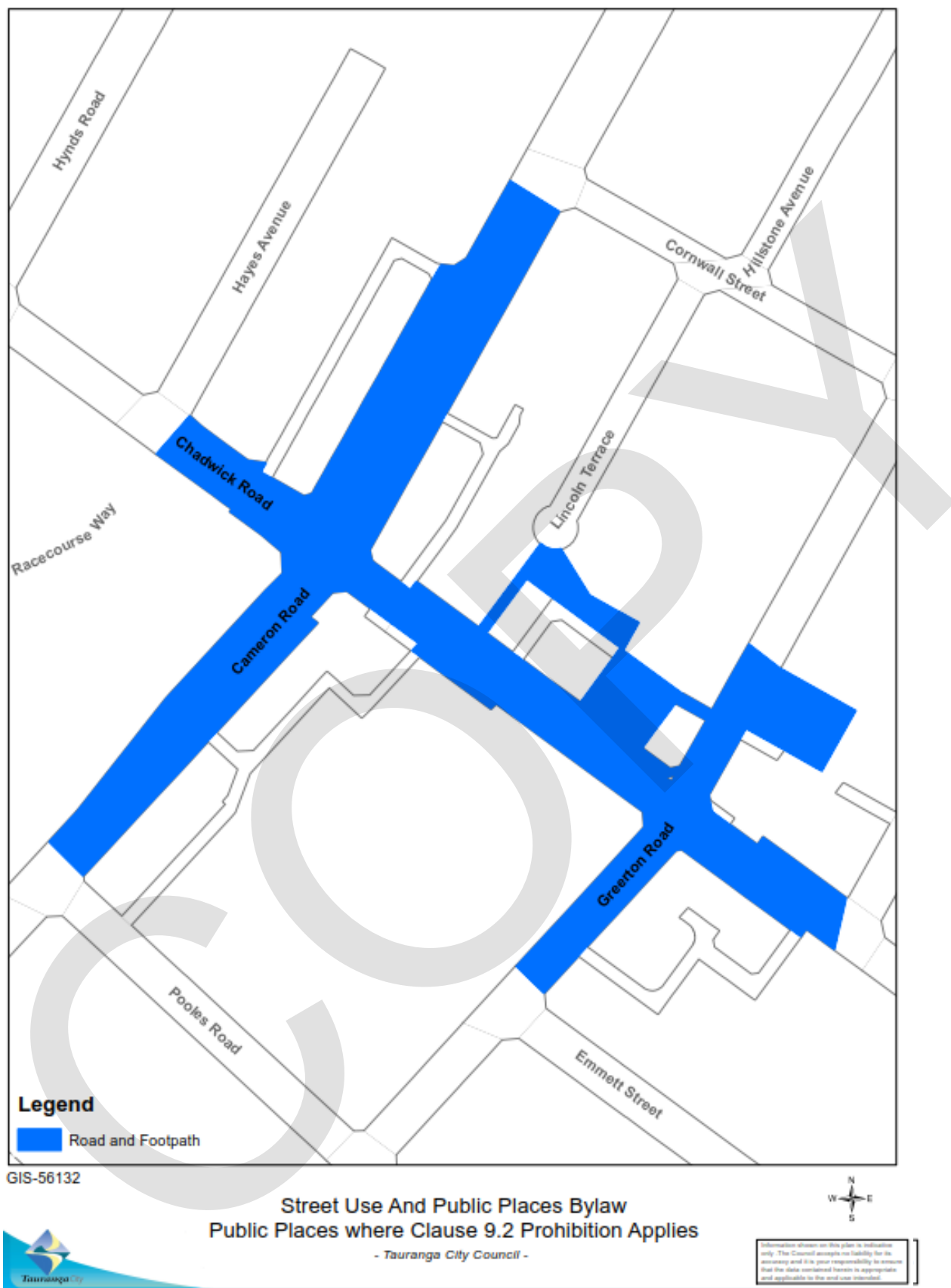
GIS-56132

Street Use And Public Places Bylaw
Public Places where Clause 9.2 Prohibition Applies

- Tauranga City Council -



Information shown on this plan is indicative only. The Council accepts no liability for its accuracy and it is your responsibility to ensure that the data presented is appropriate and applicable to the use intended.

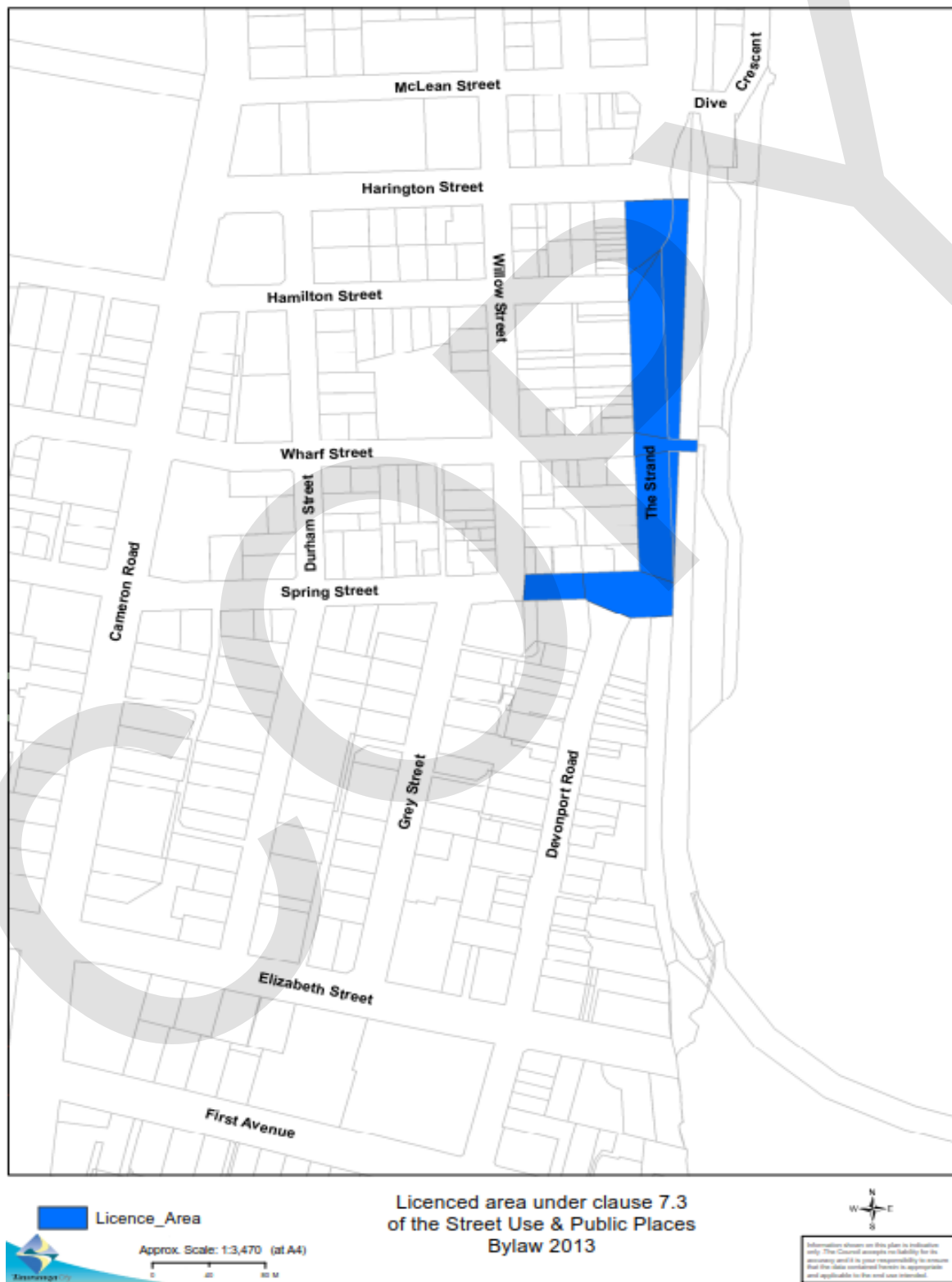


ATTACHMENT B

Areas where a licence to occupy is required to place tables, chairs and umbrellas on the Footpath (Clause 7.3 of the Bylaw)

1. The Strand from Harington Street to Mid City Mall (inclusive).
2. Mid City Mall from Devonport Road to Willow St (inclusive).

Council resolution 18 March 2013.



ATTACHMENT C

For clarification: Any retail premises that are located within the below maps prohibits begging within five metres of a public entrance to that retail premises, and prohibits rough sleeping within five metres of a retail premises (clause 20.2 and 20.3 of the Bylaw).

Council resolution 20 November 2018.



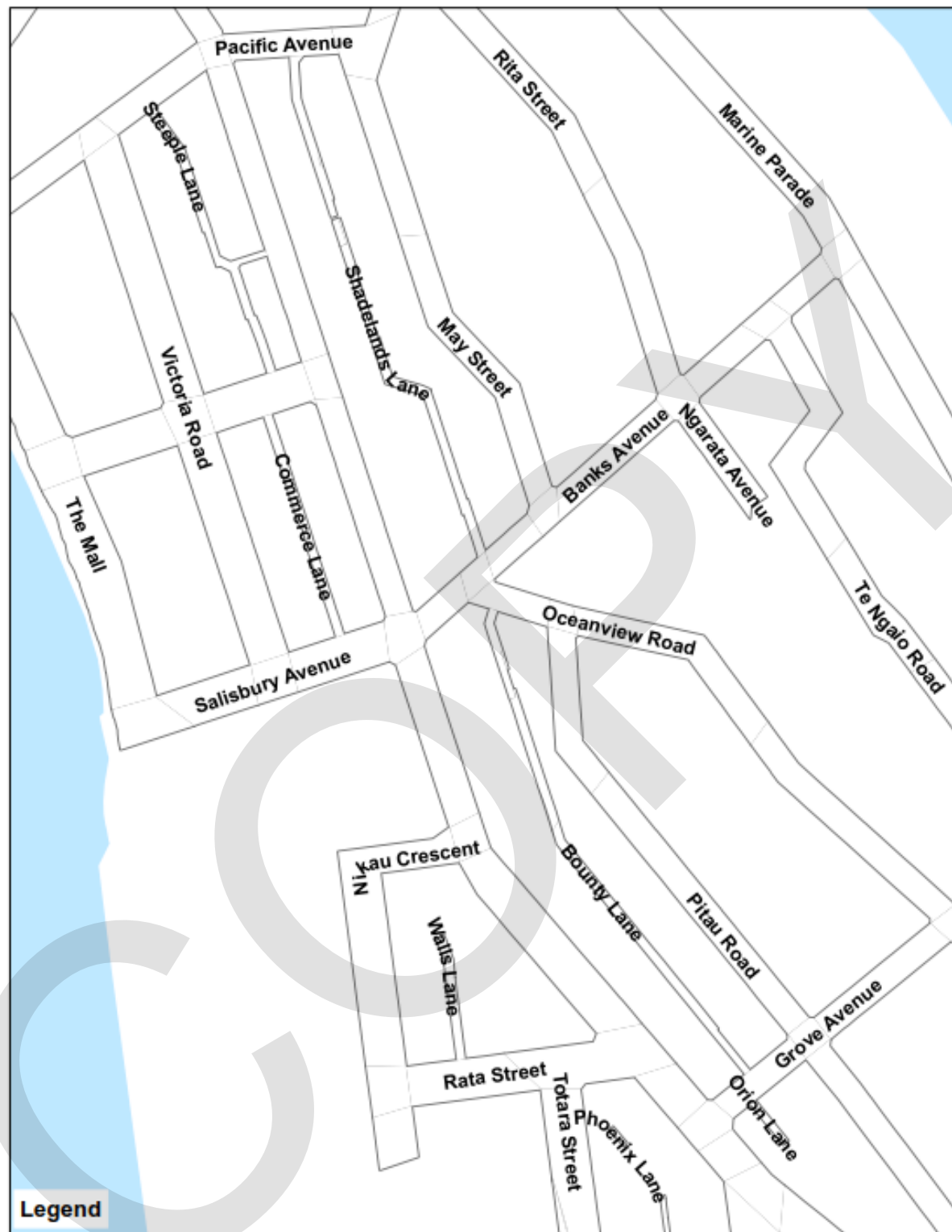
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Street Use and Public Places Bylaw, Public Places
where clause 20.2 and 20.3 prohibition applies
CBD

- Tauranga City Council -



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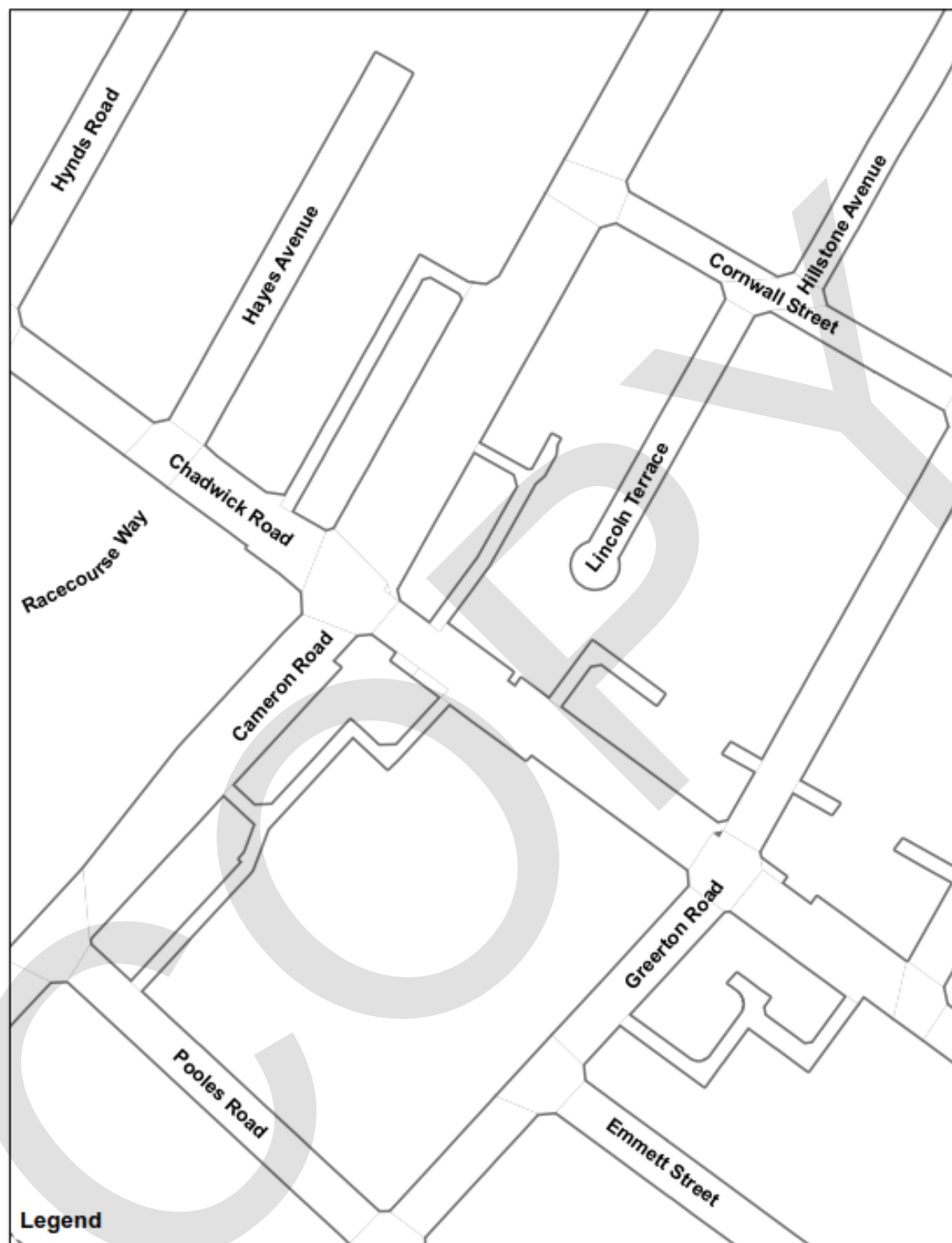
GIS-56132

Street Use and Public Places Bylaw, Public Places
where clause 20.2 and 20.3 prohibition applies
Mount Maunganui

- Tauranga City Council -



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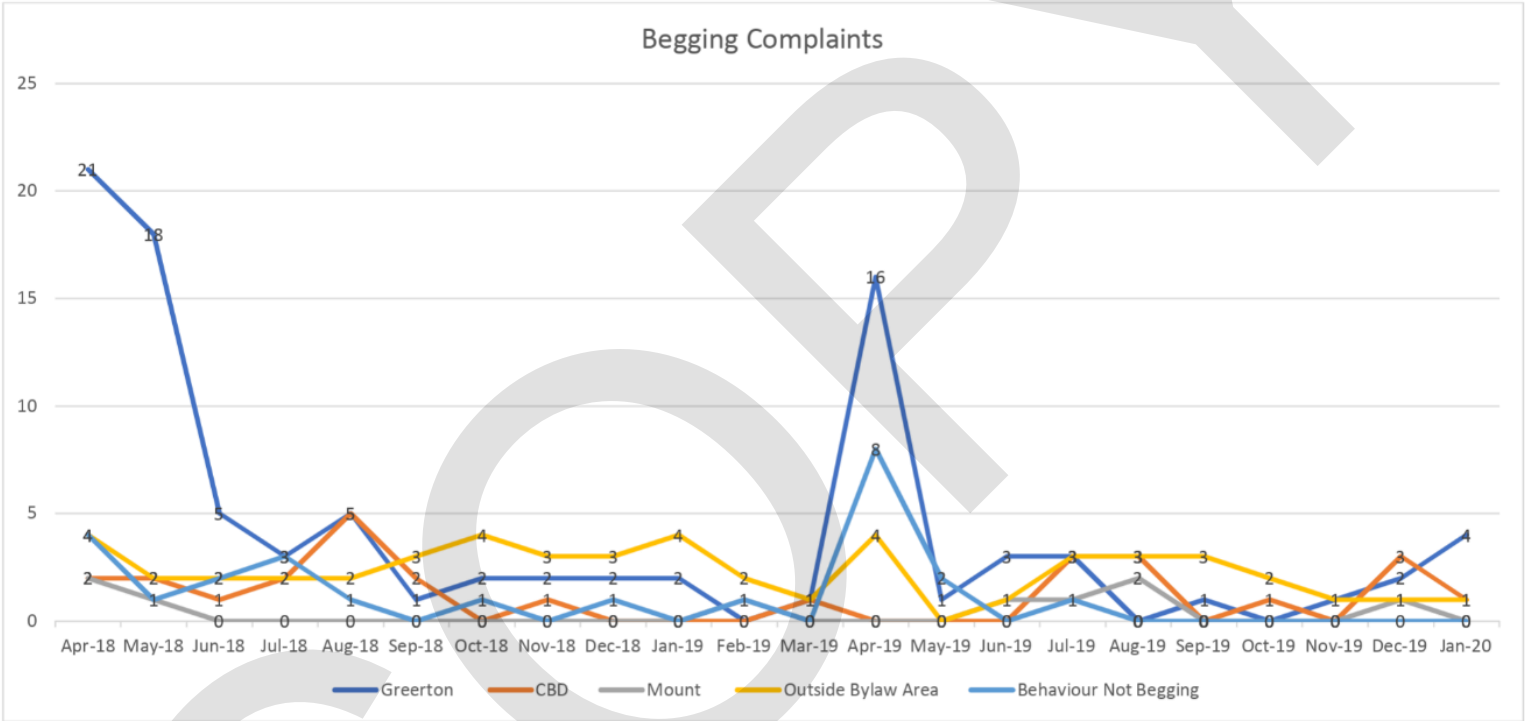
Street Use and Public Places Bylaw, Public Places
where clause 20.2 and 20.3 prohibition applies
Greerton

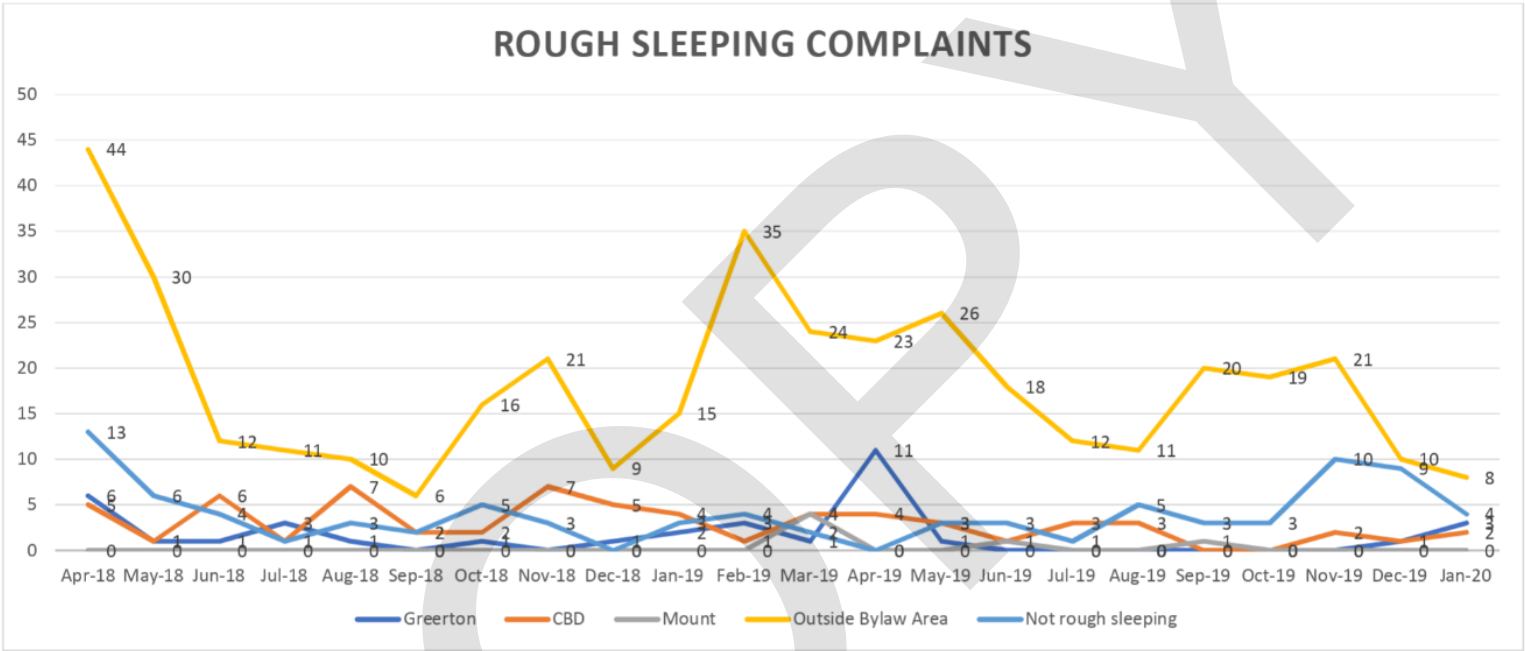
- Tauranga City Council -



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Attachment B – Begging and Rough Sleeping Complaints





Attachment C - Correspondence from NZ Police

From: PAXTON, Clifford
Sent: Wednesday, 12 February 2020 12:18 PM
To: Rebecca Gallagher
Subject: RE: Action plan for Greerton

Thanks Rebecca,

I will be seeking support from TCC in regards to a couple of specific points;

1. TCC Bylaws Officers to enact their obstructions in public places regulations for public obstructions (objects and people) to address any instances of obstructions to any public way. Examples of this would include persons sitting on the footpath begging, sleeping in doorways or otherwise obstructing a public way (no intent to impede the flow of members of the public).
2. Police will address any matters where there is an intent to threaten, alarm, intimidate, offend or on having been asked to desist from obstructing a public way (impeding the flow of the public) refuses or on having desisted subsequently obstructs that public way or some other public way in the same vicinity (sections 3 and 22 Summary Offences Act 1981)

The expectation of Bylaws Officers would be that they educate and inform those of the breach of the Bylaw Regulation, seek their agreeance to desist, make appropriate referrals where required and if the persons don't desist, then consider enforcement action under the relevant Bylaw Regulations if appropriate.

Where there is an intent to threaten, alarm, intimidate, offend or otherwise obstruct the public way (impede the movement of the general public) then that is a matter for which Police should be called.

I would also be seeking the assistance of TCC to complete;

1. Joint data collection and review to understand the nature and scale of the problem and to analyse the number of complaints being received
2. Joint Media approach to inform the community of the joint approach being taken by Police/TCC and wider messaging on reporting behaviours and removal of any labelling

Regards

Clifford Paxton
Inspector
Area Commander
WBOP

Attachment D – Other Council Approaches

Council	Activity/Team Name	Resources	Hours of service	Responsibilities
Wellington City Council	Local Hosts	12 Local hosts Day-time team Supervisor with three staff Night-time team Supervisor with seven staff	Two shifts – day-time and a night team. Day-time: 7 days Monday – Sunday 8.30am – 4pm Night team: Wednesday – Friday 4pm – 2am and Saturday 6pm – 4am	<p>CBD based and some suburbs to engage with the street community, retailers, local and overseas tourists. They work closely with the police and external partners i.e. NGOs etc. They also attend city events and local community events.</p> <p>When complaints or requests received from the community through our Contact Centre then we task the hosts to attend and ensure they give feedback to the callers.</p> <p>On top of these “local hosts” Wellington City Council has also agreed to fund social agencies to provide services that will address street homelessness and begging. This is associated with The Housing First initiative and designed to (not duplicate) services already in place.</p> <p>Wellington City Council agreed to support this approach and fund to deliver an assertive street outreach service that would identify, proactively engage, and collaborate with people sleeping rough and/or begging. An assertive outreach service is one that proactively engages with our street community to ascertain their needs. It works on case management theory and provides clear action plans developed with individuals to achieve positive outcomes. DCM is their lead agency and are funded to deliver this programme of work</p>
Hamilton City Council	City Safety Officers	20 full time equivalent role of which 2 are Team Leaders.	Two shifts – day and a night team. 7 days a week including night work Thursday, Friday and Saturday.	<p>Role includes:</p> <ul style="list-style-type: none">Litter enforcement including issuing infringementsNuisance behaviorBylaw enforcementLiquor banSmoke free <p>Regularly meetings with Police, support agencies, business associations.</p>
Dunedin City Council	City Safety Officers	Contracted security company. Six staff (part-time) rostered plus their own administration support	Fri 1600 – 0400 Sat 2200 - 0400	<p>The primary requirements of a City Safety Officer are:</p> <ul style="list-style-type: none">- Promote the image of Dunedin as a safe city- Assist members of the public- Deter crime through visibility- Provide additional eyes and ears for Police- Identify hazards within public areas- Provide feedback to Council and other organisations. <p>This is not an enforcement role and issues are reported to Police.</p>