

Officer responsible Parks Manager	Author John Allen, Area Parks Officer (Consents)
Corporate Plan Output: Customer Services Sub-output - Leases (9.4.4)	

The purpose of this report is to rescind part of the Council resolution of 24 June 1998 concerning the establishment of a burnout pad at Ruapuna Park.

At that meeting the Council resolved “that subject to a satisfactory legal opinion, the Council delegate to the City Manager the power to grant its consent as landlord to the Canterbury Car Club building and operating a burnout pad and public toilet facilities on an area of approximately 4,000 square metres than the Canterbury Car Clubs leased area at Ruapuna Park (as shown on the tabled plan), subject to conditions 1-15 as detailed in the report”.

The legal opinion from the Legal Services Manager has now come to hand and is tabled.

The legal opinion examines the potential legal liability of the Council, under a number of statutes, in granting consent as the landowner and landlord and what steps, if any, the Council should take to minimise any potential legal liability which may arise out of the burnout pad.

The Legal Services Manager is concerned that resolutions 3, 5 and 6 may cause the Council to come under a legal duty of care because it has taken on a responsibility that rightfully belongs to the Canterbury Car Club.

Section (e) entitled *Assuming Responsibility* of the legal opinion is set out below:

(e) *Assuming Responsibility*

A person may come under a legal duty of care because that person has taken on the responsibility for another person. In other words, they have assumed responsibility for the welfare of that other person where there was no legal need for them to do so. Examples of this situation are where a person has assumed an obligation to provide supervision or has assumed an obligation to approve the design of a particular matter.

*If such an assumption has been made, then the legal duty can extend not only to a person who may be directly affected, but also third parties who may be indirectly affected. Examples in the present context would be not only for users of burnout pads, but also spectators who may witness an accident. I note that a landlord has been held **not** to be responsible in negligence for a nuisance caused by a tenant.*

An illustration of these principles in a practical situation can be seen in the Court case of Catley v Talley's Fisheries Limited.

Regarding the obligations of public bodies, there are Court cases which suggest that a public body may be held responsible in negligence where it has assumed control over a specific event and simple precautionary measures could easily have been taken.

It is in regard to this area of assumption of responsibility that I believe that in the context of the burnout pad, the City Council is at greatest risk of being legally liable.

The law is clear, in my opinion, that the Council in the present case is the landlord of a tenant who is proposing to erect a burnout pad.

In general terms the law will not impose liability on the Council arising out of a tenant's negligent actions nor for nuisances caused by a tenant.

However, if the Council of its own volition decides to assume responsibility for issues such as the design of the burnout pad, or for the supervision of the operation of the burnout pad, and if an accident occurs, then the Court could well find that because of that assumption of responsibility the City Council is legally liable in negligence to an injured party such as a driver of a car or a spectator who may be watching when the accident occurs.

To address this issue, in my opinion, the City Council should endeavour to avoid any suggestion of assumption of responsibility in that regard, and should limit its involvement to giving consent as landlord to the Canterbury Car Club to erect the burnout pad, and if the Council is minded, to make a grant to the car club to limit its involvement to that extent.

I am concerned that with regard to the report to the Council at the meeting on 24 June 1998, the potential of the City Council's involvement could, if the resolutions passed by the Council remain unaltered, be held to be an assumption by the Council of responsibility in regard to the burnout pad.

In particular I refer to the following resolutions:

- “3. Before any tenders are let or work commences on the site discussions being held with the Parks Manager designate, the Area Parks Officer - Sockburn, to ascertain the Council's requirements through the development phase of the construction of the facility.*
- 5. That the Canterbury Car Club Incorporated obtain a written agreement from any manager of its burnout pad until the facility (if any) upon terms and conditions that are fully acceptable to the Council's Legal Services Manager. Without limiting the generality of the foregoing, such agreement will record that:*

- (a) *The manager will not breach any of the covenants of the lease; and*
- (b) *The Canterbury Car Club Incorporated will not be released from any of its obligations under the lease by the appointment of a manager.*

6. *The area being maintained in a safe and tidy condition to the satisfaction of the Parks Manager or his designate at all times.”*

In my opinion, the Council should endeavour to put itself in the position whereby any liability to it is minimised so that if accidents occur, then in the event of any litigation, (although it is probable that the Council will be brought into such litigation) at the end of the day the Council is not held to be liable by Court in terms of its involvement with this burnout pad.

The other difficulty in this type of situation is that if the Council is sued for negligence, and typically other parties are also sued, then although the Council may ultimately be found to be only 10% liable, it is obliged to pay the whole of the judgment and seek to recover the portions from the other parties involved.

I would advise that in my opinion these are not legal grounds for the Council to rescind the approval as landlord, that it has given but that it should rescind resolutions 3, 5 and 6 quoted above.

The Council should not become involved in design or operational issues relating to the burnout pad.”

The Committee will note that the Legal Services Manager is recommending that the Council not become involved in the design or operational issues relating to the burnout pad.

The City Design Unit of the Council has produced the concept plan for the burnout pad at Ruapuna Park. In light of the Legal Services Manager’s recommendation that the Council not become involved in design or operational issues relating to the burnout pad, the YES Trust should be informed that it should obtain separate advice in respect of the concept plan (as the Council does not accept any responsibility for that plan), and that Council units are unable to undertake further design or operational work relating to the burnout pad.

- Recommendation:**
- 1. That, as recommended by the Legal Services Manager, the Council rescind parts 3, 5 and 6 of the resolution adopted on 24 June 1998 relating to the establishment of a burnout pad at Ruapuna Park.
 - 2. That the YES Trust be informed that it should obtain separate advice in respect of the concept plan for the burnout pad at Ruapuna (as the Council does not accept any responsibility for that plan), and that Council units are unable to become involved with

the design or operational issues with regard to the burnout pad.

3. That the YES Trust be invited to make application to the Council for a grant to assist with the design and establishment of the burnout pad.