

Bylaw Review - Options Analysis

Trading in Public Places

Interpretation

For the purpose of this document the following interpretations are to be used;

- “Goods” means any product or service
- “Hawker” means any person who takes or carries about goods for sale or provides any service: (a) without an invitation to call; or (b) without any previous order or request for such goods or services; but does not include a commercial traveller who only deals with, or only solicits orders from persons or businesses within the district
- “Mobile Shop” means any vehicle from which: (a) goods are offered for sale or sold in any public place (whether or not there is an invitation to call with the goods); (b) services are offered for sale in any public place but does not include any service delivery vehicle
- “Nuisance” has the meaning given by 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 that person is in a public place or not
- “Public Place” means a place that is under the control or authority of the Far North District Council that at any material time, is open to or is being used by the public, whether free or on payment of a charge; and includes any park, reserve, recreational ground, sports field, public garden, public square, domain, cemetery, beach, foreshore, dune, wharf, breakwater, boat, ramp, pontoon, road, footpath, access way, street, pedestrian mall, courtyard, alley, lane, public thoroughfare, cycle track, grass verge, berm, walkways, esplanade strips, council owned and run facilities, public toilets, public swimming pools or any part of a council controlled public place
- “Street stall” means any structure or contrivance, stall, barrow, table, display board or portable stand established in any public place for the purposes of selling any goods, which may include raising funds for Charitable or fundraising purposes, but does not include any mobile shop, hawker, or any display by a retailer immediately adjacent to the retail outlet.

Context and Situation

Trading in public places refers to itinerant or temporary trade occurring in a public place, such as a mobile shop, hawker, or street stall.

Relevant Legislation and Regulation

Far North District Council had been regulating trading in public through the Mobile Shops and Hawkers Bylaw 2010 and the Control of the Use of Public Places Bylaw 2010 which had further regulation around signage and obstruction. However, in April 2019 both bylaws were found to have been automatically revoked in 2017.

Trading in public places is currently regulated by:

- Food Act 2014. Since the making of the Mobile Shops and Hawkers bylaw in 2010, an amendment to the Food Act 2014 introduced new regulations that require persons trading in food to implement a food safety regime which includes food plans for their business so as to demonstrate that the food they are selling is safe for consumption. Section 19 of the Food Act 2014 authorises territorial authorities to monitor and enforce compliance with the Act, including carrying out enforcement and other regulatory responsibilities under this Act. This function is carried out by FNDC's Environmental Health team
- Reserves Act 1977. Section 94 (1) (kb) states that it is an offence under the act to conduct any unauthorised trade or business on a reserve. Council currently grants permission for activities on reserves on a case by case basis
- The New Zealand Transport Authority regulates roadside trading on State Highways through the Regulating Roadside Vendors on State Highways 1993 Bylaws that are made through the Transit New Zealand Act 1989
- The Health Act 1956. This act provides the definition of nuisance that is applicable to trading in a public place. Section 54 of the Health Act 1956 provides Council with powers to deny or restrict trade that it considers offensive.

Problem Definition

Trade in public places, including mobile shops like food trucks and street stalls, can add vibrancy to a place and can be an attraction. However, there are potential negative impacts if appropriate standards of public health and safety are not met or the effects on the locations where temporary stalls are established are not addressed.

Examples of problems associated with trading in public places have been identified through a review of Council's Request for Service (RFS) system data from February 2019 through February 2020. This review found the following examples of problems associated with trading in a public place:

- 4 queries around licencing
i.e. checking if a street stall location is allowed
- 2 queries around charitable trade
Section 31 of the Food Act 2014 provides an exemption from a food control plan if the trading in food is for the purpose of fund-raising for certain activities.
- 2 queries about the Food Act 2014
- 5 queries raised regarding breaches of the Food Act 2014 and street stall limitations
- 2 queries about Council's ability to respond to, or restrict stalls in public places

The requests for service, particularly those regarding street stalls and the sale of food, suggest a limitation to the existing powers Council has through use of the Food Act 2014.

In comparison to 2019, street stall related RFS data from 2015 was confined to licence applications and the notification Council of trade in a public place being carried out for charitable purposes. While not statistically significant, this does show more request for service queries and complaints have occurred post the acknowledgment of the revocation of the Mobile Shops and Hawkers bylaw 2010.

Since the revocation of the Mobile Shops and Hawkers bylaw 2010, Council has not had the ability to request traders to relocate, or cease trading if they are causing problems such as:

- Obstruction: blocking of public space which impacts access. This can be a matter of health and safety and or nuisance, particularly for those who rely on mobility scooters or wheelchairs. There is a need to ensure that there is no interruption to pedestrian flow
- Damage, waste, or mess: Deposits in a public place caused by a trader, or damage to a public place is a matter of health and safety, and nuisance. Council also has a duty to protect its public places and Council assets from damage
- Potential for offensive behaviour in public places. For example, a trader in a public place can be trading in a product that could be considered offensive.

Objective

Administration's objective is to provide options and make a recommendation to Council that address the problems of nuisance, public health and safety and offensive behaviour associated with trading in public places while protecting Council assets from damage.

Options

Option One: Do nothing/maintaining the status quo

Under this option Council will not make a new bylaw and Administration will not have any powers under a local bylaw to request a person trading in a public place to discontinue that activity. If Council chooses this option, there is no requirement for any further action on the part of Council as the Mobile Shops and Hawkers bylaw has already been revoked. Administration will be required to investigate what implications this decision has regarding permits issued since April 2019 when Council acknowledged that the Mobile Shops and Hawkers Bylaw automatically revoked in 2017.

Under this option food traders in public places will have to meet the standards of the Food Act 2014, including the completion of food control plans and health and safety requirements under the Act. Administration has some power to regulate trade on reserves vested in Council under the Reserves Act 1977.

Regulations for the preparation and sale of safe food would be upheld by the Food Act 2014, which gives Council power pursuant to section 19 for licencing and monitoring, subject to the requirement of food plans registered with Council. However, problems such as obstruction or trading beyond the quota set by the charity clause of the Food Act will not be controlled.

Aside from the Food Act 2014, trade in selected public places is managed through the Reserve Act 1977 and a New Zealand Transport Authority bylaw as detailed in the Relevant Legislation and Regulation Section of this report.

Outside of the above regulations, the preparation and sale of services or material goods and the location of this trading activity is currently not subject to any other form of local control or regulation.

Option 1 will not address all problems arising from trading in public places. For example, there will be no controls or local regulation for:

- trading in public places that causes obstruction and limits access
- the maintenance of health and safety standards for trade other than food sales
- issues of nuisance caused by trade in public places such as waste, or mess
- offensive behaviour in a public place affiliated with trade, such as products that may offend the public, or offensive odours caused by trade or trading in a public place.

Therefore, Administration does not recommend Option One.

Option Two: Non-regulatory option/education

Under this option the Council would use non-regulatory measures like public education and guidelines to mitigate or address the problems associated with trading in public places. This could include:

- Signage and communication provided via the Councils communication channels on the appropriate locations and times for establishing trade in public places
- The publishing of guidelines for health and safety standards, including warranted vehicles, and food safety as accordance with the Food Act
- Communication and education of the public on applicable legislation and regulation (e.g. Reserve Act 1977 or NZTA bylaws) as it relates to trading in public places
- Communication to the public on how the public can apply for permits for trading on Council reserves on a case by case basis.

While guidelines, communication and access to information will educate and, if done well, will influence behaviour resulting in addressing the problems associated with trading in a public place, Under this option Council will not be able to take tougher enforcement actions or issue permits/licences to those trading in a public place. Administration is of the view that Option One coupled with Option Two will not go far enough in addressing the problems associated with trading in public places.

Option Three: Make a bylaw

In accordance with section 145 of the Local Government Act 2002, Councils' power to make bylaws may relate to one or more of the following purposes:

- a) Protect the public from nuisance
- b) Protect, promote, and maintain public health and safety. For example, ensuring that the goods and services prepared and sold in a public place are not a danger to the public
- c) Minimise the potential for offensive behaviour in public places. For example, ensuring the goods and services prepared and sold in a public place are not offensive

Moreover, under section 146 of the Local Government Act 2020, Council may make a bylaw that regulates trading in public places.

Legal advice suggests that issues relating to trading in public places cannot be managed without an operative bylaw because bylaws give local authorities the ability to regulate, control, prohibit an action, or to licence. Without the formation of a bylaw there is no regulating, control, prohibition, or licencing.

To fully address the problems of nuisance, health and safety and potential offensive behaviour associated with trade in a public place Administration recommends Option Three - Make a bylaw.

Conclusion and Recommendation

It is recommended that a combination of making a bylaw (Option Three) and providing information and education to the public (Option Two) will best address the problems associated with trading in a public place.
