



Christchurch City Council

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 7 FEBRUARY 2008

AT 9.30AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

Committee: Councillor Sue Wells (Chairman),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid and
Chrissie Williams.

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1. APOLOGIES

2. DRAFT CHRISTCHURCH CITY DOG CONTROL POLICY AND BYLAW 2008

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941 8462
Officer responsible:	Inspections and Enforcement Manager
Authors:	Mark Vincent

PURPOSE OF REPORT

1. To consider the adoption of a draft Dog Control Policy and bylaw under the Dog Control Act 1996 for the City of Christchurch.

EXECUTIVE SUMMARY

2. The Christchurch City Dog Control Bylaw 1997 is required, under section 158 of the Local Government Act 2002, to be reviewed prior to June 2008. The Banks Peninsula District Council Dog Control Bylaw 2004 is required to be reviewed prior to 15 December 2009.
3. The Dog Control Act 1996 (the Act) is the national legal instrument controlling dogs in New Zealand and has the objectives of requiring the registration of dogs; making provisions in relation to dangerous dogs; imposing obligations on owners to ensure dogs do not create a nuisance or injure or endanger any person; and do not endanger or injure any stock, other animals or wildlife. The Council has a duty under the Act to adopt a policy on dogs, which may specify the nature and application of any dog control bylaw.
4. The policy may also specify other non bylaw matters such as fees; education programmes; classification of owners; and matters to do with infringement notices.
5. Section 10(4) of the Act states that the Council, in adopting a policy under section 10 must have regard to:
 - (a) the need to minimise danger, distress, and nuisance to the community generally; and
 - (b) the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and
 - (c) the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs; and
 - (d) the exercise and recreational needs of dogs and their owners.
6. Section 20 of the Act provides for the making of dog control bylaws; any territorial authority may, in accordance with the Local Government Act 2002, make bylaws (within specified guidelines) for the purposes of complying with the adopted policy.
7. In 2006 Banks Peninsula District was merged with Christchurch City, and thus the need exists to incorporate into one policy the Banks Peninsula Dog Control Policy and Bylaw and the City Council Dog Control Policy and Bylaw as they are now under the same jurisdiction, thus ensuring consistency in intent, application and enforcement of dog controls across the district, and where appropriate nominating specific approaches for specific management requirements.
8. A copy of the current Christchurch City Dog Control Policy 1996 can be viewed on the Council website at <http://www.ccc.govt.nz/Policy/>. The Banks Peninsula Dog Control Policy can be viewed at <http://www.ccc.govt.nz/policy/bankspeninsula/dogcontrolpolicy.pdf>. Both the Christchurch City Dog Control Bylaw and the Banks Peninsula Dog Control Bylaw can be viewed on the City Council website in the bylaw register at <http://www.ccc.govt.nz/bylaws/>.

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9. During the past two years there have been significant additions and changes to the areas of land under the Council's control, including parks and reserves and foreshore areas. There has also been an increase in knowledge and awareness of the significant values of some areas e.g. mudflats, where no dog controls are in place. These areas all have specific amenity, recreation and wildlife values which need to be supported and/or protected.
10. The total number of dogs registered in Christchurch City has risen by 5.9% from 28,569 in the 2004/05 financial year to 30,376 in the 2006/07 financial year. During this same period the Banks Peninsula District Council dog registration statistics were merged with the Christchurch City Council statistics, accounting for the majority of the increase. It is critical to ensure both dog owners/dogs, including working dogs, and non dog owner requirements are satisfactorily catered for across the wider region, however this needs to be aligned with park and reserve area management practices.
11. There has been an increase in the number of vicious attacks by dogs on people both nationally and in Christchurch City and these have all received high profile media coverage. Although the number of reported attacks on people in Christchurch City dropped from 190 (2004/05) to 174 (2006/07), there is still strong evidence for the need for education (of both dog owners and the general public) and enforcement to ensure this attack rate decreases.
12. To assist with the protection of specific amenity, recreation and wildlife values and the community health and safety issues associated with dogs in public places the protection status of each area has been reviewed and documented. Some areas are new and have initial dog control status designations. Other areas are recommended for enhanced dog protection (prohibited, restrained and not specified) and are included in the 'Development' option. The reason for protection will be specific to each area, but may include aspects such as community health and protection, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. The current and proposed control status (and any change) is documented within the Dog Control Policy.
13. For the reasons mentioned above, it is considered that a bylaw is the most appropriate way to address the dog control problems as outlined. Both a new policy and bylaw are required, as the amalgamation of Banks Peninsula District and Christchurch City has resulted in two Dog Control Policies and Bylaws being in existence. Consequently, the form of the recommended bylaw is also considered to be in the most appropriate form and there do not appear to be any implications raised by the bylaw in terms of the New Zealand Bill of Rights Act 1990.

FINANCIAL IMPLICATIONS

14. If the 'development' option or 'restrained' option is adopted by the Council then there may be significant financial implications, both in the areas of enforcement and in relation to control signage.
15. Should the 'consolidation' option be adopted by the Council then the financial implications would be minimal as under the amalgamation these responsibilities already exist.
16. The Council and the community, through consultation, need to be mindful therefore that if the 'development' option is approved, the increased number of prohibited, restrained and not-specified dog areas could have a direct cost implication, depending on the number and location of sites.
17. Because a larger number of new prohibited, restrained and not-specified dog areas have been included in the 'development' option significant funding is likely to be required to cover the **cost of the enforcement necessary** to monitor and service these additional areas.
18. The implementation of the 'development' option could be managed from an enforcement perspective on a respond and investigate approach as issues arise in these areas. This can be done within existing resources/FTE's, however, there will be a need for Animal Control to monitor the number of complaints/instances over a 12-month period to determine the true service demand that the new prohibited and restrained areas will create. During this 12-month period it is intended to utilise other Council staff such as Regional Park Rangers, to assist with monitoring compliance of the policy and bylaw. Should there be a substantial increase in service demand then the 12-month monitoring period will allow a business case to be created to gain additional resources (i.e. Animal Control Officer FTE's).

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19. If, however, the Council, as part of the policy review requires a more proactive dog control approach as a result of the additional prohibited and restrained areas detailed in the 'Development' option then the best estimates as to the additional cost of this proactive approach is two FTE's or \$120-\$140,000 p.a. (salary plus equipment cost for two additional FTE animal control officers required to monitor and enforce the additional specified dog areas). A more proactive approach would involve a patrol and education based service with regular visits to these areas, therefore, preventing issues before they arise. This proactive approach is currently provided in some high public use areas within Christchurch City but not all prohibited etc areas within the City.
20. The 'restrained' option may also have significant financial implications. Its general rule that dogs are to be restrained with a leash in public places will be easy for members of the public to retain and consequently may result in an escalation in the number of complaints received from the public to which dog control staff will need to respond. It is difficult to quantify the extent of these financial implications and again, monitoring over 12-months would be carried out with a business case being made after that period, if necessary, for additional resources.
21. If a more proactive dog control approach is required by the Council under the 'restrained' option then the financial implications would be similar to that for a proactive approach under the 'development' option i.e. an additional \$120 – 140,000 p.a.
22. Any additional **budget requirement for enforcement** could be funded through dog registration fees, infringement notice revenue, rates, or a combination of these.
23. The current Dog Control account is funded 92% from dog registration fees and 8% from rates (to recognise the public good component of the service).
24. Should the Council be minded to place all the additional \$120-140,000 cost on dog owners, there would be a consequential need to increase dog registration fees by approximately \$5 across the board. The current Dog Registration Fee Schedule is attached to this report (Appendix E).
25. If the Council is minded to have a more proactive dog control approach (see paragraph 18) and adopts either the 'development' or 'restrained' options, then it should indicate to staff how, in broad terms, it wants to apportion funding of the additional enforcement costs between the different sources available, so that more detailed financial modelling can be carried out.
26. In addition there will be costs associated with informing the public on the new bylaw once it is in place. Different levels of signage will be needed at different parks and other public places. This will be done in a variety of ways. All the relevant information will be available on the Council's website, including maps showing specific details of some dog-restrained and prohibited areas. Animal Control and Greenspace produce a number of information leaflets - these will be updated to include updated bylaws. The signage on Parks will be reviewed and 'dog signs' will need to be installed at key entry points and adjacent to playgrounds to indicate any dog restrictions that apply. Street signs and stencilled logos on footpaths will be used where needed. There will be media releases done once the new bylaws are in place. The Animal Control team will continue to do dog education programmes with school groups and others. Estimates for additional signage are \$100,000 based on a range of options (from signs on poles through to spray-painted stencils) and the range of urban and regional parks.
27. A bid for new signage may need to be made at the next LTCCP round. Until then, priority signs will be covered by existing budgets.
28. The estimated cost of the special consultative procedure communication is \$50,000. This will be funded from the Dog Control account.

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Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

29. Yes, there may, however, depending on the option chosen, (the options for consideration being set out at the end of this report), be a requirement to make application for budgetary provision for more signage for restricted and prohibited dog areas, in the future annual plan budget rounds. Depending on the final option chosen, there may also be a need for an increase in enforcement costs, the funding for which will depend on the indication from the Council of how any increase in enforcement costs is to be funded (see section 20 above).

LEGAL CONSIDERATIONS

30. The legal considerations in relation to the review and adoption of a new bylaw, including one made under the Dog Control Act 1996 (by virtue of sections 10AA and 20 of that Act) largely arise from section 155 of the Local Government Act 2002. This sets out the matters that must be determined as follows:

- “(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
- (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw:*
- (a) is the most appropriate form of bylaw; and*
 - (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
 - (c) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*

31. In order to comply with section 155 the Council needs to formally resolve that a bylaw is the most appropriate way to deal with this issue, and if so, that the proposed form of bylaw is the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. The conclusion reached in the background section below is that this bylaw is the most appropriate way to deal with the issues covered by the proposed bylaw. The matters to be controlled are not covered by other legislation or Regional Council provisions. The Dog Control Act 1996 is the predominant legal instrument controlling dogs in New Zealand, but it is operated and enforced through territorial authorities. The Dog Control Act contemplates that bylaws will be used for the purpose of setting in place operation and enforcement mechanisms for controlling dogs in the region. The legal services unit also considers that the form of the bylaw is the most appropriate form and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
32. Both the draft bylaw and draft policy must be consulted on by way of the special consultative procedure, as required by sections 10, 10AA and 20 of the Dog Control Act 1996. The special consultative procedure requires that the Council must prepare and resolve on a statement of proposal (which must include the draft bylaw and policy, set out the reasons for the proposal and include a report on the Council's determinations under section 155) and a summary of information (which must provide a fair representation of the major matters in the statement of proposal, be distributed as widely as reasonably practicable and as determined by the Council, must indicate where the statement of proposal can be inspected and a copy obtained, and state the submissions period). In addition to giving public notice of the proposal, section 10(2) of the Act requires that the Council give notice of the draft policy to every person who is, according to its register, the owner of a dog. Following the submissions period, the Council will hear from anyone who wishes to be heard, consider the submissions made and then resolve on the final form of the policy and the bylaw.

Have you considered the legal implications of the issue under consideration?

33. Yes

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ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

34. Yes: The Council minimises potential hazards and nuisances from dogs and wandering stock (Ref. LTCCP Volume 1 page 146).

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

35. Strategic Directions require the "Provision of a variety of safe, accessible and welcoming local parks, open spaces and waterways" under Objective 5 Strengthen the Garden City Image; and under Objective 6 Identify, protect and enhance the city's native and exotic ecosystems "Encouraging the community to learn about and care for biodiversity and ecosystems.
36. The Draft Biodiversity Strategy will be considered by the Council early in 2008. Dogs are specifically identified as having a significant impact on penguin populations in the technical report - 'Dog control is a major issue in urban areas if penguins are again to form a prominent part of our urban wildlife.' Whilst dogs are not specifically identified elsewhere in the technical report, they do have a significant impact on some types of wildlife particularly on the seashore and mudflats. A number of the areas identified for tighter dog control measures (prohibited or restrained areas) in the 'Development' option correspond with those identified in the draft Biodiversity Strategy as being important habitats for biodiversity in the concept plans contained in the draft Strategy.

CONSULTATION FULFILMENT

37. Through a Council Seminar (June 2007) Councillors gave initial input into the need for the breadth and the potential content for consideration when reviewing the Dog Control Policy and Bylaw.
38. There has been no input from Community Boards to the Dog Control Policy and Bylaw at this stage. This results from the absence of a process for doing so during and following the local body elections, coupled with the pressure to review a significant number of bylaws prior to 30 June 2008 to meet statutory timelines. Community Boards will have the opportunity to express their views on the proposed Dog Control Policy and Bylaw through the Special Consultative Procedure.
39. Initial discussions have taken place with Mahaanui Kurataiao (MKT). However, due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development, and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the Draft Dog Control Policy and Bylaw during the Special Consultative Procedure.
40. Once adopted by the Council and as part of the Special Consultative Procedure, all dog owners and a number of possible stakeholder groups in addition to those individuals who expressed interest in the subject, will be sent information on the bylaw and the Policy. The estimated cost of the special consultative procedure communication is \$50,000. This will be funded from the Dog Control account. Wider publicity, beyond that legislatively required, will be given to the bylaw once it is adopted as a proposal by the Council including clarifying the distinction between dog control areas, documenting the areas and their dog control status and other areas covered by the bylaw.

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STAFF RECOMMENDATION

It is recommended that the Planning and Regulation Committee adopt and recommend to the Council that:

- (a) Under section 155 of the Local Government Act 2002 the draft Christchurch City Dog Control Bylaw is the most appropriate way to address the dog control issues covered by the draft bylaw, is in the most appropriate form, and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (b) The attached draft bylaw (Appendix B) and draft Dog Control Policy (Appendix A) based on the 'Development' option be adopted for consultation by way of the special consultative procedure.
- (c) The attached statement of proposal (Appendix C) (incorporating the draft bylaw and draft policy) and the attached summary of information (Appendix D) be adopted and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (d) Notice of the proposal be given by mail to all registered dog owners in the district.
- (e) Public notice of the proposal be given in "The Press" and "Christchurch Star" newspapers and on the Council's website on Saturday 1 March 2008, with public notice also to be given in the "Akaroa Mail", "Diamond Harbour Herald" and other community newspapers distributed in the Christchurch area as close as possible to Saturday 1 March 2008.
- (f) The period within which written submissions may be made to the Council be between Saturday 1 March and Wednesday 2 April 2008.
- (g) A Hearings Panel comprising (the members thereof to be named at the present Council meeting) be appointed to consider and where necessary hear any submissions on the draft bylaw and draft policy, and report back to the Council with its recommendations thereon.

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BACKGROUND (THE ISSUES)**Background information**

41. In undertaking the review of the bylaws, this must be carried out in accordance with section 155(1) of the Local Government Act 2002. This section requires that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner. However, in the case of bylaws made under the Dog Control Act 1996 (the Act) prior to their introduction the Council must adopt a policy in respect of dogs in the district which must specify the nature and application of any bylaws made, or to be made, under section 20 of the Act. The policy must also identify any public places in which dogs are to be prohibited or controlled on a leash, and how dogs classified as menacing dogs are dealt with. A number of matters also may be contained in the policy relating to fees, owner education programmes, dog obedience courses, classification of owners, disqualification of owners, and the issuing of infringement notices.
42. The purpose of this section of the report is to outline the legal requirements for Local Authorities in relation to Dog Control under the Dog Control Act 1996, the context and content of a Dog Control Policy and Bylaw for Christchurch City Council and the justification for a Bylaw.

Section 155 considerations

43. A useful guide to considering the matters under section 155 (as quoted above) is the *Code of Good Regulatory Practice, 1997* which suggests the following should be considered:
 - *Efficiency by adopting only regulations for which the costs to society are justified by the benefits. To achieve objectives at the lowest cost taking into account alternatives.*
 - *Effectiveness to ensure it can be complied with and enforced at the lowest possible cost.*
 - *Transparency by defining the nature and extent of the problem and evaluating the need for action.*
 - *Clarity in making things as simple as possible, to use plain language where possible, and keeping discretion to a minimum.*
 - *Regulation should be fair and treat those affected equitably. Any obligations or standards should be imposed impartially and consistently.¹*

In addition, guidance provided by Local Government New Zealand states the following matters should be taken into account at this stage: *What is the problem?; Have we got enough information?; Who is affected or interested?; What is our objective?; What is the root cause of the problem – not the symptom?* ² In the following paragraphs these issues are addressed in the context of determining a need for any bylaw.

44. The Dog Control Act 1996 (the Act) is the national legal instrument controlling dogs in New Zealand and has the objectives of requiring the registration of dogs; making provisions in relation to dangerous dogs; imposing obligations on owners to ensure dogs do not create a nuisance or injure or endanger any person; and do not endanger or injure any stock, other animals or wildlife. Territorial authorities are given the role of undertaking functions under the Act, including registering dogs in its area. Section 10 of the Act requires territorial authorities to adopt a policy on dogs and sets the process for doing this which includes its adoption through the special consultative procedure under the Local Government Act 2002. Furthermore, in accordance with the Act the territorial authority must have regard to the section 10(4) matters, as quoted under clause 3, when adopting a policy.

¹ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

² *The Knowhow Guide to the Regulatory and Enforcement Provisions of the Local Government Act 2002*, SOLGM, Local Government New Zealand, Department of Internal Affairs, no date

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45. These matters focus on minimising danger, distress and nuisance; removing the inherent danger of dogs having uncontrolled access to public places frequented by children; enabling the public to use streets and public amenities without fear of attack or intimidation by dogs; while also considering the exercise and recreational needs of dogs and their owners. Any policy **must** specify any bylaws to be made under the Act; areas in which dogs are to be prohibited or restrained; areas in which no prohibitions or restraints are applied; and areas designated as "dog exercise areas". The policy may also specify other non-bylaw matters such as fees; education programmes; classification of owners; and matters to do with infringement notices.
46. The Act, under section 20, also provides for the introduction of dog control bylaws where any territorial authority may, in accordance with the Local Government Act 2002, make bylaws (within specified guidelines) for the purposes of complying with the adopted policy. The matters that may be controlled under bylaw include the prohibition of dogs from specified areas; requiring leashing in certain areas; requiring dogs to be kept confined in certain circumstances; limiting the numbers of dogs that can be kept on premises; and making provision for impounding. Under the Dog Control Amendment Act 2003 territorial authorities were required to revise their dog control policies so there was more emphasis on public safety and were also required to participate in the National Dog Database and micro-chipping of dogs. Under the Dog Control Amendment Act 2006 territorial authorities were required to strengthen policies in relation to dealing with menacing and dangerous dogs. Thus, to meet the objects of the Act and the obligations of the Act, as a territorial authority the Christchurch City Council must adopt a policy on dog control.
47. The Dog Control Amendment Acts 2004 and 2006 lay out an inventory of tools for territorial authorities to use to crack down on unregistered dogs, roaming dogs, and irresponsible owners. Fines and penalties have been increased for erring owners, and sensible steps have been taken to enable territorial authorities to take a more preventative approach to keeping children clear of uncontrolled dogs in public spaces. It is necessary to revise the Christchurch City Council Dog Control Policy and Bylaw to ensure the objects of these amendments to the Act are incorporated.
48. In 2006 Banks Peninsula District was merged with Christchurch City, and thus the need exists to incorporate the Banks Peninsula Dog Control Policy and Bylaw in the City Council Dog Control Policy and Bylaw as they are now under the same jurisdiction; thus ensuring consistency in intent, application and enforcement of dog controls across the region and where appropriate nominating specific approaches for specific management requirements. A comparison of the clauses in the existing Christchurch and Banks Peninsula Bylaws is attached as an attachment to this report (Appendix F). Alongside this is the need to ensure that the controls for rural (working) and urban dogs are appropriately addressed, as the amalgamation of Banks Peninsula District resulted in the inclusion of farming areas and thus working rural dogs, into the Christchurch City Council's jurisdiction.
49. During the past two years there have been significant additions and changes to the areas of land under Council control, including parks and reserves and foreshore areas. These areas all have specific amenity, recreation and wildlife values which need to be supported and/or protected.
50. Within the current policies and bylaws there are some areas of land that require reclassification of their dog control status, for example to align them with the need to keep dogs separate from dog-sensitive wildlife areas in reserves and foreshore areas in keeping with the draft Biodiversity Strategy.
51. There has also been an increase in knowledge and awareness of the significant values of some areas e.g. mudflats, saltmarshes, wildlife breeding habitats and ecologically sensitive sites, under Council control and management and the potential impact of dogs on these areas if allowed to continue to enter these areas. In order to fully protect the environmental values of these areas a review of the impact of dogs 'at large' in these areas has been undertaken and dog control status recommendations made in order to best protect the significant values for each area. The undertaking of this work is in support of the draft Biodiversity Strategy which will be presented to Council to adopt as policy early this year.

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52. Several parks especially on the Port Hills and Banks Peninsula are grazed. It is important the dogs are kept on leads to minimise the disturbance of stock. People passing through grazed land with dogs on a lead pose little problems, however, there has been an increase of complaints of dogs chasing and in some cases mauling stock. It may be necessary to close dog access to some grazing land at certain times of the year, such as during lambing.
53. A number of Department of Conservation scenic reserves on Banks Peninsula were included in the present Banks Peninsula Dog Control Bylaw. The Minister of Conservation has different dog control responsibilities on scenic reserves as set out in the Conservation Act 1987, than local authorities, and therefore these reserves need to be removed from the schedules, before they are attached to the proposed Christchurch City Council Dog Controlled Bylaw, e.g. Palm Gully Scenic Reserve.
54. In addition, a number of reserves that are leased out to private enterprise were included in the dog control areas for Banks Peninsula. As these five areas are leased with specific contractual agreements into private enterprise they cannot be designated as dog control areas and need to be removed from the Dog Control Bylaw.
55. The total number of dogs registered in Christchurch City has risen by 5.9% from 28,569 in the 2004/05 financial year to 30,376 in the 2006/07 financial year. During this same period the Banks Peninsula District Council dog registration statistics were merged with the Christchurch City Council statistics, accounting for the majority of the increase. In reviewing the Dog Control Policy the requirements of dog owners/dogs and non dog owners' have been carefully considered across the district. These have been aligned with park and reserve area management practices and the collation of supporting knowledge and information. As a result, specific areas with particular values and resources have been identified that need protection from dogs. It is through a bylaw that these areas can receive the necessary protection, by imposing partial or full dog control mechanisms to control dog access e.g. prohibit access or specify restraint required.
56. There has been an increase in the number of vicious attacks by dogs on people both nationally and in Christchurch City and these have all received high profile media coverage. Although the number of reported attacks on people in Christchurch City Council region dropped from 190 (2004/05) to 174 (2006/07), there is still strong evidence for the need for education (of both dog owners and the general public) and enforcement to ensure this attack rate decreases. It is considered that to achieve the level of input required for education, monitoring and enforcement to achieve the decrease in attack outcome a Dog Control Policy and Bylaw is essential to enable the Council to effectively manage dog control issues.
57. For the reasons mentioned above, it is considered that a bylaw is the most appropriate way to address the dog control problems as outlined. The Dog Control Bylaw is required to cover provisions relating to prohibiting dogs from specified public places (e.g. around children's play areas and swimming areas on beaches) and requiring dogs to be leashed in public places such as footpaths. A review is also required as the amalgamation of Banks Peninsula District Council and Christchurch City Council has resulted in two Dog Control Policies and Bylaws are in existence to cover the now amalgamated jurisdiction. Consequently the form of the recommended bylaw is also considered to be in the most appropriate form and there do not appear to be any implications raised by the bylaw in terms of the New Zealand Bill of Rights Act 1990.

THE OBJECTIVE

58. The objective is to introduce a new policy that will replace both Councils' former policies. It is also to have a bylaw that will continue to reduce the incidence of dog related issues (both to human, wildlife and land) through the application of controls that enable dog access that is sympathetic to the needs of the community and the environment. The controls recommended under the bylaw endeavour to address these potential issue areas. The bylaw is to replace, by revocation, the Christchurch City Dog Control Bylaw 2006 and the Banks Peninsula District Council Dog Control Bylaw 2004.

2 Cont'd**THE OPTIONS**

59. The 'restrained' option is based on the requirement that all dogs in public places must be restrained on a leash. Exceptions to this requirement will be areas identified and listed specifically as prohibited or not specified areas. This option would also incorporate the amalgamation of the two current policies and bylaws (Christchurch City Council and Banks Peninsula District Council). Further variations of this option could incorporate the requirement to restrain dogs within a certain class of place eg. urban parks.
60. The 'consolidation' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify the bylaw and provide some additional clarity. This option would also include the adoption of consistent access times and prohibition of dogs to these areas within these times. No new or re-designated access will be added to the dog control areas at this time.
61. The 'do nothing – minimal change' option would mean the retention of two current bylaws: the Christchurch City Council Bylaw which covers the pre-amalgamation Christchurch City Council district and the Banks Peninsula District Council Bylaw which covers the Banks Peninsula District Council area, pre-amalgamation. However, within this option as a minimum the Christchurch City Council Policy and Bylaw must be reviewed by June 2008 as prescribed by the Local Government Act. Aside from administering two policies and bylaws, there are also other anomalies between the two Dog Control bylaws and policies which has the potential to create confusion for the public accessing dog control areas (e.g. different access times for beaches in Banks Peninsula area than in the Christchurch area) and may hinder the effective and efficient management of dog control issues by the Animal Control Officers. For these reasons it is not considered this option should be adopted.
62. A fifth option would be to update both the current policies and bylaws and maintain two separate regional documents but under the one jurisdiction, ie a Policy and Bylaw relating to specified boundaries in Banks Peninsula and a Policy and Bylaw relating to the balance of Christchurch City. Although this would create the least change for the respective communities it would be cumbersome and inefficient to manage; it could also generate potentially conflicting implementation of Christchurch City Council policy e.g. management and protection of wildlife areas if updated policies and bylaws were based on their current clauses within Banks Peninsula.

THE PREFERRED OPTION

63. The 'development' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify and align the bylaws and provide some additional clarity. In addition, further areas for enhanced dog protection (prohibited, restrained and not specified) are included in the 'Development' option. The reason for protection will be specific to each area, but may include aspects such as community health, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. Although a great deal more information will be contained within the merged policy and bylaw this option will create a greater clarity amongst members of the public moving within the region and for those enforcing the policy and bylaw, which will make administration of the bylaw simpler. It would also allow for greater alignment between other Christchurch City Council policy and strategic outcomes (draft Biosecurity Strategy) e.g. relating to management of areas such as wildlife, protection of children from dog attacks and fouling and health and safety issues.

2 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

64. The 'development' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify and align the bylaws and provide some additional clarity. In addition further areas for enhanced dog protection (prohibited, restrained and not specified) are included in the 'development' option. The reason for protection will be specific to each area, but may include aspects such as community health, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. Although a great deal more information will be contained within the merged policy and bylaw this option will create a greater clarity amongst members of the public moving within the region and for those enforcing the policy and bylaw, which will make administration of the bylaw simpler. It would also allow for greater alignment between other Christchurch City Council policy and strategic outcomes (draft Biosecurity Strategy) e.g. relating to management of areas such as wildlife, protection of children from dog attacks and fouling and health and safety issues.

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas. In grazing areas there is a need to enable walking access while protecting stock by keeping dogs restrained while in these areas.	Possible increase in the number of complaints owing to the higher number of dog areas designated as prohibited and restrained. Once a new policy and bylaw is in place there will be a need to inform dog owners, park users and the public in general about the new dog bylaws in the City.
Cultural	None specific.	None specific.
Environmental	Protection of areas that have been identified as significant due to their wildlife or habitat significance. Aligned to the draft Biodiversity Strategy.	None specific.
Economic	More cost effective to manage as it creates one policy for the region. Protection of environmental and wildlife areas now will result in some economic savings, rather than having to spend more later to protect these areas, which will be in alignment with the draft Biodiversity Strategy, the changes being required to be processed through the Special Consultation Process. Environmental losses may also continue to accrue through allowing not specified dog access.	Should the proposed policy be adopted there may be significant financial implications for the Council in terms of additional enforcement costs. Refer to points 17 and 18 of this report. There may also be costs to the Council associated with the provision of signage and possibly the installation of 'disposal bins' in the newly designated areas (refer to point 26). There will be some financial implications associated with informing dog owners, park users and the public in general about the new dog bylaws in the City.

2 Cont'd

Extent to which community outcomes are achieved:

This policy option aligns with the following Community Outcomes:

A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated.

A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.

Impact on Council's capacity and responsibilities:

Potential increase in impact on Council's capacity and responsibilities as new areas are introduced and signage, education and enforcement is needed for these areas.

Effects on Maori:

No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.

Consistency with existing Council policies:

Consistent with current Policies. This option supports the directions in the draft Biodiversity Strategy.

Views and preferences of persons affected or likely to have an interest:

Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting.

Potential unrest from dog owners who will view this as "further limiting" their recreation and access.

Other relevant matters:

The 'Restrained' Option

65. The 'restrained' option is based on the requirement that all dogs in public places must be restrained on a leash. Exceptions to this requirement will be areas identified and listed specifically as prohibited or not specified areas. This option would also incorporate the amalgamation of the two current policies and bylaws (Christchurch City Council and Banks Peninsula District Council). Further variations of this option could incorporate the requirement to restrain dogs within a certain class of place eg. urban parks.

2 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	<p>Gives dog owners and other citizens clarity around where and when dogs can access areas.</p> <p>Greater protection and safety to the public in public places.</p>	<p>Possible increase in the number of complaints owing to the higher number of dog areas designated as restrained.</p> <p>People may feel more inhibited in taking dogs to public places if they have to be on a lead all the time.</p> <p>Dogs and people potentially will get less exercise if they cannot run free at times.</p> <p>There is the loss of opportunity to run dogs free to the detriment of both dog and owner – healthy dog - healthy owner.</p> <p>Less diverse activities people can engage in with their dogs eg. ball throwing /retrieving.</p> <p>Increase in financial cost to dog owners who want to run their dogs free as they may have to travel to designated dog exercise areas.</p> <p>Once a new policy and bylaw is in place there will be a need to inform dog owners, park users and the public in general about the new dog bylaws in the City.</p>
Cultural	None specific.	None specific.
Environmental	Greater protection to all areas including those with limited or no significant values.	None specific.
Economic	<p>More cost effective to manage as it creates one policy for the region.</p> <p>Protection of environmental and wildlife areas now will result in some economic savings, rather than having to spend more later to protect these areas, which will be in alignment with the draft Biodiversity Strategy, the changes being required to be processed through the Special Consultation Process.</p>	<p>Potentially higher costs of enforcement due to the increase of restrained areas and expectation of monitoring and enforcement of these areas.</p> <p>Refer to points 17 and 18 of this report for the enforcement management options and financial implications.</p> <p>There may also be costs to the Council associated with the provision of signage and possibly the installation of 'disposal bins' in the newly designated areas (refer to point 26).</p> <p>There will be some financial implications associated with informing dog owners, park users and the public in general about the new dog bylaws in the City.</p>

2 Cont'd

Extent to which community outcomes are achieved:

This policy option aligns with the following Community Outcomes:

A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated.

A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.

Impact on Council's capacity and responsibilities:

Potential increase in impact on Council's capacity and responsibilities as region wide restrained status implemented and signage, education and enforcement is needed within these areas.

Effects on Maori:

No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.

Consistency with existing Council policies:

Consistent with current Policies. This option supports the directions in the draft Biodiversity Strategy.

Views and preferences of persons affected or likely to have an interest:

Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting.

Potential unrest from dog owners who will view this as "further limiting" their recreation and access.

Other relevant matters:**The 'Consolidation' Option**

66. The 'consolidation' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify the bylaw and provide some additional clarity. This option would also include the adoption of consistent access times (based on daylight saving hours) and prohibition of dogs to these areas within these times. No new or re-designated access will be added to the dog control areas at this time. However, a key element of this option is for staff to subsequently review additional areas for enhanced dog control in order to protect wildlife (in line with the draft Biodiversity Strategy); protect children for dog attacks and generally improve health and safety. Any proposals for changes to designations will then be presented back to Council at a later date.

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas.	The application of some dog control measures to Banks Peninsula (that are not in the current Banks Peninsula policy) may be of concern to some dog owners.
Cultural	None specific.	None specific.
Environmental	Continued protection of areas that have previously been identified as significant due to their wildlife or habitat.	Continued limited access to some areas for owners with their dogs, which may be seen as negative by dog owners. Additional environmental areas that have been identified as benefiting from protection will not be protected.

2 Cont'd

Economic	More cost effective to manage as it creates one policy for the region.	Currently there are costs to the Council associated with the provision of signage and possibly 'dog bins' in the designated areas, however this is a current and ongoing business cost. No other changes in costs envisaged since the amalgamation of the two Councils.
<p>Extent to which community outcomes are achieved: This policy option aligns with the following Community Outcomes: <u>A Safe City</u> – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated. <u>A City of People who Value and Protect the Natural Environment</u> – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations. This option will not protect the natural environment as well as the preferred option will.</p> <p>Impact on Council's capacity and responsibilities: Similar impact as to current capacity.</p> <p>Effects on Maori: No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies: Generally consistent with current Policies. There is some degree of alignment with the draft Biodiversity Strategy. This strategy indicates that some additional areas should at least be considered for greater dog protection and this option provides for this to take place subsequent to this policy review.</p> <p>Views and preferences of persons affected or likely to have an interest: Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting; however this group may be unhappy that many other 'environmentally sensitive' areas have not been included.</p> <p>Other relevant matters:</p>		

The 'Do nothing – Minimal change' Option

67. The 'do nothing – minimal change' option would mean the retention of two current bylaws, the Christchurch City Council Bylaw which covers the pre-amalgamation Christchurch City Council district and the Banks Peninsula District Council Bylaw which covers the Banks Peninsula District Council area, pre-amalgamation. However, within this option as a minimum the Christchurch City Council Policy and Bylaw must be reviewed by June 2008 as prescribed by the Local Government Act. Aside from administering two policies and bylaws, there are also other anomalies between the two Dog Control bylaws and policies which has the potential to create confusion for the public accessing dog control areas (e.g. different access times for beaches in Banks Peninsula area than in the Christchurch area) and may hinder the effective and efficient management of dog control issues by the Animal Control Officers. For these reasons it is not considered this option should be adopted.

2 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	Some dog owners in Banks Peninsula may be happy that no further restrictions have come into place which further limits their recreation.	Frustration in dealing with two different policies within the same jurisdiction – for both the public and for the Animal Control Officers. Confusion for the public with two policies and bylaws operative and one of these related to the former CCC district being reviewed.
Cultural	None specific.	None specific.
Environmental	Existing levels of protection to wildlife will remain in Banks Peninsula and could be either enhanced or reduced in Christchurch depending on the content of the revised Christchurch policy.	Some important environmentally sensitive or wildlife areas will not be protected in Banks Peninsula. Health, hygiene and safety in some bathing areas and public places may not be protected.
Economic	New signage or bins required to be installed only in former CCC district.	More challenging management regimes for the Inspection and Enforcement team managing two separate policies.
<p>Extent to which community outcomes are achieved: This policy option aligns with the following Community Outcomes: <u>A Safe City</u> – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated. <u>A City of People who Value and Protect the Natural Environment</u> – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations. This option will not protect the natural environment as well as the preferred option will.</p> <p>Impact on the Council's capacity and responsibilities: Running separate policies and bylaws will have some increase in capacity impact on current Council services. No change from current responsibilities since the amalgamation of the two Councils.</p> <p>Effects on Maori: No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies: Would be inconsistent with Council direction to protect and enhance environmentally sensitive, wildlife areas. Would also not align with Council direction of health, safety and hygiene standards in public places.</p> <p>Views and preferences of persons affected or likely to have an interest: Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting. Potential unrest from dog owners who will view this as "further limiting" their recreation and access.</p> <p>Other relevant matters:</p>		

At least one other option (or an explanation of why another option has not been considered)

68. The fifth option would be to update both the current policies and bylaws and maintain two separate regional documents but under the one jurisdiction i.e. a Policy and Bylaw relating to specified boundaries in the Banks Peninsula region and a Policy and Bylaw relating to the Christchurch City district. Although this would create the least change for the respective communities it would be cumbersome and inefficient to manage; it could also generate potentially conflicting implementation of Christchurch City Council Policy e.g. management and protection of wildlife areas if updated policies and bylaws were based on their current clauses within Banks Peninsula.

2 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas.	Confusion over which policy is relevant where and which policy clause is being updated with what. Difficult for Animal Control to manage and implement. Possible increase in the number of complaints owing to the higher number of dog areas designated as prohibited.
Cultural	None specific	None specific
Environmental	Updated policies would better align with the current CCC strategic direction and community outcomes.	None specific
Economic	Less cost effective to manage dual policies within the region, than to manage one consistent policy.	No change in costs envisaged since the amalgamation of the two Councils.
<p>Extent to which community outcomes are achieved:</p> <p>This policy option aligns with the following Community Outcomes:</p> <p><u>A Safe City</u> – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated.</p> <p><u>A City of People who Value and Protect the Natural Environment</u> – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Running separate policies and bylaws will have some increase in capacity impact on current Council services. No change from current responsibilities since the amalgamation of the two Councils.</p> <p>Effects on Maori:</p> <p>No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies:</p> <p>Consistent with current policies would depend on the content of each Dog Control Policy.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting.</p> <p>Potential unrest from dog owners who will view this as "further limiting" their recreation and access.</p> <p>Other relevant matters:</p>		

3. PROPOSED CHRISTCHURCH CITY PUBLIC PLACES BYLAW 2008

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Strong Communities
Authors:	Teena Caygill, Policy Analyst – Bylaws Terence Moody, Principal Adviser - Environmental Health

PURPOSE OF REPORT

1. To outline the background and options relating to the review of the public places bylaws and to recommend that the Planning and Regulatory Committee adopt and recommend the attached draft Public Places Bylaw to the Council.

EXECUTIVE SUMMARY

2. The Local Government Act 2002 requires many of our bylaws to be reviewed in order to determine that they are still necessary, that they are appropriate and that they meet the purpose they were designed for. This report forms part of the review of the three public places bylaws. The bylaws are:
 - the Christchurch City Council Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
3. On 13 December 2007, the Council considered a report seeking agreement that a bylaw was the most appropriate way of addressing potential problems relating to public places,³ and agreed that a draft public places bylaw should be prepared for further consideration. The Council agreed that the new public places bylaw would cover the regulation of:
 - commercial activities in public places
 - obstructions in public places
 - Council declaring public places Special Use Areas
 - temporarily residing in public places
 - some aspects of building and construction near or over public places
 - other issues that may arise during further analysis.
4. Councillors added the following list of matters to be covered in the bylaw:
 - playing of games⁴
 - poster pasting/graffiti/tagging/etching
 - damage to public places
 - depositing rubbish or litter
 - substance abuse.
5. The Council also recommended that a city-wide alcohol ban in public places be investigated by staff.
6. This report outlines the options⁵ for the draft new public places bylaw:
 - Option one: Status quo, retain the three bylaws
 - Option two: Revoke the three bylaws and create a consolidated bylaw
 - Option three: Revoke the three bylaws and create a consolidated, rationalised and modernised public places bylaw.

³ This is required under s.155(1) of the Local Government Act 2002

⁴ "Playing at games" as used in the current bylaws covers any games (such as ball games) as well using bicycles, motorised scooters, skateboards, roller skates and roller blades.

⁵ This is required under s.77 of the Local Government Act 2002

3 Cont'd

7. The recommended option is option three. A draft bylaw has been prepared for Councillors' consideration, rationalising and modernising the three bylaws, and amalgamating them into a single, new bylaw (Attachment 2). This option will best meet the requirement in section 155(2) of the Local Government Act (at a broad, overall level), that the bylaw, which the Council has determined is required, will be in the most appropriate form.
8. The purpose of the new bylaw would be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used, and to provide for reasonable controls to protect health and safety, to protect the public from nuisance, and to regulate trade in public places.⁶
9. Existing bylaw clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.
10. Many of the existing clauses in the bylaws do not meet the above tests, and they were recommended for removal in the last report to the Council on this issue. However, Councillors have requested that a number of the behavioural clauses remain in the new bylaw.
11. Advice from the Legal Services Unit and the Inspections and Enforcement Unit suggests that behavioural clauses are very difficult for local authorities to enforce, as the only tool available for enforcement under the particular bylaw-making powers is prosecution.⁷ Taking a prosecution requires a high level of proof, which can be difficult for behavioural issues. The minor nature of some behavioural matters also makes the cost of taking a prosecution disproportionate to the harm being caused. A further factor is the likely age of offenders (who may have to be prosecuted through the Youth Court). Additionally, it is often difficult to establish the identity of the offender.
12. Behavioural clauses in bylaws are very difficult for local authorities to enforce. For example, the Council has not taken a prosecution under the existing graffiti clauses (which have been in public places bylaws for over two decades) for the above and other reasons, even though graffiti is clearly a problem. There are more effective tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act, which the Police enforce.
13. Including clauses that cannot easily be enforced within the bylaw may lessen the credibility of other clauses in the bylaw, may falsely raise public expectations and may divert the focus away from practical solutions to address such issues.
14. The question before Councillors is not whether an issue (for example, graffiti) is a problem, the question is whether a bylaw is an *appropriate or effective tool* for managing the issue.⁸ This report suggests that there are other tools that are more appropriate than a bylaw to address matters such as playing at games, graffiti, damage, littering and substance abuse in public places. Additionally, the new public places bylaw is intended to regulate *lawful* activities. The behavioural matters recommended for inclusion at the 13 December Council meeting are already unlawful due to their coverage under the Summary Offences Act.
15. These matters are covered in more detail in the background section of this report, and in the attached clause by clause analysis.

⁶ Local Government Act 2002 – Powers of territorial authorities to make bylaws - Section 145(a) to protect the public from nuisance; Section 145(b) protecting, promoting and maintaining public health and safety; and Section 146(a)(vi) [regulating] trading in public places.

⁷ Parliament has not yet introduced any infringement offences in relation to these matters.

⁸ Section 155(1) of the Local Government Act requires local authorities to consider whether a bylaw is the “most appropriate way of addressing the perceived problem”.

3 Cont'd

16. If the Council adopts the attached draft bylaw, it will go out for public consultation in accordance with the Special Consultative Procedure outlined in sections 83 and 86 of the Local Government Act 2002.

FINANCIAL IMPLICATIONS

17. It is not anticipated that the adoption of the bylaw, as proposed, would significantly impact on enforcement demands, and indeed may be more cost effective, as the bylaw reduces the scope of the Council's enforcement activities. Provision could be made to recover the costs of providing licenses or approvals in relation to the use of public places (for example, commercial activities using public space), should the Council so wish.
18. Adding to the range of matters covered by the bylaw could substantially increase the budget required for enforcement activities (monitoring, investigation, evidence collection, taking prosecutions, etc) as well as putting a strain on the small Inspections and Enforcement Unit. The Unit has a range of statutory inspection and enforcement responsibilities under a range of Acts.⁹

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

19. The budgets for the Regulatory Services group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.¹⁰

LEGAL CONSIDERATIONS

20. The following bylaws have been considered as part of this review:
 - the Christchurch City Council Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
21. The Local Government Act 2002 requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008.¹¹ The first two of the bylaws fit into this category. However, the third, the BPDC Public Places and Signs Bylaw, was made under the Local Government Act 2002 and does not need to be reviewed until 2009.¹² Due to the amalgamation of the BPDC with the CCC, and the need to align the legislation across the new jurisdiction, it is appropriate to review relevant parts of the BPDC Public Places and Signs Bylaw now, in conjunction with the review of the other public places bylaws.
22. The Local Government Act 2002 allows local authorities to make bylaws to cover certain things or situations. Section 145 of the Act covers general bylaw-making powers. These allow local authorities to make bylaws for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places. Section 146 of the Act contains specific bylaw-making powers. Of relevance to this report, is section 146(a)(vi), which allows local authorities to make bylaws for the purpose of regulating trade in public places.¹³ The proposed public places bylaw covers aspects of all of these, except minimising offensive behaviour.
23. Offensive behaviour is covered by the Summary Offences Act. For example, the Act covers: offences against public order; offences against persons or property (such as graffiti); intimidation, obstruction and hindering police; indecency; loitering and trespass; and offences relating to nuisances. The Local Government Act does not allow for the issuing of infringement notices (instant fines), so the only option for enforcement by the Council for breaches of the bylaw is to prosecute. It is hard to argue that the cost of taking such a case to Court, given the unlikelihood of a conviction, are in the ratepayers' interest, particularly when the Police already have the power to deal with these matters under the Summary Offences Act.¹⁴

⁹ For example, the small team of eleven managed over 3,500 complaints last year across a of range of legislation.

¹⁰ Our Community Plan 2006-2016, Volume 1, page 149.

¹¹ Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974, in force at 1 July 2003, to be reviewed within five years.

¹² As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

¹³ Section 146(a)(vi), trading in public places.

¹⁴ Although the power in the Local Government Act relates not just to regulating offensive behaviour, but to "minimising the potential" for offensive behaviour, the current bylaw wording for most of these behavioural issues is almost the same as the wording used in the Summary Offences Act.

3 Cont'd

24. The Local Government Act requires local authorities to determine whether a bylaw is the most appropriate way of addressing the perceived problems (section 155(1) of the Act). This was canvassed in the previous report to Councillors on this issue. In that report, it was decided that a bylaw was the most appropriate way of addressing potential problems relating to public places. The appropriateness of bylaws as a tool for addressing the issues that have been raised will be covered later in this report.
25. Section 155(2) and 155(3) relate to whether the proposed bylaw is in an appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act. A bylaw cannot be made if it is inconsistent with the Bill of Rights Act. The Bill of Rights Act sets the minimum standards to which public decision making must conform.¹⁵ Relevant parts of the Bill of Rights in relation to the public places bylaw include the right to freedom of expression, freedom of peaceful assembly, freedom of association, freedom of movement and freedom from discrimination.¹⁶
26. The Legal Services Unit considers that the form of the bylaw, as proposed, is the most appropriate form, and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
27. This report also covers matters relating to section 77 of the Local Government Act. Section 77 relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the Council's capacity. The options analysis forms the second part of this report.
28. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Local Government Act 2002. If the Council agrees to adopt the attached draft bylaw, it is required to appoint a hearings panel, to agree to a submission closing date, and to agree to the draft Statement of Proposal and Summary of Information for consultation.
29. Section 81 of the Local Government Act requires local authorities to establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes. Initial discussions have taken place with the Ngai Tahu Runanga Mahaanui Kurataiao (MKT). However, due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development, and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the bylaw review during the Special Consultative Procedure.

Have you considered the legal implications of the issue under consideration?

30. Yes, as above.
31. A clause by clause analysis of the existing bylaws was provided to Councillors on 13 December 2007, and an updated version is attached to this report.
32. The clause by clause analysis compares the current clauses across the three bylaws, and contains advice on whether a clause should be included in the new draft bylaw.¹⁷ The clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.

¹⁵ Ministry of Justice, *The Guidelines on the New Zealand Bill of Rights Act 1990: A Guide to the Rights and Freedoms in the Bill of Rights Act for the Public Sector*

¹⁶ Sections, 14, 16, 17, 18 and 19 of the New Zealand Bill of Rights Act 1990.

¹⁷ The Council Decision-making Guide, as well as the Local Government New Zealand guide on regulation and enforcement, require taking into account: the identification of the problems being addressed; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

3 Cont'd

33. Any regulation, including bylaws, should consider the Ministry of Economic Development's Code of Good Regulatory Practice, which suggests that the following should be considered:
- *efficiency* by adopting only regulation for which the costs to society are justified by the benefits, regulation at the lowest cost, taking into account alternatives
 - *effectiveness* to ensure regulation can be complied with and enforced, at the lowest possible cost
 - *transparency* by defining the nature and extent of the problem and evaluating the need for action
 - *clarity* by making things as simple as possible, using plain language where possible, and keeping discretion to a minimum
 - *fairness and equity* any obligations or standards should be imposed impartially and consistently.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

34. The LTCCP's strong communities strategic directions section prioritises: providing accessible and welcoming public buildings, spaces and facilities; providing parks, public buildings, and other facilities that are accessible, safe, welcoming and enjoyable to use; working with partners to reduce crime, help people avoid injury and help people feel safer; providing and supporting a range of arts, festivals and events; and protecting and promoting the heritage character and history of the city.¹⁸
35. The LTCCP's healthy environment strategic directions section prioritises: providing a variety of safe, accessible and welcoming local parks, open spaces and waterways; providing street landscapes and open spaces that enhance the character of the city; and protecting and enhancing significant areas of open spaces within the metropolitan area.¹⁹
36. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.²⁰

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

37. The bylaw would be consistent with the commitment in the Community Plan, volume 1, page 145: *Legislative requirements are enforced to ensure the safety and health of people.*

ALIGNMENT WITH STRATEGIES

38. A number of adopted Council strategies are particularly relevant when considering the use of public places.
39. The Christchurch *Central City Revitalisation Strategy* aims to develop a "vibrant, fun, exciting, safe and sustainable heart of Christchurch..."²¹ Two of the priorities of the Strategy are "enhancing our public spaces" and "growing our businesses". The Strategy also aims to "enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City..."²² and the number of pedestrians in the Central City is listed as a measurable sign of achievement in a number of the objectives.²³
40. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services.²⁴ One of the ways of measuring the success of the Strategy is that "pedestrians, cyclists, motorists and people with disabilities can move safely around our city".²⁵

¹⁸ Our Community Plan 2006-2016, Volume 1, p.60

¹⁹ Our Community Plan 2006-2016, Volume 1, p.61

²⁰ Our Community Plan 2006-2016, Volume 1, p.64

²¹ <http://www.ccc.govt.nz/CentralCity/>

²² Central City Strategy, Revitalising the Heart of Our City - Stage I, Objective F, p. 13,

http://www.ccc.govt.nz/CentralCity/Strategy/DevelopmentOfCentralCityStrategyStageOne_Feb2001.pdf

²³ Central City Strategy, stage II, , pp 48-51, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

²⁴ <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

²⁵ Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

3 Cont'd

41. The *Pedestrian Strategy for Christchurch, February 2001*, states: "The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation... Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence".²⁶ Additionally, Council recently signed the International Charter for Walking, which supports the "universal rights of people to be able to walk safely and to enjoy high quality public spaces, anywhere and at any time."²⁷
42. The *Christchurch Cycling Strategy* states: "The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch's sustainable transport mix".²⁸
43. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau".²⁹ Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed (this includes... sandwich boards on footpaths)".³⁰
44. These five strategies touch on aspects of what a proposed public places bylaw would be developed to manage – that is, a balance between the different activities the community may wish to use public places for. The proposed bylaw would provide for reasonable controls to protect health and safety, to protect the public from nuisance, and to regulate trade in public places.
45. The Council also has a number of policies that are relevant to public places, in particular, the commercial use of public spaces, as follows:
 - Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
 - Stall Site Licensing Policy (adopted 20 September 1995)
 - Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
 - Busking Conditions (adopted 27 August 1997)
 - Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
 - Signboards in Public Places (adopted 22 July 1998)
 - Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
 - Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
 - Victoria Square and Victoria Square Amphitheatre - Use Of (26 November 1990)
 - Street Trading Policy (16 December 1999)
 - Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).
46. The proposed bylaw would be complemented by operational policies (such as those above), which would align with the relevant strategies for managing public spaces. These policies will need to be reviewed and updated to ensure they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

Do the recommendations align with the Council's strategies?

47. Yes, as above

²⁶ <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

²⁷ Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21st Century

²⁸ <http://www.ccc.govt.nz/cycling/future/>

²⁹ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

³⁰ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

3 Cont'd

CONSULTATION FULFILMENT

48. A Council seminar was held in May 2007. The Bylaw Review Sub-Committee considered the public places bylaw review in August 2007, enabling the inclusion of Community Board members' views. Consultation with the Ngai Tahu runanga commenced on October 2007 through Mahaanui Kurataiao.
49. Informal discussions on the current and future coverage of the public places bylaws were undertaken with the New Zealand Police and with the Central City Business Association.
50. If the draft bylaw is adopted by the Council, stakeholder groups will be given the opportunity to make a submission as part of the Special Consultative Procedure. They can also be heard before the hearings panel, if they so wish. Stakeholder groups include, but are not limited to, retailers, event management companies/festival organisers, disability associations, the Chamber of Commerce, and all residents' groups. The Ngai Tahu runanga will have a further opportunity to express their views on the proposed bylaw through this Special Consultative Procedure process.

STAFF RECOMMENDATION

It is recommended that the Planning and Regulatory Committee adopt and recommend to the Council:

- (a) That the attached draft bylaw is the most appropriate way to address problems in public places; is in the most appropriate form; and does not give rise to any implications under the New Zealand Bill of Rights Act 1990 [sections 155(1), 155(2) and 155(3) of the Local Government Act 2002].
- (b) That the draft bylaw will be made to protect the public from nuisance in public places; to maintain health and safety in public places; and to regulate trade in public places [sections 145(a), 145(b) and 146(a)(vi) of the Local Government Act 2002].
- (c) That the purpose of the draft bylaw will be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.
- (d) That the attached draft bylaw be adopted for consultation.
- (e) The composition of a Hearings Panel.

3 Cont'd

BACKGROUND (THE ISSUES)

51. This review covered the three public places bylaws:
- the CCC Public Places and Signs Bylaw 2003;
 - the BPDC Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part three only).
52. The bylaws currently comprise a collection of relatively diverse matters that may occur in public places, including: the use of public places; hawkers and keepers of mobile or travelling shops; itinerant traders; stands and stalls; signs visible from public places; nuisance in public places, damage to public places; use of barbed wire; discharge of stormwater or wastes; stormwater drains through footpaths; vehicle crossing; access on hillside sites; and miscellaneous provisions.
53. It is timely to review these bylaws as:
- the Local Government Act 2002 requires them to be reviewed
 - the amalgamation of Banks Peninsula District Council with the Christchurch City Council means that legislation made under the two jurisdictions is gradually being amalgamated.
54. Some of the clauses contained in the existing public places bylaws:
- reflect matters that were significant in the past, but are no longer relevant
 - are now covered by national legislation, by city and district plans, or by other bylaws
 - may not comply with the Code of Good Regulatory Practice
 - may not comply with the New Zealand Bill of Rights Act 1990
 - may not fall within current bylaw making powers of the Local Government Act
 - may no longer present a significant issue that needs to be controlled via bylaw
 - may not be possible or practical to enforce.
55. In general, it is accepted that Council control of public places via a bylaw should not:
- apply to matters that are covered adequately by other legislation
 - deal with matters that unnecessarily restrict individual freedoms³¹
 - cover matters that are insignificant in effect or magnitude
 - deal with matters that can be more appropriately dealt with by other tools at the Council's disposal
 - be impractical to enforce.³²
56. A clause by clause analysis of the bylaws is attached (Attachment 1), indicating which of the existing clauses in the three bylaws meet the above test for inclusion in a new public places bylaw.
57. The Council has at its disposal a number of different tools for managing or preventing potential or perceived issues, including through City or District Plans, through policies and strategies, through public education, through partnerships with other agencies, imposing conditions as the owner of public places (eg through contracts), and through bylaws.

³¹ The New Zealand Bill of Rights Act must be taken into account in the making of bylaws - bylaws cannot be made that are inconsistent with the NZBORA (Local Government Act 2002, section 155(3))

³² The Decision Making Guide (produced by CCC and Local Government New Zealand) requires taking into account the nature of the identified problems; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

3 Cont'd

58. Bylaws are an effective tool for regulating some matters (such as commercial activities in public places via licensing), but are an ineffective tool for regulating other matters (such as behaviour). The powers contained within the Local Government Act to enforce bylaws are limited, and in the case of the public places bylaw, the only tool available to enforce a breach of a bylaw offence is prosecution. Prosecution is not usually a viable option for behaviour-related matters, where often the offence is committed with little physical evidence or with little likelihood of establishing the identity of the offender (eg graffiti). An additional complication is that often those who are likely to breach behavioural bylaws are considered youths under the law,³³ and the cost of taking a prosecution is often disproportionate to the offence (eg playing at games). The Local Government Act requires the Council to determine whether a bylaw is an appropriate tool for addressing each issue. In the case of behavioural clauses, the clause by clause analysis demonstrates that it is not an appropriate or effective tool. Behavioural matters are covered in the Summary Offences Act, which is enforced by the Police. Police ultimately retain the power of arrest for uncooperative offenders and, unlike Council staff, maintain a 24 hour response capability.
59. As a result of the previous report provided to Councillors, it was decided that a bylaw was needed to prevent nuisance in public places, to maintain public health and safety in public places, and to regulate trade in public places. The aim of the bylaw would be to manage public places in such a way as to balance the various different, and sometimes competing, legal uses for which public places may be used.

BYLAW CONTENT

60. At the 13 December 2007 Council meeting, Councillors agreed that a draft bylaw should be prepared covering:
- commercial activities in public places
 - obstructions in public places
 - Council declaring public places Special Use Areas
 - temporarily residing in public places
 - some aspects of building and construction near or over public places.
 - other issues that may arise during further analysis.
61. Councillors added the following list of matters to be covered in the draft bylaw:
- playing of games
 - poster pasting/graffiti/tagging/etching
 - damage to public places
 - depositing rubbish or litter
 - substance abuse.

Building and construction near or over public places

62. The 13 December 2007 report to the Council suggested that clauses covering some aspects of building and construction near or over public places may be necessary. Further analysis has revealed that such clauses (vehicle crossings and access on hillside sites) may need to be included in a bylaw, but that they are more appropriately covered under a traffic and parking bylaw, rather than a public places bylaw. These clauses will be incorporated into the draft new traffic and parking bylaw, rather than the public places bylaw.³⁴

³³ Under the Children, Young People and their Families Act 1989, young people are those over 14 years of age, but under 17 years. The Youth Justice section in the Act has specific responsibilities for officers charging a youth with an offence (section 215). Such charges would be brought before a Youth Court (section 272), and a Youth Justice Coordinator is required (section 245).

³⁴ The clause on restricting the use of barbed wire (as well as razor and electrified wire) from within certain distances of public places is still to be included in the proposed new bylaw. Just the clauses on vehicle crossings and access on hillside sites no longer need to be included in this bylaw.

3 Cont'd

Nuisance/behavioural clauses

63. The proposal to incorporate behavioural nuisance clauses (such as those addressing graffiti, skateboarding, littering, etc) into the bylaw does not meet the test in the Local Government Act, which requires local authorities to determine whether a bylaw is the *most appropriate* way of addressing perceived problems (section 155(1) of the Act). By not including these matters in the bylaw, the Council would not be saying that these are things are not problems, just that the bylaw is not the *most appropriate* way to address them.
64. A bylaw is not an appropriate (or effective) way of addressing the problem of nuisance behaviour as:
 - the only option for enforcing the bylaw is to take a prosecution in the District Court (or the Youth Court, if the offender is a youth 14-17 yrs)
 - there is no power under the Local Government Act to issue infringement notices (instant fines)³⁵ or to use other, less formal, legal tools than prosecution
 - having these clauses in the bylaw duplicates what is in the Summary Offences Act (which is enforced by the Police)
 - the public places bylaw is intended to regulate otherwise lawful activity, the behavioural matters are already unlawful (under the Summary Offences Act or the Litter Act)
 - many of these issues (such as substance abuse) are more appropriately handled by the Police, who have specialised training and other tools at their disposal, have the power to arrest, and have a 24 hour response capability
 - it can be difficult to establish the identity of the offender, and Council Enforcement Officers are empowered to ask for a person's name and address, but if the person refuses or gives fake or incorrect details, an Enforcement Officer can take no further action
 - Council staff have no ability to take action to stop the offender from committing the offence, as they have no powers of arrest, and physically intervening could be considered assault or put Council staff in danger
 - often by the time a complaint has been received, the offender has moved on, so the identity of the offender cannot be established
 - the minor nature of the offences is disproportionate to the cost of taking a prosecution and is therefore arguably not in the public interest.
65. Behavioural nuisance clauses have been in public places bylaws in Christchurch for over two decades and the Council has not taken any related prosecutions. There is no record of any prosecutions being taken by the Banks Peninsula District Council. As the only enforcement tool available under the Local Government Act is prosecution, and because these types of clauses are of a minor nature, they are not easily enforceable.

³⁵ Infringement notices (instant fines) cannot be issued under the Local Government Act (under which a Public Places Bylaw would be made). Some bylaws allow infringement fines - it depends on the primary act under which the bylaw was made – eg some of our bylaws are made under the Dog Control Act, the Transport Act, etc, which all allow infringement notices to be issued in relation to the enforcement of bylaws.

3 Cont'd

Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Playing of games CCC – clause 3 BPDC – clause 3.2.1	<ul style="list-style-type: none"> As the clauses are currently worded, they prohibit anyone playing any game or skateboarding, in a way that could be considered reckless or dangerous, or which could cause damage or annoyance, in a public place. This currently covers all parks in Christchurch, where, for example, sports are regularly played, and all skate parks. Proving behaviour has been “reckless” or “dangerous” or that it “may cause damage or annoyance” can be difficult. If the behaviour was immediately dangerous, the Police would be called, as they have powers of arrest and could intervene. Since the development of the Washington Skate Park, complaints to the Council about skateboards have almost completely stopped. The Council also has a Skateboarding Strategy. There is no record of complaints about people “playing at games”. There is no record of prosecutions being taken by the Councils. These issues are covered by the Summary Offences Act (sections 13 – things endangering safety - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000). The clause on special use areas could be used to prohibit an activity from a specific area – such as banning ball games in Cashel Mall to protect the safety of pedestrians. Skateboards, in-line skates and roller skates are defined as a “vehicle” under the Land Transport Act 1998 and the Police can issue infringement notices (instant fines).
Poster pasting, graffiti, tagging, etching CCC – clause 4 BPDC – clauses 3.3.2 – 3.3.3	<ul style="list-style-type: none"> There is no record of prosecutions being taken by the Councils. Establishing the identity of the offender and proving they committed the offence in order to get a prosecution is difficult. These issues are covered by the Summary Offences Act and are enforced by the Police (sections 33 – Billsticking, defacing, etc – a fine not exceeding \$200). Charges could also be brought under section 11 – wilful damage (see below). Other non-regulatory approaches to graffiti may be more effective, such as the Council’s Graffiti Hotline, working with spray can retailers, or working with schools, communities, etc, following guidance from the Ministry of Justice and Local Government New Zealand is the <i>Beat Graffiti</i> guide.
Damage to public places BPDC - clause 3.3.2	<ul style="list-style-type: none"> There is no record of prosecutions being taken. Establishing the identity of the offender and proving they committed the offence in order to get a prosecution is difficult for behavioural matters. Damage to public places is covered by the Summary Offences Act (section 11 – wilful damage - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000). Reports of damage are referred to the Police where appropriate.

3 Cont'd

Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Depositing rubbish or litter	<ul style="list-style-type: none"> • Traffic and Parking Wardens are delegated powers under the Litter Act. This allows them to issue infringement fines (tickets) to those caught littering. This is effective (though narrow in scope).
CCC – no coverage	<ul style="list-style-type: none"> • Having this in the bylaw would duplicate what is covered by the Litter Act (and the only tool would be prosecution).
BPDC - clause 3.2.1	<ul style="list-style-type: none"> • A non-regulatory option would be to provide more rubbish bins or recycling facilities in public places.
Substance abuse	<ul style="list-style-type: none"> • No record of the BPDC taking a prosecution.
CCC – no coverage	<ul style="list-style-type: none"> • Enforcement could put Council staff in danger and Council Enforcement Officers are not trained to deal with such matters.
BPDC - clause 3.2.1	<ul style="list-style-type: none"> • There are more effective ways of managing substance abuse in public places, for example, engaging the Police, who are equipped to handle such issues.

66. The Police are empowered to address the behavioural issues (above) and can do so more effectively, with better resources, training and enforcement tools, than the small Council enforcement team. The Council is working with the Police to help address some of these issues, for example, through the Graffiti Hotline, through Safer Christchurch, and through the Central City Revitalisation project.

67. There is no dispute that these types of behaviours are problematic; the question is whether a bylaw is an effective tool to deal with the problem. In this case, a bylaw is not an effective tool for addressing nuisance behaviours, for the above reasons. The purpose of the bylaw is to regulate “lawful” matters. These sorts of behavioural matters are already offences under other law, such as the Summary Offences Act.

68. If behavioural clauses are included within the bylaw to send a message about the appropriateness of behaviour, this may raise public expectations that the Council will enforce the bylaw, unintentionally setting the Council up for failure. Incorporating unenforceable clauses into the bylaw may tie up staff and Councillor time responding to complaints about why the Council is not enforcing its bylaws.

City-wide alcohol ban in public places

69. A recommendation was added to the previous report on the public places bylaw review, requesting that Council staff investigate the possibility of a city-wide alcohol ban in public places. This will be covered in a separate report to Council as part of the review of the liquor control bylaws, and potentially a wider review of the Council’s Alcohol Policy (relating to liquor licensing etc) in late 2008.

Display of goods / trading in a public place

70. A further issue that was raised at the last Council meeting on this issue, but did not result in a new recommendation, was the issue of street prostitution – that is, people soliciting for sex work in public places.

71. The Prostitution Reform Act 2003 changed very little in regard to legal controls over prostitution. Prostitution is legal, and has been for a considerable number of years. The Act has four main purposes:

- to safeguard the human rights of sex workers and protect them from exploitation
- to promote the welfare and occupational health and safety of sex workers
- to protect and promote public health for sex workers and their clients
- to prohibit persons under 18 years of age being involved in prostitution.

3 Cont'd

72. The bylaw-making powers under the Local Government Act 2002 that are relevant to the regulation of street prostitution include:
- trading in public places (s.146 (a)(vi))
 - protection from nuisance (s.145 (a))
 - minimising the potential for offensive behaviour (s.145(c)).³⁶
73. Prostitution can be regulated, but it cannot be prohibited. There are Bill of Rights and other implications in how it is regulated, for example, the regulation cannot be so difficult to comply with that it is, in effect, prohibitive. Bylaws in this area have been challenged in Court, including CCC's Brothels (Location and Signage) Bylaw 2004, which was, in part, successfully challenged in 2005.³⁷
74. One possibility is that street prostitution could be regulated as "trading" in a public place. A relevant clause in the existing bylaw gives the Council the power to issue licenses and set conditions for commercial activities in public places (including displaying goods for sale). Council could apply this to street prostitution. Such a requirement would have to focus on the behaviour concerned and explicitly describe the behaviour being regulated (otherwise it would be unenforceable).³⁸ The cost effectiveness of such an approach, including the likely success of enforcement and any prosecutions, is questionable. Licensing of street prostitutes would have to comply with the Prostitution Reform Act requirements, for example, the Act requires all sex workers to adopt safe sex practices.³⁹ A further issue is that if the Council licenses street prostitutes, such licensing could be seen by the public as an endorsement of the activity.
75. A further issue with regulating street prostitution via a bylaw, is that street prostitution predominantly occurs in the evening and early morning hours. Council enforcement staff do not work during these hours, and there could be considerable occupational safety issues (as well as large budgetary increases), were such a clause to be applied to street prostitution and enforced by Council staff. As mentioned previously, Council Enforcement Officers have no powers of arrest, and if an offender provides a fake or incorrect name and address, there is no further action that an Enforcement Officer can take.
76. There is little evidence that street prostitution creates a significant problem. Indeed, the Justice and Electoral Select Committee, tasked with considering the Prostitution Law Reform Bill, stated that "The extent of street soliciting in New Zealand is limited, both in the areas where it happens and the numbers of workers involved. Few submitters provided tangible evidence of actual harm caused by such activity".⁴⁰ For example, it was found that the problems occurring in the Manchester Street area (such as loud conversations; litter; using residents' gardens as toilets; and unsafe parking practices) were caused by patrons of the bars and other night activities in Manchester Street, not by street prostitutes.⁴¹ These problems can be addressed by the Council through non-regulatory means, such as the provision of rubbish containers in the relevant areas; parking restrictions along the appropriate areas; the provision of public toilets; and increased street cleaning. Additionally, other issues, such as indecent exposure, were it to occur, can be dealt with under existing legislation administered and enforced by the Police.⁴²
77. A further report to Council on the prostitution-related matters will be prepared in late 2008, following the report of the Ministry of Justice's Prostitution Law Review Committee. The Committee will focus on whether the Act is achieving its prescribed purpose five years since it came into force. The Committee will provide its findings to the Minister of Justice by June 2008, and a report will be provided to Councillors in late 2008.

³⁶ Note that both "nuisance" and "offensive behaviour" have particular meanings under the law. Because a person finds behaviour offensive or a nuisance, this does not necessarily mean that the behaviour would be considered offensive or a nuisance under the law.

³⁷ Willowford Family Trust v Christchurch City Council; 29 July 2005; Justice Panckhurst; High Court, Christchurch.

³⁸ The Prostitution Reform Act defines commercial sexual services as "sexual services that—(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

³⁹ Section 9 of the Prostitution Reform Act 2003, Sex workers and clients must adopt safer sex practices

⁴⁰ Prostitution Reform Bill, As reported from the Justice and Electoral Committee, 29 November 2002, p. 32

⁴¹ Report by the Chairman of the Christchurch City Council Prostitution Reform Act Subcommittee, 22 April 2004

⁴² For example, indecent exposure is an offence under the Summary Offences Act (s. 27)

3 Cont'd

THE OBJECTIVES

78. The objective of the bylaw is to provide for reasonable controls for the protection of health and safety, the avoidance of nuisance in public places, and to regulate trade in public places, to the extent that the controls fulfil the provisions of the Local Government 2002 and appropriate community outcomes. The purpose of the draft bylaw will be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.⁴³
79. This report outlines the options for a new public places bylaw, includes a draft new public places bylaw, and recommends that Council adopt the draft bylaw and agrees that consultation should be undertaken to seek community views on the draft.⁴⁴

THE OPTIONS

80. The options are:
- Option one: Status quo, retain the three bylaws
 - Option two: Revoke the three bylaws and create a consolidated bylaw
 - Option three: Revoke the three bylaws and create a consolidated, rationalised and modernised public places bylaw.
81. Option one, status quo, is not considered acceptable, as two of the three bylaws under consideration must be reviewed by 30 June 2008 under the requirements of section 158 of the Local Government Act 2002. Additionally, due to the amalgamation of the CCC and BPDC, it is sensible to combine this process with a review of the third bylaw, the BPDC public places bylaw, in order to introduce a single bylaw covering public places across the whole jurisdiction.
82. Option two, revoking the three bylaws and creating a consolidated bylaw would meet the review requirements of section 158 of the Local Government Act and address the amalgamation issues, but is not the preferred option, as consolidating the bylaws, but not rationalising and updating them could lead to a bylaw that may need further updating within a short time frame (which would have to undergo the full Special Consultative Procedure). In addition, this option is not likely to meet the tests of section 155 in the Local Government Act.⁴⁵ Part of the purpose of the Local Government Act requirement to review bylaws, is to ensure that they are relevant and appropriate in the current context. As the attached clause by clause analysis shows, many of the existing clauses:
- reflect matters that were significant in the past, but are no longer relevant
 - are now covered by national legislation, by city and district plans, or by other bylaws
 - may not comply with the Code of Good Regulatory Practice
 - may not comply with the New Zealand Bill of Rights Act 1990
 - may not fall within current bylaw making powers
 - may no longer present a significant issue that needs to be controlled via bylaw
 - may not be cost-effective or possible to enforce.
83. Option three, revoking the three bylaws and creating a consolidated, rationalised and modernised public places bylaw, is the preferred option. This would meet the review requirements of section 158 of the Local Government Act, address the amalgamation issues and meet the tests, at a broad level, in section 155 of the Local Government Act.⁴⁶ The key differences between this option and option two, are the rationalisation of the new bylaw, and its modernisation. Rationalising the bylaw would clarify and reduce the clauses, for example, by removing duplication and matters that are insignificant or are no longer relevant, and matters that cannot be enforced. Modernising the bylaw would update the language and style of the bylaw, so that it is easier to understand, and is more suitable now and into the future.

⁴³ The bylaw will regulate lawful matters – unlawful matters are already illegal due to their coverage under other legislation.

⁴⁴ The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

⁴⁵ Section 155(1) requires that a local authority must “determine whether a bylaw is the most appropriate way of addressing the perceived problem”.

⁴⁶ As above.

3 Cont'd

THE PREFERRED OPTION

84. Option three, revoking the existing three bylaws and creating a consolidated, rationalised and modernised public places bylaw is preferable.
85. Rationalisation of the bylaw would remove clauses that are already covered by national legislation, by city and district plans, or by other bylaws, and ensure that the bylaw no longer contains matters that are insignificant or no longer relevant in the current context, or that cannot be practically enforced. Additionally, only those matters that are lawful will be regulated by the bylaw.
86. The proposed new bylaw will contain less information than the current bylaws, as it will have a set of complementary operational/management policies which will sit outside the bylaw itself (such as the Public Streets Enclosures Policy and Fees Charged). The policies will contain the detail, such as forms, conditions, approvals, licenses, fees, etc. This will allow a greater degree of flexibility for managing these approvals. If the information were to be contained within the bylaw itself, rather than in a policy, any changes would have to undergo the full Special Consultative Procedure. Taking this approach to the bylaw results in a streamlined and simplified bylaw, with the much of the detail in operational/management policies. The policies already exist, but will need to be reviewed to ensure they align with the new bylaw.
87. This type of bylaw is written in simple, modern language. The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: "there is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people..."⁴⁷ Additionally, the Ministry of Economic Development's *Code of Good Regulatory Practice*, promotes the importance of clarity, arguing that regulation should use plain language where possible, in order to make things as simple as possible.⁴⁸

ASSESSMENT OF OPTIONS

The Preferred Option

88. The preferred option is to revoke the three bylaws and create a single, new, consolidated, rationalised and modernised public places bylaw.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> Only matters of significance will be regulated Only matters that are enforceable will be regulated Flexibility for policies to be altered (rather than having to alter the bylaw) An easier to understand bylaw (modern plain English) Flexibility to cover future applications (all activities covered, rather than specific activities) Public expectations more likely to be met (realistic and enforceable clauses) 	<ul style="list-style-type: none"> Initial need to review policies and keep them updated People have to check with the Council before undertaking an activity – all activities covered, rather than specific activities (eg "commercial activities" generally are covered, rather than each specific commercial activity being listed) Increased need for advertising/communications
Cultural	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific

⁴⁷ The Legislation Advisory Committee was established in 1986 to "help improve the quality of law-making by attempting to ensure legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation" www.justice.govt.nz/lac/who/index.html

⁴⁸ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997.

3 Cont'd

Environmental	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Economic	<ul style="list-style-type: none"> • Only matters of significance will be regulated • Flexibility for policies to be altered (rather than having to alter the bylaw) • Requirements more easily understood 	<ul style="list-style-type: none"> • Initial need to review policies and keep them updated • Some Council staff time – eg in preparation of advisory documents (may be similar to the current situation)

Extent to which community outcomes are achieved:

The community outcomes that this option would contribute to include:

- a **well governed city** by having a single, new, consolidated, rationalised and modernised public places bylaw, the requirements will be easier to understand than they are now. Increased understanding of the bylaw, both while it is being consulted on, and once it comes into force. Public expectations will be able to met in relation to enforcement.

Impact on the Council's capacity and responsibilities:

Inspection and enforcement activity for the bylaw, as proposed, is likely be less than or similar to that required under current bylaws. Provision could be made to recover the costs of providing licenses or approvals in relation to public places, should the Council so wish.

Effects on Maori:

There will be no specific effect on Maori – consolidating, rationalising and modernising the three bylaws will make them easier to understand for everyone.

Consistency with existing Council policies:

Current policies relating to the management or access of public places include:

- Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
- Stall Site Licensing Policy (adopted 20 September 1995)
- Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
- Busking Conditions (adopted 27 August 1997)
- Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
- Signboards in Public Places (adopted 22 July 1998)
- Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
- Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
- Victoria Square and Victoria Square Amphitheatre - Use Of (adopted 26 November 1990)
- Street Trading Policy (16 December 1999)
- Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).

Additionally, the Council has existing arrangements, for example, a contract with Phantom Billstickers for poster-pasting and bollards, and an agreement relating to advertising on bus shelters with Adshell.

These policies will need to be reviewed and updated to ensure they align the with new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

Such policies, agreements or contracts would be complementary to the bylaw, and can be updated to respond to changing community needs, whereas if a greater of level of detail was contained within the bylaw, the bylaw itself would have to be updated, which must involve the Special Consultative Procedure.

3 Cont'd

Views and preferences of persons affected or likely to have an interest:

The Inspections and Enforcement Unit is strongly in favour of this option – preference for only those clauses that are easily enforceable to be included.

Further views would be obtained through the Special Consultative Procedure.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.

The amalgamation of the Banks Peninsula District Council and the Christchurch City Council requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.

Maintain the Status Quo (if not preferred option)

89. The status quo is not preferred as it would involve failing to comply with section 158 of the Local Government Act, which requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008. In addition, retaining the three separate bylaws, would fail to acknowledge or respond to the amalgamation of the BPDC with the CCC. A single bylaw is required to cover the whole district for which the Christchurch City Council has responsibility.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> Existing bylaws may be known to some people - no new requirements to publicise 	<ul style="list-style-type: none"> Legal uncertainty as to the status and enforceability of the bylaws Reputation of the Council tarnished by not meeting LGA requirements Reputation of the Council tarnished by failing to update bylaws as a result of the BPDC/CCC amalgamation in a timely fashion Reputation of the Council tarnished by failure to enforce the unenforceable parts of the current bylaws
Cultural	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Environmental	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Economic	<ul style="list-style-type: none"> Existing bylaws may be known to some businesses - no new requirements to learn 	<ul style="list-style-type: none"> Legal uncertainty as to the status and enforceability of the bylaws Open to legal challenge

3 Cont'd

Extent to which community outcomes are achieved:

The community outcome of a **well governed city** would not be met, as the maintaining the current situation would be confusing and uncertain, and would not comply with the Local Government Act.

Impact on the Council's capacity and responsibilities:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create a uncertain legal environment, in which the legal status and enforceability of the bylaws would be questionable.

Effects on Maori:

There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.

Consistency with existing Council policies:

The Council has policies which currently cover a wide range of matters covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but without the bylaw to back them up, their status is uncertain.

Views and preferences of persons affected or likely to have an interest:

The Legal Services Unit does not support maintaining the status quo, nor does the Inspections and Enforcement Unit.

Other relevant matters:**At Least one Other Option (or an explanation of why another option has not been considered)**

90. The third option is to revoke the three bylaws and create a single, new, consolidated bylaw. This new bylaw would largely replicate the existing three bylaws, with some rationalisation where duplication exists. The clauses and language from the existing three bylaws would largely be carried over to the new bylaw.
91. This is not the preferred option as some of the language in the three bylaws does not follow the movement in New Zealand towards plain English legal drafting.⁴⁹ A further issue, is that there is a need to rationalise the three bylaws, as aspects of them:
 - may not fall within current bylaw making powers of the Local Government Act 2002
 - are now covered by other legislation or by city and district plans
 - no longer present a significant issue that needs to be controlled via bylaw
 - may no longer be cost-effective or possible to enforce.

⁴⁹ The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: "There is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people..." (2001)

3 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> not much change – easy to understand 	<ul style="list-style-type: none"> aspects of the current bylaw cannot be enforced (eg the behavioural nuisance clauses) public expectations unlikely to be met (unrealistic and unenforceable clauses) duplication in other laws (including city/district plans) is unnecessary and could be confusing the need for updating or altering may be more likely in the short term outmoded language may make the new bylaw harder to understand, now and into the future some coverage of the bylaw is prescriptive, providing less flexibility lack of flexibility may increase the need to update or alter the bylaw if it requires updating or altering, it will have to go through the full Special Consultative Procedure
Cultural	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> none specific
Environmental	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> none specific
Economic	<ul style="list-style-type: none"> not much change – easy to understand 	<ul style="list-style-type: none"> (as above for social)

Extent to which community outcomes are achieved:

This option would not contribute to a **well governed city**, as the language and coverage of the bylaw may be outmoded (and therefore hard to understand) and the bylaw will be less flexible than the preferred option, making it less useful and more expensive, as it may require frequent updating. A further issue is that aspects of the existing bylaws are unenforceable (therefore failing to meet public expectations), and carrying them over to the new bylaw is not good practice.

Impact on the Council's capacity and responsibilities:

The bylaw may require frequent updating due its lack of flexibility. Inspection and enforcement activity for a new bylaw is likely be similar to that required under current bylaws. Provision could be made to recover the costs of providing licenses or approvals, should the Council so wish.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

The Council has policies which currently cover a wide range of matters also covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but would have to align with the detail in the bylaw, which cannot be altered without undertaken the Special Consultative Procedure.

Views and preferences of persons affected or likely to have an interest:

The Inspections and Enforcement Unit does not support this option.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.

4. PROPOSED DRAFT TRAFFIC AND PARKING BYLAW 2008

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Ross Herrett, A/Transport and Greenspace Manager
Author:	Patricia Su

PURPOSE OF REPORT

1. To seek agreement that a bylaw is the most appropriate way of addressing traffic and parking issues, including the movement of stock and to adopt the proposed *draft Traffic and Parking Bylaw 2008* (Attachment 1) for consultation and commence the Special Consultative Procedure.

EXECUTIVE SUMMARY

2. The following bylaws have been considered as part of this review:
 - Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
 - Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
 - Banks Peninsula District Council Stock Control Bylaw 1994
 - Banks Peninsula District Council Licences for Vehicle Stands on Streets
3. The Local Government Act 2002 (LGA 02) introduced a new requirement for Councils to review their bylaws. However, the LGA 02 also contained a transitional regime for those bylaws made under repealed provisions of the Local Government Act 1974 (LGA 74).
4. Under section 293 of the LGA 02, bylaws made under repealed provisions of the LGA 74 that were in force immediately before 1 July 2003, are deemed to be validly made under the LGA 02 and continue to be in force. However section 293 also provides that those bylaws that have not been subsequently revoked, or that have not expired before 1 July 2008, are automatically revoked on 1 July 2008.
5. Section 158(2) of the LGA 02 also provides that the council must review a bylaw made by it under the LGA 74 (other than bylaws to which section 293 apply) no later than 1 July 2008 if the bylaw was made *before* 1 July 2003 (section 158(2)(a)).
6. The effect of these provisions is that the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets Bylaw must be reviewed before 30 June 2008 to determine which provisions will be automatically revoked, which provisions should be subsequently replaced and which provisions can be revoked in any case.
7. In addition, with the inclusion of the BPDC into CCC, it is also timely to consolidate the two different Council's Bylaws into one.
8. A clause by clause analysis of the current existing clauses was undertaken to compare the clauses between the four different Bylaws and whether the provisions should be retained or revoked. The clause by clause analysis table of the clauses to be retained and clauses to be revoked is in Attachment 2 and Attachment 3, respectively.
9. There are a number of traffic and parking issues faced by local authorities across New Zealand and Christchurch is no different. One of the issues is the competing demand on the road space for different types of uses e.g. parking and traffic flow, whilst still providing a safe and efficient infrastructure. An analysis of the various options available for dealing with traffic and parking issues has been undertaken. The following options have been considered:
 - (a) Do nothing. Under this option, those parts of the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets that are made under now repealed provisions of the LGA 74 will automatically be revoked on 1 July 2008. While unnecessary bylaws should be revoked if they are no longer required, using this option (ie doing nothing), it will be difficult to determine what has been revoked and what has not been revoked.

4 Cont'd

- (b) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and rely on other legislation to deal with any issues that may arise.
 - (c) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and replace these bylaws with a consolidated Traffic and Parking Bylaw 2008. Under this option, redundant bylaw provisions can be revoked and a clear set of rules for traffic and parking will apply in the City.
10. Options (a) and (b) are not acceptable options as there is no legislation in place to deal with some of the perceived problems except by way of a bylaw. Option (c) - the consolidated draft Traffic and Parking Bylaw 2008 will address these issues by providing the Council with a means to address the various parking concerns of the local communities and also as to the use of a particular road. Option (c) is considered to be the best way of dealing with any perceived problems.
 11. The proposed Traffic and Parking Bylaw 2008 is considered to be the most appropriate form of bylaw. The proposed Bylaw will be reformatted so that the language of the Bylaw is updated and simplified and so that provisions made under the powers from different Acts are divided into the appropriate section. This is due to the different maximum penalty liable for a breach of an offence made under the different Bylaw making powers. For example, under the *Transport Act 1962* there is a maximum penalty of \$500 for the breach of a bylaw made under that Act, whereas under the *LGA 02* there is a maximum penalty of \$20,000 for the breach of a bylaw made under that Act. It is important that the different penalties payable are clearly identified.
 12. The proposed Traffic and Parking Bylaw 2008 will also contain some new provisions. The clause by clause analysis of these is contained in Attachment 4. In the August 2007 seminar, it was proposed that one of the new clauses to be added was the misuse of an operation mobility card. There was however, a recent amendment to Clause 6.4 of the Land Transport (Road User) Rule 2004 which covers this situation. The new provision in the Land Transport (Road User) Rule 2004 which came into force on 17 January 2008 is:
 - 6.4(1A)
Without limiting subclause (1), a driver or person in charge of a vehicle must not stop, stand, or park the vehicle in any parking area reserved for disabled persons unless:
 - (a) the driver or any passenger is disabled; and
 - (b) an approved disabled person's parking permit is prominently displayed in the vehicle.
 - The previously proposed new clause is therefore, no longer required.
 13. One of the new clauses to be introduced relating to heavy vehicles will likely be controversial. There are a number of possible ways to restrict heavy vehicles being parked on residential streets. In the seminar presented to Council in August 2007, it was proposed that a provision be included which enables the Council by way of a resolution to restrict heavy vehicles parked on a residential street at night. Since then, the Council has received other views on this issue. Possible options include:
 - banning heavy vehicles parked on residential streets unless Council has by resolution allowed the parking, stopping or standing of heavy vehicles on those streets, or
 - allowing heavy vehicles to be parked on residential streets for no more than an hour, which essentially is a complete ban on heavy vehicles parking on residential streets.
 14. The possible provisions are as follows:
 - (a) No person shall stop, stand or park a heavy motor vehicle for a period of more than one hour on any public place where there is adjacent residential zoned land on both sides of the road.

4 Cont'd

- (b) The Council may, by resolution, prohibit the parking, stopping or standing of heavy vehicles on specified roads described in the Heavy Vehicles on Residential Streets Register between the hours of 9pm and 7am.
 - (c) The Council may, by resolution, allow the parking, stopping or standing of heavy vehicles on specified roads described in the Heavy Vehicles on Residential Streets Register between the hours of 9pm and 7am.
15. The issues that need to be considered with the different options are the impact it would have on all road users. There is a perceived safety issue from motorists with heavy vehicles parked on residential streets. However, there is no data available as to the number of complaints we receive on this. There are however, currently 1075 owners/operators who reside in the Christchurch area owning one heavy vehicle. The total number of owners/operators would be greater than this if the number of owners/operators who own multiple vehicles are included. If there was a complete ban on heavy vehicles parked on residential streets, those owners will have to find alternative storage areas, which may result in increased freight cost and which would be passed onto the consumers.
16. In addition to the clauses, there are amendments to existing clauses which may bring in new provisions that were not previously covered. This applies in the clause relating to restriction on movement of stock. There was previously no provision to determine the type of stock crossing that would be most appropriate on a particular road. A graph which is used by other Council is therefore to be adopted. This graph assesses the type of stock crossing control that is required dependent on the number of stock to be moved, the intensity of the stock movement and also the average daily traffic volume.

FINANCIAL IMPLICATIONS

- 17. Inspection and enforcement activity for the proposed new Bylaw arising from this review is likely to be similar to that required under the current Bylaws.
- 18. Staff resources would be required to process the permit for stock movement.
- 19. New signage will be required at the attended off-street parking buildings outlining the conditions of entry. The estimated total cost to supply and install the required signage is \$10,000.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

- 20. The enforcement of Bylaws is provided for in the LTCCP Regulatory Services group of activities.

LEGAL CONSIDERATIONS

- 21. Section 145 of the LGA 2002 provides general bylaw-making powers for local authorities for the purposes of:
 - (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
- 22. Section 146(a) of the LGA 02 authorises the Council to make bylaws regulating trading in public places. Section 146(b) of the LGA 02 authorises the Council to make bylaws for the purposes of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the Council.
- 23. Section 72 of the Transport Act 1962 also has specific bylaw making powers relating to the use of roads. These powers relate to stock on roads, heavy traffic, one way streets, and various other traffic restrictions.

4 Cont'd

24. Section 591A of the LGA 74 contains specific bylaw making powers in relation to parking places and transport stations. Section 684(1)(13) of the LGA 74 authorises the Council to make bylaws generally concerning roads, cycle tracks, and the construction of anything upon or over a road or cycle track.
25. Reviews must be carried out in accordance with LGA 02. Relevant parts of the Act include section 155, which requires that Council is satisfied that a bylaw is necessary and that it is the most appropriate way of addressing the perceived problems; section 77, which sets out the requirements in relation to decisions, in particular, identifying options and assessing them; and section 83, which sets out the Special Consultative Procedure, outlining the consultation process, including notification, submissions, hearings etc.
26. In undertaking the review, in accordance with *Section 155* of the LGA 02, the Council must make the following determinations:
 - (a) Identification of a perceived problem, and consideration of whether a bylaw is the most appropriate way of addressing the perceived problem; and
 - (b) If it has determined that a bylaw is the most appropriate way of addressing the perceived problem, then whether:
 - (i) A new bylaw or the reviewed bylaw is the most appropriate form of bylaw (section 155(2)(a)); and
 - (ii) A new bylaw or the reviewed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (no bylaw can be made which is inconsistent with the New Zealand Bill of Rights Act 1990 (section 155(3))).
27. In addition, under the general law, there are four requirements for a valid bylaw. These are:
 - (a) an Act of Parliament must empower the Council to make the bylaw. In other words, the Council must have clear statutory authority to make the proposed bylaw.
 - (b) the bylaw must not be repugnant to the general laws of New Zealand. The basic proposition is that delegated legislation must not override primary legislation. With respect to a bylaw, if it were to override another statute or the common law, then the bylaw could be found to be invalid because it is repugnant to the general laws of New Zealand.
 - (c) the bylaw must be certain. There must be adequate information as to the duties of those who are to obey it.
 - (d) the bylaw must be reasonable. The reasonableness of any bylaw is a major consideration. The leading case setting out factors that the courts will consider when assessing the reasonableness of a bylaw is *McCarthy v Madden* (1914) 33 NZLR 1251. Relevant principles from this case include:
 - (i) where a bylaw necessarily affects a right common to all citizens, it must be scrutinised with greater care than a bylaw which simply affects the inhabitants of a particular district;
 - (ii) the reasonableness of the bylaw can only be ascertained in relation to the surrounding facts, including the nature and condition of the locality in which it takes effect, the danger or inconvenience it is designed to remedy, and whether or not public or private rights are unnecessarily or unjustly invaded;
 - (iii) a bylaw which unnecessarily interferes with a public right without producing a corresponding benefit to the inhabitants of the locality in which it applies must necessarily be unreasonable.

4 Cont'd

Have you considered the legal implications of the issue under consideration?

28. Yes, as above.
29. The clause by clause analysis compares the current clauses across the bylaws, and contains advice on whether a clause should be included in the new draft bylaw. The clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.
30. Any regulation, including bylaws, should consider the Ministry of Economic Development's Code of Good Regulatory Practice, which suggests that the following should be considered:
 - *efficiency* by adopting only regulation for which the costs to society are justified by the benefits, regulation at the lowest cost, taking into account alternatives
 - *effectiveness* to ensure regulation can be complied with and enforced, at the lowest possible cost
 - *transparency* by defining the nature and extent of the problem and evaluating the need for action
 - *clarity* by making things as simple as possible, using plain language where possible, and keeping discretion to a minimum
 - *fairness and equity* any obligations or standards should be imposed impartially and consistently.
31. To summarise the legal conclusions reached –
 - A consolidated Traffic and Parking Bylaw is considered to be the best way of dealing with perceived traffic and parking problems in the City:
 - The draft Traffic and Parking Bylaw is the most appropriate form of bylaw
 - The draft Traffic and Parking Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Bylaw can be said to be inconsistent with that Act. In this respect, particular regard has been given to the clause relating to prohibited times on roads.
 - The draft Traffic and Parking Bylaw is authorised under sections 145 and 146 of the LGA 02, section 591A and 684(1)(13) of the LGA 74, and section 72 of the Transport Act 1962.
 - The draft Traffic and Parking Bylaw is not considered to be repugnant to the general laws of New Zealand. Again particular consideration has been given to the clause relating to prohibited times on roads.
 - The draft bylaw is certain.
 - The draft bylaw is reasonable. While the bylaw does interfere with the public's right to park in a given space, then benefits of controlled parking and traffic movement give a reasonable public benefit in return. Further analysis of reasonable concerns is contained below in paragraphs 41 to 71.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

32. Aligns with the Streets and Transport activities by contributing to the Council's Community outcomes:
 - Safety (by providing a safe transport system); and
 - Community (by providing easy access to facilities).
 - Governance (by providing the opportunity for the community to participate in decision-making through consultation on plans and projects).

4 Cont'd

Do the recommendations of this report support a level of service or project in the 2006-2016 LTCCP?

33. The Bylaw would be consistent with the commitment in the Our Community Plan, Volume 1, Regulatory services: Legislative requirements are enforced to ensure the safety and health of people.

ALIGNMENT WITH STRATEGIES

34. A number of adopted Council strategies are particularly relevant when considering the use of public places.
35. The Parking Strategy for the Garden City 2003 aims to have a City where parking is provided and managed to integrate with the community's aspirations for its development; protect the environment; support economic vitality; and complement the overall transport system.
36. The Christchurch *Central City Revitalisation Strategy* aims to develop a "vibrant, fun, exciting, safe and sustainable heart of Christchurch...". The Strategy aims to "enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City..."
37. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services. One of the ways of measuring the success of the Strategy is that "pedestrians, cyclists, motorists and people with disabilities can move safely around our city".
38. The *Pedestrian Strategy for Christchurch, February 2001*, states: "The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation... Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence".
39. The *Christchurch Cycling Strategy* states: "The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch's sustainable transport mix".
40. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau". Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed".

Do the recommendations align with the Council's strategies?

41. As above.

CONSULTATION FULFILMENT

42. A seminar was presented to the Council on 28 August 2007 on the bylaw review.
43. If Council determines that a bylaw should be developed to address the traffic and parking related issues and the proposed draft Traffic and Parking Bylaw 2008 is adopted, then as part of the Special Consultative Procedure, stakeholder groups that may have an interest in the matters covered will be given the opportunity to make submissions and to be heard before a Hearings Panel, if they so wish.

4 Cont'd

STAFF RECOMMENDATION

It is recommended that the Committee:

- (a) Resolve which provision of heavy vehicles parking on residential streets is to be included in the draft Traffic and Parking Bylaw 2008:
- (i) No person shall stop, stand or park a heavy motor vehicle for a period of more than one hour on any public place where there is adjacent residential zoned land on both sides of the road.
- or**
- (ii) The Council may, by resolution, allow the parking, stopping or standing of heavy vehicles on specified roads described in the Heavy Vehicles on Residential Streets Register between the hours of 9pm and 7am.
- or**
- (iii) The Council may, by resolution, prohibit the parking, stopping or standing of heavy vehicles on specified roads described in the Heavy Vehicles on Residential Streets Register between the hours of 9pm and 7am.

It is recommended that the Committee recommends to Council:

- (b) That the following Bylaws be revoked and replaced by the attached draft Traffic and Parking Bylaw 2008 (Attachment 1), subject to any changes the Committee resolves:
- BPDC Traffic and Parking Bylaw 1998
 - CCC Traffic and Parking Bylaw 1991
 - BPDC Stock Control Bylaw 1994
 - BPDC Licences for Vehicle Stands on Streets
- (c) That the attached draft Bylaw, in terms of section 155 of the LGA 02:
- (i) is the most appropriate way to address perceived problems relating to traffic, parking, and movement of livestock issues in the City; and
- (ii) is the most appropriate form of bylaw; and
- (iii) does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (d) That the attached draft Bylaw:
- (i) Is authorised by the LGA 74, the LGA 02 and the Transport Act 1962;
- (ii) Is not repugnant to the general laws of New Zealand;
- (iii) Is certain; and
- (iv) Is reasonable.
- (e) That the draft Statement of Proposal (Attachment 5) is adopted, subject to any changes the Committee resolves.
- (f) That the draft Summary of Information (Attachment 6) is adopted, subject to any changes the Committee resolves.
- (g) That Special Consultative Procedure commence on 31 March 2008 and the last submission date shall be 30 April 2008.
- (h) That a Hearings Panel be appointed.

4 Cont'd

BACKGROUND (THE ISSUES)**Discussion**

44. The following bylaws have been considered as part of this review:
- Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
 - Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
 - BPDC Stock Control Bylaw 1994
 - BPDC Licences for Vehicle Stands on Streets
45. The main issues to be covered by the draft Traffic and Parking Bylaw 2008 is the management of traffic and parking and the movement of livestock. There are some clauses contained in the current bylaws which are covered by existing legislation or by other bylaws and therefore should be revoked. The following section analyses the requirement of the provisions to be included in the propose draft CCC Traffic and Parking Bylaw 2008.

Traffic and Parking

46. *Sections 591A and 684(1)(13) of the LGA 74 and Section 72 of the Transport Act 1962* authorise the Council to make bylaws for the purpose of imposing any parking, stopping or standing restrictions. This allows Council to restrict or limit the time vehicles may use parking spaces and also prohibit stopping in certain places where capacity is limited or safety is required. One of the main parking issues is the conflict between commuter parking and parking for visitors/shoppers to a particular area. Imposing parking restrictions is the only way to achieve a balance between the competing demands. A bylaw is therefore the most appropriate and reasonable way to deal with the problems associated with parking in the City.
47. The provision in the proposed Bylaw will not only cover general restrictions in relation to parking, stopping or standing but be further expanded to incorporate the different means and methods of controlling a restricted parking area eg. by way of meters or otherwise (eg coupon parking). This will also remove the need for some of the other provisions in the current Bylaws.
48. The proposed provision caters for restrictions for the different classes of road users eg. motorcycles and buses, thereby removing the need for a specific clause relating to the parking of vehicles by disabled persons which is another class of road users.
49. Provisions relating to vehicles parked on grass berm or verges are provided mainly for pedestrian safety. The draft bylaw provides that no person may park a vehicle on a grass berm. It also provides that a vehicle may only be parked on a grass verge if the grass verge is on a road which is listed on the Vehicles on Grass Verges Register. These provisions have been included because there are some areas where no footpaths are provided and pedestrians use the berm or verge area. If a vehicle was parked on the berm/verge, the vehicle may obstruct the pedestrian's path and force the pedestrian to step out onto the roadway. In addition, there may be damage caused to the berm/verge with vehicles travelling on it as it is not constructed to the same standard as the roadway. A bylaw is the most appropriate way and reasonable way to deal with this problem.
50. The provision relating to heavy vehicles on residential streets is one of the new clauses to be included. There are currently a number of local streets in Christchurch where Council signs prohibit the use of heavy vehicles on those streets except for heavy vehicles making deliveries. These signs were erected due to requests from the community regarding traffic, in particular heavy vehicles using these roads as a "short cut". These signs appear to have been erected under *Section 70A of the Transport Act 1962* which provides that in the case of any road under its control, the Council may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any 2 places by way of any road or roads specified in the notice. However, rather than rely on this provision which does not relate to a bylaw (or require the policy analysis that is associated with making a bylaw), it is proposed that a provision is introduced into the Traffic and Parking Bylaw 2008 which enables the Council by resolution, to prohibit, limit or restrict the use of any road by any heavy motor vehicle at any time.

4 Cont'd

51. The issues with heavy vehicles on some roads is due to the classification of those roads and the type of traffic that is reasonably expected to be travelling on those roads. All roads within CCC are classified into local, collector or arterial roads and as an example, any traffic travelling on a local road should be local traffic ie the person driving the vehicle has a reason to be on that street because the driver or their passenger either lives or is visiting someone on that street or travelling through that street because there is no other alternative route. It would be unfair to the local community who have specifically chosen to live on a local road to then have a road which functions like an arterial road due to the nature of the traffic travelling on it. Another issue with heavy vehicles on some roads, especially local roads, is the road environment that has been created. The junctions/intersections may also have been narrowed and it would be unsuitable for heavy vehicles to manoeuvre through the intersections safely without encroaching onto the opposing lane or damaging parts of the road (eg footpaths).
52. Section 72(1)(i) of the Transport Act 1962 authorises the Council to make a bylaw which prohibits or restricts absolutely or conditionally any specified class of traffic (whether heavy traffic or not), or any specified motor vehicle or class of motor vehicle which by reason of its size or nature or the nature of the goods carried is unsuitable for use on any road or roads specified in the bylaw. The draft bylaw relies on this section to enable the Council to establish a Heavy Vehicles on Residential Streets Register which will specify any residential road or part of a residential road which may not be used by heavy motor vehicles. This provision is considered to be reasonable because the Council will need to pass a resolution in relation to each residential road to add that road to the register. Therefore a sound case will need to be established before the Council will make such a resolution. The draft bylaw also provides that the prohibition will not apply if:
 - (a) the heavy motor vehicle is conveying an owner or occupier of, or a bona fide visitor to, a property fronting the residential road; or
 - (b) there is no other alternative route other than to use the residential road.
53. Nor will the prohibition apply to heavy motor vehicles:
 - (a) providing an emergency service on the road or in the immediate vicinity; or
 - (b) loading or unloading that vehicle in the course of trade; or
 - (c) carrying out work as a network utility operator on the road.
54. The parking of heavy vehicles on residential streets is another issue relating to heavy vehicles that is included in the proposed draft CCC Traffic and Parking Bylaw. *Section 591A(1)(d)* of the *LGA 74* authorises the Council to make a bylaw prohibiting or restricting parking in residential areas by specified classes of vehicles, either generally or at specified times where in the council's opinion such parking is likely to cause a nuisance or danger. There has been a number of incidences where complaints have been received by Council regarding heavy vehicles being parked outside a resident's property and causing a nuisance to the residents affected. It is believed that it is not reasonable for a community to be living in a residential area to expect heavy vehicles to be parked in front of their property at all times. There are different provisions that could be applied and this is in the executive summary of this report.
55. There are other provisions contained in this part which relates to the parking restrictions provisions and ensure better compliance and effectiveness of the parking restrictions eg. allowing an authorised officer to temporarily discontinue a parking space or temporarily discontinue a parking space except for the use of a trades vehicle or other specified vehicle, the use of parking coupons etc.

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Traffic Movement Restrictions

56. Bylaws relating to one way streets, roads or traffic lanes restricted to specific classes or vehicles and turning, stock driving routes are provided for under section 72 of the Transport Act 1962. One way streets and prohibitions on u-turns, left or right turns are created for safety and capacity reasons. Special vehicle lanes on roads or traffic lanes or any turning movement to be made only by specified classes or vehicles carrying specified classes of loads or not less than a specified number of occupants allows Council the authority, if they wish to promote or allow a certain class of vehicle priority.
57. The provision relating to prohibited times on roads was included to prevent car enthusiasts congregating on roads and causing a nuisance to the adjacent residents. A recent Council report was presented on 21 June 2007 and this considered the legal implications of this provision in light of the *New Zealand Bill of Rights Act 1990 (BORA)*. Further legal advice has been obtained on this issue and a copy of this is in Attachment 7. The legal advice concludes that while the matter is not beyond doubt, there is a good argument that the benefits to local residents, the temporal and other exceptions to the limitation, and the degree of harm the bylaw is seeking to prevent combine to make the bylaw reasonable and subsequently not repugnant to the general laws of New Zealand.
58. This provision relies on *Section 684(1)(30)* of the *LGA 74* which has been repealed and consequently, this provision will be automatically revoked on 1 July 2008. However, *Sections 145 and 146* of the *LGA 02* provide the Council with the authority to make this provision and therefore this provision can be retained. It is recommended that this provision be located in the 'Traffic Movement Restrictions' part in the proposed Traffic and Parking Bylaw.

Events

59. In some circumstances, the event that is to be held on the road has a significant impact on the road network as it may involve road closures, removing of parking or restricting certain traffic manoeuvres. Ensuring that applications are to be made to the Council in regards to any events that are to be held on the road will assist Council to ensure that the public are aware of the event and minimise any disruption it may cause to the community. This provision also assists Council in complying with the *Transport (Vehicular Traffic Road Closure) Regulations 1965* and *Schedule 10* of the *Local Government Act 1974*. *Section 145* of the *LGA 02* authorises the Council to make a bylaw protecting, promoting, and maintaining public health and safety.

Vehicle crossings

60. It is acknowledged that there are circumstances where access to a site may not be possible at an authorised crossing point either due to accessibility or the lack of an existing driveway. As a compromise, this provision allows access to the site by crossing the footpath provided that temporary measures are in place to protect the footpath. In addition, the requirement for a traffic management plan will assist to ensure that any traffic hazards and considerations for other road users are identified. The provision also ensure the appropriate process of installing a vehicle crossing is adhered to.

Machinery or equipment on road

61. The provision on the use of machinery, equipment and any other objects that may be left on the road are included in the Bylaw as there may be a hazard to other road users. Generally, a person wishing to operate machinery or equipment on roads will need to obtain the prior consent of an authorised officer. The requirement of a traffic management plan will ensure that considerations for road users are provided for. The Bylaw also includes a provision dealing with waste taker bins or other receptacles. Again, persons wishing to place one of these bins on the road will need to obtain the prior written consent of an authorised officer and submit a Traffic Management Plan which is satisfactory to the Council in all respects. This represents a balance between the competing interests of road users and is considered to be reasonable.

4 Cont'd

62. Caravans/motorhomes, immobilised/immobile vehicles and using a vehicle to attach advertising materials, are vehicles which are parked on the road and effectively using the road as a storage facility. This means that the parking spaces are not available to other users and it causes inconvenience to the general public especially in areas where there is a high parking demand.
63. In relation to caravans/motorhomes, BPDC has a provision which does not allow the vehicle to be parked for any continuous period exceeding 24-hours whereas the CCC had a seven days period. It is proposed that a seven days period be applied to be consistent with clause 6.19 of the Land Transport (Road User) Rule 2004 regarding parking a trailer on the roadway.
64. In relation to the clause relating to immobilised/immobile vehicle, it is acknowledged, that in the case where a vehicle has broken down, the owner may have no alternative but to leave the vehicle on the street while remedial works to the vehicle have been organised. Therefore the provision will provide that an immobilised vehicle may be parked on the road for a 7 day period until the owner rectifies the situation. This provision is not considered to be inconsistent with sections 356 and 356A of the LGA 74 which relate to the removal of certain vehicles from roads eg abandoned vehicles or vehicles with no warrant of fitness.
65. The provision on displaying vehicles on street is included in the Bylaw to address the issue of businesses which use the road as an extension of their business to store and/or advertise their vehicles and thereby causing an inconvenience and nuisance to the general public as the spaces are then not available to other road users and also act as a distraction to passing traffic. It is considered that this provision is authorised by section 145 of the LGA 02 which authorises the Council to make bylaws protecting the public from nuisance as well as section 146 of the LGA 02 which authorises the Council to make bylaws regulating trading in public places. Storage of vehicles on public places for business purposes can be viewed as one aspect of trading in a public place.
66. The provision prohibiting parking vehicles on the road to be worked on unless the repairs are of an urgent but minor matter is included not only for the safety for both the passing motorists as well as the person working on the vehicle but also to prevent damage to the road, environment and noise control.

Stock Control

67. Sections 145(a) and 145(b) of the LGA 02 provides Council with the authority to make a bylaw to protect the public from nuisance and to protect, promote, and maintain public health and safety. In addition, Section 146(b)(vi) authorises the Council to make a bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. There is a clear safety issue for both stock, drovers and other road users when stock are moved on the roads. There are also issues about effluent on roads. Effluent can be a nuisance as it sticks to vehicles. It also corrodes the road surface, potentially requiring the Council to reseal roads earlier than anticipated.
68. Previously, CCC did not have any bylaw to control the movement of stock. The draft bylaw introduces some new rules about the movement of stock on City roads. These rules are considered to be a reasonable balance between the needs of stock drovers and the other users of roads. It also requires stock owners and drovers to ensure that the amount of faecal waste deposited on the carriageway is kept to a minimum. This provision was in the BPDC Stock Control Bylaw 1994.

4 Cont'd

69. An additional further restriction is included in Part VI of this Bylaw to further improve the safety for both stock movement and other traffic. A graph to determine the stock crossing status is adopted from other local authorities. It means that for roads which carries a higher volume of traffic may require a stock underpass for stock crossing.

Miscellaneous

70. This provision relating to materials/debris on road and damage to road is one of the new provisions to be included in this Bylaw.
71. Traffic hazards on roads are caused when contractors working on a site are not vigilant with the way they access a site or not ensuring that they rectify the situation as soon as it occurs. There are situations where materials/debris eg. mud, stones etc. are brought onto the road and causes damage to passing road users with the materials being flicked up. It also causes other issues such as blocked drains with materials being washed into the stormwater system. Excess materials being discharged into the waterways also create environmental problems.
72. Damage to the roads especially to footpaths is also another safety concern that the Council has particularly for pedestrians. The contractors should therefore be responsible to ensure that they take better care to avoid such situations.
73. *Section 357(1) of the LGA 74* provides that it is an offence to cause certain types of damage to roads. The penalties are as follows: a fine not exceeding \$1,000 and, where the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued. The defendant may be ordered to pay the cost incurred by the Council in removing any matter, or in repairing any damage caused. This penalty is considered to be inappropriate especially for contractors who are aware of the requirements to ensure that roads must not be damaged and also if there are any materials/debris brought onto or left on the road from a site.
74. *Section 146(b)(vi) of the LGA 02* authorises the Council to make a bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. Including a provision in the proposed Bylaw to deal with damage to roads, berms, and footpaths will ensure that better care is undertaken to avoid such damage.
75. The powers of the police officer, enforcement officers and parking warden/officer are provided for in the Transport Act 1962, sections 356 and 356A of the LGA 74 and section 113 of the Land Transport Act 1998. This is provided to further clarify the authority of the police officer, enforcement officer and parking warden/officer to remove any vehicle or thing which are parked or placed on the road in breach of any provisions in this Bylaw.

ASSESSMENT OF OPTIONS

The Preferred Option

76. The preferred option is to revoke the four bylaws and create a new consolidated traffic and parking bylaw which would be rationalised and modernised.

4 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • An easier to understand bylaw as it would be written in modern plain English • Able to include new provisions • A consolidated Bylaw to cover the whole of CCC jurisdiction rather than having separate bylaws 	<ul style="list-style-type: none"> • Need to advertise and communicate to the public of the changes
Cultural	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Environmental	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Economic	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
<p>Extent to which community outcomes are achieved:</p> <p>The community outcomes that this option would contribute to include:</p> <ul style="list-style-type: none"> • a well governed city by having a new consolidated traffic and parking bylaw which is • a safe transport system and access to facilities for the community by providing the mechanism to regulate and control traffic and parking <p>Impact on the Council's capacity and responsibilities:</p> <p>Inspection and enforcement activity for the bylaw, as proposed, is likely to be similar to that required under the current bylaws. The introduction of a permit system for the movement of stock would require additional staff resources to process the permits. A permit system would enable the Council to determine the type of crossing required eg. whether a level crossing or a stock underpass is appropriate.</p> <p>Effects on Maori:</p> <p>There will be no specific effect on Maori.</p> <p>Consistency with existing Council policies:</p> <p>Current policies relating to the regulation and control of traffic and parking include:</p> <ul style="list-style-type: none"> • Bus stop location policy (adopted 16 December 1999) • Central City Transport Concept Plan (adopted 27 October 2005) • Christchurch Road Safety Strategy (adopted 26 August 2004) • Citywide Public Transport Priority Plan (adopted 26 August 2004) • Cycling (adopted 27 April 1994) • Give way/stop Controls (adopted 27 July 2000) • Maintenance of Private Rights-of-Way (adopted 22 April 1991, reconfirmed 24 October 2002) • Parking – Kerbside Parking Limit Lines (adopted 23 October 1996) • Parking Strategy (adopted 26 June 2003) • Public Transport Policy (adopted 24 June 1998) • Right Turn Phases at Traffic Signals (adopted 27 May 1998) • Traffic Calming Policy (adopted 28 June 1995, reconfirmed 25 February 1999) <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The Inspections and Enforcement Unit is in favour of this option. Further views would be obtained through the Special Consultative Procedure.</p> <p>Both the MED's Guide to Good Regulatory Practice, and the Legislation Advisory Committee's Guidelines on Process and Content of Legislation promote the importance of clarity through plain English legal drafting in order to increase the public's understanding of their legal obligations.</p> <p>Other relevant matters:</p> <p>Section 158(2) of the LGA 02 requires the Council to review the bylaws by 30 June 2008. The amalgamation of the BPDC and the CCC requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.</p>		

4 Cont'd

Maintain the Status Quo (if not preferred option)

77. The status quo is not the preferred option because the clauses in the bylaws were made under a range of bylaw making powers eg. LGA 74 and the Transport Act 1962. Some of the clauses were made under provisions of the LGA 74 that have now been repealed. These clauses need to be reviewed by 30 June 2008, otherwise, they will be automatically revoked. It would be unclear and confusing to allow parts of the bylaws to be revoked whilst some of the clauses are retained. In addition, retaining the four separate bylaws which is separated into the two different districts, would fail to acknowledge or respond to the inclusion of BPDC into CCC.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> Existing bylaws may be known to some people – no new requirements to publicise 	<ul style="list-style-type: none"> Confusion and uncertainty as to the status and enforceability of the bylaws Reputation of the Council tarnished by not meeting the LGA 02 review requirements Reputation of the Council tarnished by failing to update bylaws as a result of the BPDC/CCC amalgamation in a timely manner Some of the clauses are repetitive The language used is sometimes convoluted and confusing
Cultural	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Environmental	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Economic	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> Legal uncertainty as to the status and enforceability of the bylaws Open to legal challenge

Extent to which community outcomes are achieved:

The community outcome of a **well governed city** would not be met, as the maintaining of the current situation would be confusing and uncertain.

Impact on the Council's capacity and responsibilities:

Section 158(2) of the LGA 02 requires the Council to review the Bylaws by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create an uncertain legal environment as to which clauses are enforceable.

Effects on Maori:

There will be no specific effect on Maori – maintaining the status quo would have a negative impact on the city as a whole.

Consistency with existing Council policies:

The Council has policies which currently cover a wide range of matters relating to the control of traffic and parking (see the preferred option list). These policies would continue to be used.

Views and preferences of persons affected or likely to have an interest:

The Legal Services Unit does not support maintaining the status quo, nor does the Inspections and Enforcement Unit.

Other relevant matters:

As discussed above, the confusion on the legality of the clauses within the Bylaws for both the community and anyone who needs to enforce them is not preferred.

4 Cont'd

At Least one Other Option (or an explanation of why another option has not been considered)

78. The third option is to revoke the four bylaws and rely on other legislation to deal with any issues that may arise. This is not a preferred option as some of the issues can not be dealt with by any other way except by way of a bylaw.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> no bylaws to enforce 	<ul style="list-style-type: none"> public expectations will not be met no or low compliance of traffic direction and parking restrictions as it will not be enforceable negative impact on the safety and efficiency of the road network
Cultural	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> none specific
Environmental	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> the efficiency of the road network would have environmental impact
Economic	<ul style="list-style-type: none"> none specific 	<ul style="list-style-type: none"> there may be financial impact on businesses if there are no regulation and control on parking
<p>Extent to which community outcomes are achieved:</p> <p>The community outcome of a well governed city, providing a safe transport system and access to facilities for the community will not be met as there will be no or low compliance of the controls in place as they will not be enforceable.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>The community expectations on the regulation and control of traffic and parking will not be met as there may not be any legislations under which Council can enforce on.</p> <p>Effects on Maori:</p> <p>There will be no specific effect on Maori – revoking the bylaws will have a negative impact on the city as a whole.</p> <p>Consistency with existing Council policies:</p> <p>Will not be consistent with existing Council's policies especially in relation to safety and parking (see preferred option list).</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The Legal Services Unit, Inspections and Enforcement Unit and the Transport and Greenspace Unit does not support revoking the bylaws.</p> <p>Other relevant matters:</p> <p>As discussed above, it is not appropriate for traffic movement and parking to be left uncontrolled.</p>		

5. REVIEW OF THE CHRISTCHURCH CITY COUNCIL WATER RELATED SERVICES BYLAW 2001, THE BANKS PENINSULA DISTRICT COUNCIL WATER SUPPLY BYLAW 1998, AND THE BANKS PENINSULA DISTRICT COUNCIL WASTEWATER DRAINAGE BYLAW 2000

General Manager responsible:	General Manager City Environment, DDI 941 8656
Officer responsible:	City Water and Waste Manager
Author:	Zefanja Potgieter DDI 941 8271

PURPOSE OF REPORT

1. To recommend the review of the above mentioned three bylaws; the making of one new bylaw and the commencement of the statutory special consultative procedure.

EXECUTIVE SUMMARY

2. The above three bylaws are being reviewed and it is intended to replace them with one comprehensive bylaw. In terms of the provisions of the Local Government Act 2002, the two Banks Peninsula bylaws expire on 30 June 2008 while the Christchurch bylaw needs to be reviewed by 30 June 2010.
3. The proposed changes to the three bylaws are contained in a table (Attachment A) working around the existing Christchurch bylaw format. Also attached is the draft bylaw (Attachment B). Following the committee's consideration of this report and the draft bylaw a statement of proposal (incorporating the draft bylaw) and summary of information, as required in terms of the Local Government Act 2002, will be prepared for formal approval by the Council.
4. Attachment A details the changes to improve the bylaw, and assists in the analysis required of the Council under section 155(1) of the Local Government Act 2002. It includes new clauses that relate mostly to additional definition of terms and clarification of procedures; changed provisions for fire protection service connections and backflow prevention; amended clauses that are changed to clarify and update terminology and improve ability to deliver services; and clauses recommended for deletion which are either redundant or are dealt with by other legislation, including the Local Government Act 2002, the Health (Drinking Water) Amendment Act 2007, and the Resource Management Act 1991.
5. The review process is as follows:
 - (a) The Council resolves that a bylaw is the most appropriate way to address the perceived problems identified in the draft bylaw concerning the management of the municipal water supply and wastewater and stormwater drainage; the proposed bylaw is in the most appropriate form, and that there are no inconsistencies with the New Zealand Bill of Rights Act (see recommendations below);
 - (b) The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (see recommendations below);
 - (c) A special consultative procedure will commence early March 2008.
 - (d) Hearing of submissions to take place late in April 2008; and
 - (e) The Council to receive a report from the Hearings Panel in May 2008 to consider the recommendations of the panel regarding the review of the bylaws.

FINANCIAL IMPLICATIONS

6. The review of the bylaws will not have an impact on rates and charges.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

7. Not affected by the proposed changes.

5 Cont'd

LEGAL CONSIDERATIONS

8. Section 145 of the Local Government Act 2002 (the Act) provides a general bylaw making power, which includes for the purposes of protecting the public from nuisance and protecting, promoting, and maintaining public health and safety. Section 146 of the Act provides a specific bylaw making power for the purposes of regulating water supply, wastewater drainage and land drainage. It also provides for the review of bylaws made under the Act.
9. Section 160 requires that in reviewing a bylaw a local authority must make the determinations required by section 155. After the review, if a local authority considers the bylaw should be amended, revoked, or revoked and replaced, then it must use the special consultative procedure.
10. Section 155 of the Act requires the Council to determine whether the making of a bylaw (and the review of an existing bylaw) is *"the most appropriate way to address the perceived problem"*. The problem in this particular instance is the regulation of the supply of water, and the drainage of wastewater and stormwater.
11. Section 77 of the Act requires the Council, in the course of a decision making process, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. The following options exist:
 - (a) Do nothing i.e. conduct the supply of water to all users, and regulate the drainage of wastewater and stormwater with no regulatory powers. The Councils' previous bylaws worked well but in terms of Local Government Act 2002 provisions need to be reviewed and in doing so certain improvements and changes are proposed.
 - (b) Seek voluntary cooperation. This was presumably deemed impractical by the two respective Councils because they enacted bylaws rather than seek voluntary cooperation, and the bylaws have generally proved to work well;
 - (c) Make a bylaw requiring regulating water supply and wastewater and stormwater drainage. This option was recommended respectively in 1998, 2000 and 2001 when the previous bylaws were made. It is considered that this option meets that duty more effectively than either of the other options above. It is therefore proposed that the draft 2008 bylaw be authorised for special consultative procedure purposes.
12. The regulatory framework for councils has changed since the adoption of the three relevant bylaws, but the need to retain a bylaw regulating these matters still exists. New legislation includes the Local Government Act 2002 and the Health (Drinking Water) Amendment Act 2007. There is also a need to update the bylaws to recognise that the new Christchurch City district includes the Banks Peninsula area. It is considered that the new bylaw is in the most appropriate form.
13. There are no provisions in the New Zealand Bill of Rights Act 1990 which have a bearing on the draft Christchurch City Council Water Related Services Bylaw 2008 and therefore there are no inconsistencies between the draft bylaw and the statute.
14. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:

"(a) as the case may be,—

 - (i) a draft of the bylaw as proposed to be made or amended; or
 - (ii) a statement that the bylaw is to be revoked; and
 - (b) the reasons for the proposal; and
 - (c) a report on any relevant determinations by the local authority under section 155."

5 Cont'd

15. The Act also requires the Council to determine the form of the summary of Information and to determine the appropriate manner for distributing that summary. Section 89(c) requires that it be distributed as widely "*as reasonably practicable....having regard to the matter to which the proposal relates*". In this case as the bylaw concerns property developers, plumbers, owners of properties that may pose a backflow risk, fire protection system providers and fire service providers, and it is considered appropriate to distribute the summary of information to all such water users. Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken. These documents will be prepared following the committee meeting for approval by the Council.

Have you considered the legal implications of the issue under consideration?

16. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. Yes

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

18. Yes.

ALIGNMENT WITH STRATEGIES

19. No existing strategies apply. A new water supply strategy and new surface water strategy are in preparation and will receive consideration by the Council during 2008/09. Should new initiatives arise from these strategies there might be a need to review the bylaw at that stage. Review of the bylaw cannot be delayed until that time due to the expiry of the Banks Peninsula bylaws in June 2008.

CONSULTATION FULFILMENT

20. The statutory special consultative procedure will follow the adoption of the recommendations of this report.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee adopt and recommend to the Council:

- (a) That a bylaw is the most appropriate way to manage and regulate municipal water supply and wastewater and stormwater drainage.
- (b) There are no inconsistencies between the draft Christchurch City Council Water Related Services Bylaw 2008 and the New Zealand Bill of Rights Act 1990, and the draft bylaw is in the most appropriate form.
- (c) That the attached draft bylaw be adopted for consultation;
- (d) The composition of a Hearings Panel to consider submissions on the draft bylaw.

6. THE REVOCATION OF THE BANKS PENINSULA AMUSEMENT DEVICES AND SHOOTING GALLERIES BYLAW 1996, THE BANKS PENINSULA PUBLIC SWIMMING POOLS BYLAW 1972, AND THE CHRISTCHURCH CITY BYLAW NO 103 (1979) PUBLIC SWIMMING POOLS

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941 8549
Officer responsible:	Legal Services Manager
Authors:	Judith Cheyne, Willis Heney and Paul Clark

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Committee that it recommend to Council that it allow the automatic revocation on 1 July 2008, under section 293(3) of the Local Government Act 2002, of the:

- Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 (attached)
- Banks Peninsula Public Swimming Pools Bylaw 1972 (attached)
- Christchurch City Bylaw No 103 (1979) Public Swimming Pools (together, "the Bylaws") (attached)

on the grounds that adequate provision for the management of amusement devices and public swimming pools is provided for by other legislation, and/or by the terms and conditions of use and the normal operating procedures for public swimming pools and other Council policies.

EXECUTIVE SUMMARY

2. A review was undertaken on the Bylaws, to ascertain whether the provisions of the Bylaws were still current or needed amendment.
3. The purpose of the Bylaws was:
 - To set the process for the licensing of shooting galleries and the issuing of permits for amusement devices.
 - To regulate public bathing and impose controls over public baths.
4. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have bylaws covering amusement devices and nuisances. The control of amusement devices is covered by the provisions of the Amusement Devices Regulations 1978.
5. The two Swimming Pools Bylaws are very similar, but the provisions of both bylaws are now covered either by the terms and conditions of use on persons entering the particular public swimming pools or other Council policies, or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
6. There is no need to re-enact the Bylaws or make new bylaws with the same provisions because the harm the Bylaws were originally introduced to deal with is now addressed in other ways.
7. The Bylaws were made or had effect under now repealed provisions of the Local Government Act 1974, and are therefore subject to section 293(3) of the Local Government Act 2002, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.
8. The proposal in this report is that the Council allow the Bylaws to automatically be revoked on 1 July 2008, but to give notice to the public first, of the Council's intention, to ascertain whether there are any objections to the Council simply allowing the statutory provision to take effect.

FINANCIAL IMPLICATIONS

9. There are no financial constraints to the automatic revocation of the Bylaws. If the Bylaws are revoked automatically under section 293(3) then this will be less cost for the Council than if it revoked the Bylaws prior to 1 July 2008, as this would require the use of the special consultative procedure.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

10. Not applicable.

6 Cont'd

LEGAL CONSIDERATIONS

11. The relevant sections of the Local Government Act 2002 (LGA02) are:

s.293 Bylaws

- (1) *Bylaws made or having effect under provisions of the Local Government Act 1974 that are repealed by this Act, being bylaws that were in force immediately before the commencement of this section, are deemed to be validly made under this Act and continue in force accordingly if validly made under the Local Government Act 1974 ...*
- (3) *Every bylaw to which this section applies that is not revoked or that does not expire before 1 July 2008, is revoked on that date.*

s. 156 Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act

- (1) *A local authority must use the special consultative procedure (as modified by section 86) in—...*
- (c) *revoking a bylaw made under this Act.*

and

s.158 Review of Bylaws...

- (2) *A local authority must review a bylaw made by it under the Local Government Act 1974 (other than a bylaw deemed to be made under this Act by section 293)—*
- (a) *no later than 1 July 2008, if the bylaw was made before 1 July 2003; and*
- (b) *no later than 5 years after the bylaw was made, if the bylaw was made after 1 July 2003.*

12. This means that under the LGA02, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974 will be automatically revoked on 1 July 2008. There is no need to review such bylaws under section 158.
13. The Amusement Devices and Public Swimming Pools Bylaws were made under now repealed provisions of the Local Government Act 1974 (sections 684(1)(30), (33), and (33A) – section 686 was also relevant). Because these were the authorising powers for making the Bylaw, and not just the procedural provisions for making the Bylaw and they have been repealed, this means they are bylaws deemed to be made under the LGA02 by section 293(1), and are subject to section 293(3).
14. The powers embodied in the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 are a duplication of provisions contained in the Amusement Device Regulations 1978. The provisions in the two Public Swimming Pools Bylaws are now covered either by the conditions of use on persons entering the particular public swimming pools or other Council policies (the normal operating procedures), or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
15. As the Bylaws provisions are not considered necessary (they would be unlikely to pass the first test in section 155 of the LGA02, that a bylaw must be the most appropriate way of addressing the perceived problem) they should therefore be revoked, and allowing them to be revoked on 1 July 2008 by the operation of section 293(3) appears to be the appropriate course of action in this case.
16. The Bylaws could be revoked earlier than 1 July 2008, in accordance with section 156 of the LGA02, which requires that the special consultative procedure be used. However, section 293(3) was included in the LGA02 by way of an amendment in June 2006. Although there is nothing specific in the explanatory note to the Bill or the Select Committee report on this addition, its purpose seems to be to avoid the need for Councils to have to use the special consultative procedure in these instances of old obsolete bylaws.

6 Cont'd

Have you considered the legal implications of the issue under consideration?

17. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Page 146 of the LTCCP, level of service under regulatory services.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

19. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. Aligns with the "Strong Communities" strategic direction by giving the public a chance to be consulted first, via the public notice, on the Council's intention, and thereby be involved in the decision making process.

CONSULTATION FULFILMENT

21. The preferred option recommends that a public notice be issued to ascertain the views of the public before the Council simply allows the Bylaws to be revoked in accordance with section 293
22. Members of the former Bylaw Reviews Sub Committee were contacted by e-mail and asked to raise any concerns they had about these bylaws being treated in this manner. No concerns were raised by sub committee members.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council that it resolve:

- (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.
- (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within 1 month of the date of publishing the notice.
- (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).

6 Cont'd

BACKGROUND (THE ISSUES)

Background On Banks Peninsula Amusement Devices And Shooting Galleries Bylaw 1996

23. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 10:1972 Amusement Devices and Shooting Galleries.
24. The Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 provides that no land or building shall be used as a site for an amusement device unless the device has a permit from the Council under the Amusement Devices Regulations 1968. There are also safety precautions the proprietor of the amusement device must comply with. The bylaw also provides for the licensing of any land or building used as a shooting gallery to which the public have access.
25. There was no equivalent Christchurch City bylaw and no record of any need for such a bylaw. The provisions in the LGA74 under sections 684(1)(31) and 686 related to bylaws for such matters have been revoked. The Amusement Device provisions in the bylaw duplicate the provisions of the Amusement Device Regulations 1978, and the safety requirements set out in the bylaw are inserted as Conditions on the Permit, as provided for by regulation 11. There is no record of any Shooting Gallery within the city and it is considered that this entire bylaw is obsolete and should be left to be revoked in accordance with section 293(3).

Background on the Banks Peninsula Public Swimming Pools Bylaw 1972 and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools

26. The Public Swimming Pools Bylaw permits the local authority or superintendent to enforce operating procedures for the pool. For example, close the swimming pool in an emergency, charge fees and granting coaching and teaching rights. It also covers persons wearing medical dressings being prohibited from using the swimming pool, requires appropriate swimwear to be worn, provides controls over improper use of the swimming pool, unnecessary loitering and the causing of undue noise. It gives the superintendent power to prohibit anyone, who has been asked to leave the pool, from re-entering it for such period as he deems fit.
27. Christchurch City Council in 1979 and Banks Peninsula District in 1972 adopted Chapter 16, from the New Zealand Standard Model Bylaws NZS 9201 covering Public Swimming Pools. This is based on a 1972 model bylaw standard, that in turn was based a 1952 Standard (NZS791, Part XIV – Public Baths and Swimming Pools). The 1972 Standard supersedes the 1952 Standard.
28. The NZS9201, Chapter 16, was reconfirmed by New Zealand Standard in 1980. It was then superseded in 1999 Bylaws Cultural and Recreation Facilities NZS9201:16 -1999.
29. The Cultural and Recreational Facilities NZS9201:16 -1999 Standard Bylaws were withdrawn on 18 May 2007 with no replacement.
30. The Christchurch City Public Swimming Pools Bylaw has not been used or enforced by the Council since its introduction. No evidence can be found to demonstrate enforcement of the Banks Peninsula Bylaw.
31. The Bylaw provisions have not needed to be enforced because they have been overtaken by other legislation (the Health and Safety in Employment Act, and the Crimes Act), Council policies (fees and charges) and comprehensive industry wide quality standards which have been incorporated into Council operating policy. As the owner of the swimming pools the Council also has terms and conditions of use, that persons who enter the pool premises are required to comply with. Council continually enforces the operation of its swimming pool policy and conditions, and duties under the relevant statutes. Council continually audits its performance both internally and externally.

6 Cont'd

THE OBJECTIVES

32. To recommend the appropriate option to the Council to enable the Bylaws to be revoked on 1 July 2008 in accordance with section 293(3) of the LGA 02.

THE OPTIONS

33. The Council has the following options for dealing with the revocation of these section 293 bylaws:

Option 1

34. The Council may revoke the Bylaws now.

Under section 293(1) of the LGA02, a bylaw made under repealed provisions of the LGA74 is deemed to be a bylaw validly made under the LGA02. Therefore, if the bylaw is to be revoked before 1 July 2008, section 156 of the LGA02 applies, and the revocation must be in accordance with the special consultative procedure set out in sections 83 and 86. This requires that a statement of proposal and summary of information be prepared, approved by the Council and distributed/publicly notified, providing for a period within which submissions can be made on the proposal, of not less than one month. If anyone requests to be heard in relation to their submission then the Council must also provide for this, before making a final decision on whether or not to revoke the bylaw.

Option 2

35. Revoke the Bylaws now, and replace with new Bylaws.

This is the same as Option 1, with the addition of making new bylaws on the same subject matters as the revoked bylaws (and revoking the old bylaws within the body of the new bylaws). However, it does not appear that could be justified in terms of the test in section 155(1), that a bylaw be the most appropriate way to address the problem, given the background issues discussed above.

Option 3

36. The Bylaws may be left to lapse/be revoked automatically.

Under section 293(3), bylaws made or having effect under provisions of the LGA74 that are repealed by the LGA02, and that are not revoked, or do not expire, before 1 July 2008, are automatically revoked on that date. Allowing such bylaws to be revoked automatically under section 293(3) would remove the need to undertake any special consultative procedure. Notice could be given to the public on 1 July 2008 of the bylaws that have been revoked on this date. This option could be seen by the public as the Council not acting transparently, and hiding the fact that these bylaws will no longer be applicable on 1 July 2008 (even if they are redundant and are not currently acted on by the Council).

Option 4

37. The Council gives public notice of its intention to let the Bylaws be automatically revoked.

This is the same as option 3 above, but notice would be provided to the public first, so that if anyone objects to the Council simply acting in accordance with section 293(3), the Council is aware of those views before making a final decision to allow the bylaws to be automatically revoked on 1 July 2008.

THE PREFERRED OPTION

Option 4

38. As it will mean the public can express a view on whether or not the bylaws should be left to lapse under section 293(3), and the Council can then take those views into account before it confirms its intention. Allowing the bylaws to be revoked under section 293(3) involves significantly less expense and use of Council resources than a special consultative procedure.

6 Cont'd

ASSESSMENT OF OPTIONS**The Preferred Option**

39. Option 4.

The Council gives public notice of its intention to let the Bylaws be automatically revoked on 1 July 2008.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public can have a say on whether or not the Council should allow the Bylaws to be revoked automatically</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked</p> <p>Compliance with section 293(3) of the LGA02</p>	None
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	Costs of the public notice
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Giving public notice first will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The preferred option of Inspections and Enforcement and Recreation & Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

6 Cont'd

Option 3

40. The Bylaws revoke automatically on 1 July 2008, without prior public notice.

	Benefits (current and future)	Costs (current and future)
Social	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked Compliance with section 293(3) of the LGA02	Without advising the public first that the Bylaws will revoke automatically there may be criticism of the Council for not acting transparently
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	No effect on cost, as the Bylaws are not enforced/acted on in anyway currently; any enforcement required is carried out through other legislation
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Failing to advise the public first means the community outcome "a well governed city" may not be achieved.</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

6 Cont'd

Option 2

41. Revoke the Bylaws now, and replace with new Bylaws.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public is consulted</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked and, if necessary, replaced</p>	<p>Having new Bylaws that overlap with other legislation and Council policies</p> <p>Overrides the mechanism provided in section 293(3) of the LGA02</p>
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	Costs of the special consultative procedure and the ongoing costs of enforcing the new Bylaws
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved if new Bylaws were enacted. Using the special consultative procedure will assist in achieving the community outcome “a well governed city”, but having new Bylaws that overlap with existing legislation and policies may not achieve this community outcome.</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None.</p> <p>Effects on Maori:</p> <p>None.</p> <p>Consistency with existing Council policies:</p> <p>The overlap with existing policies will remain.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

6 Cont'd

Option 1

42. Revoke the Bylaws now.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public is consulted</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked</p>	<p>Overrides the mechanism provided in section 293(3) of the LGA02</p>
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	Costs of the special consultative procedure
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Using the special consultative procedure will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, and there will be no delay in that revocation.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

7. VARIATION TO BANKS PENINSULA PROPOSED DISTRICT PLAN

General Manager responsible:	General Manager Strategy & Planning, DDI 941 8177
Officer responsible:	City Plan Team Leader
Author:	Keri Davis-Miller

PURPOSE OF REPORT

1. The purpose of this report is to seek direction from the Council about private requests for variations to the Proposed Banks Peninsula District Plan.

EXECUTIVE SUMMARY

2. The Council has been approached to consider varying the Banks Peninsula Plan to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.
3. If the Banks Peninsula Plan was operative this variation request would proceed as a plan change and the Council would be obliged under the Resource Management Act to process the request at the applicant's cost. However, there is no similar right to request a variation from a proposed plan.

FINANCIAL IMPLICATIONS

4. Within City Plan Budget

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

5. Covered by existing unit budgets.

LEGAL CONSIDERATIONS

6. No particular legal issues arise other than the standard RMA process for a plan variation.

Have you considered the legal implications of the issue under consideration?

7. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. Aligned with City Plan Activity Management Plan. Supports the LTCCP City Plan measure that 10 variations or plan changes be prepared and notified annually.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

9. As above.

ALIGNMENT WITH STRATEGIES

10. N/A

Do the recommendations align with the Council's strategies?

11. Yes

STAFF RECOMMENDATION

It is recommended that the Council adopt the attached policy on private requests for variations to the Banks Peninsula Proposed District Plan and delegate to the Team Leader City Plan the power to allow private requests to vary the plan to be prepared in accordance with the policy, for consideration by the Council.

7 Cont'd

BACKGROUND (THE ISSUES)

12. The Council has been approached to consider varying the Banks Peninsula District Plan (BPDP) to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.
13. The BPDP has been in preparation since 1997 and has at least 12 months before it can be made operative in part. The expectation of the Resource Management Act is that people should be able to make applications to change a district plan. However this opportunity is not given until the plan becomes operative. Much of the BPDP has been beyond challenge for several years but has not been made operative because of several important issues which are going through the Environment Court. The Council itself can vary the proposed plan but other parties cannot apply for this until the plan is operative. The effect is that the RMA opportunity to apply for a plan change has not been available since 1997, even though some provisions have been completed for several years. This is not considered to be a particularly user-friendly situation.
14. The Council has previously considered the question of variations to a proposed plan when in 2003 the same issue arose due to approaches to the Council for variations to the Proposed Christchurch City Plan. At that time the Council adopted a policy for handling such requests. An adapted version of this policy is attached should the Council wish to adopt this course. Factors which could influence a Council policy on requests for variations are the same now as they were in 2003, they are:
 - The first consideration should be the impact on staff resources for making the Banks Peninsula Plan operative. This means completing existing appeals and variations. This should be the primary task of the City Plan team and related staff.
 - The second issue is time delays in making the plan operative. New variations may be controversial and give rise to references, thus delaying the ability to make that part of the plan operative.
 - The third issue is the desirability of being helpful to the community whenever possible. There are occasions when the plan could be more helpful to parties without compromising its overall role.
 - A fourth factor is the complexity in administering the Plan. If people cannot get the Plan varied they are likely to apply for resource consents instead and these applications may be much more complex and difficult than they would be if the Plan was less restrictive.
 - A fifth factor is cost. The plan changes are not of any great public interest or benefit, even though they may be suitable and appropriate for adoption under the Resource Management Act. In other words the benefits are largely private rather than public.
15. A technique which addresses most of these factors is for an applicant to prepare a potential variation itself, generally using consultants, in consultation with Council staff. This gives the Council input without demanding large amounts of time. Such proposals should be specific to a particular site, or perhaps a particular objective, policy, rule or zoning. A typical example would be a request to rezone a particular piece of land. This would have no impact on the rest of the Plan. The rest of the Plan could be made operative in part. Alternatively such proposals may be small-scale or have little potential for controversy, so that they can be completed in the time before the Plan is made operative.
16. It is likely that most of the Plan will be operative by late 2008. Therefore any policy would have a relatively short life and the number of applications is likely to be low. There will come a time, probably in late 2008, when all such requests should be declined to enable staff to get the Plan document corrected, formatted and made operative.

7 Cont'd

THE OPTIONS

Option 1

17. Reject the application for a variation to the Banks Peninsula Plan relating to rezoning land to enable private development.

Option 2

18. Adopt the attached Council policy on private variations to the Banks Peninsula Proposed District Plan under which officers are able to deal with all such applications on a one-off basis as and when they arise.

Option 3

19. Advise the applicant, Mrs Dunster, that if she prepares a draft variation and section 32 report, at their expense, the Council will consider it for possible adoption and public notification but can give no assurance at this stage as to its adoption or otherwise.

PREFERRED OPTION

Option 2 & 3

20. Adopt a policy on private variations to the Banks Peninsula Plan and advise applicant that they can prepare a draft variation for consideration by the Council.

PROPOSED POLICY

Policy on Private Requests for Variations to the Banks Peninsula District Plan

That privately initiated requests for variations to the Banks Peninsula District Plan be considered on the following basis:

1. That the requests are to be in relation to specific sites only by the owner of the fee simple of the land or any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force, and shall not affect broadly applicable Banks Peninsula Plan provisions.
2. That the proposal is not contrary to any adopted strategy or area plan for the site in question.
3. That the proposal will not create a demand for additional infrastructure to be provide by the council, or deplete available capacity to service and supply appropriately zoned land.
4. That the requests will not be granted where applying for resource consents would be a practical alternative.
5. That such requests should not delay the Council's ability to make the majority of the Banks Peninsula District Plan operative in part.
6. That applicants shall agree to reimburse the Council for its actual and reasonable costs in processing the request and any subsequent variation, to the conclusion of the hearings phase.
7. That any such variations are to be prepared by the applicants, at their expense, in consultation with relevant Council staff.
8. That the Council will consider any such variation on its merits but gives no assurance that it would introduce it, or if introduced as to its eventual decision on it.
9. That the Council will reserve the right to withdraw any such variation at any stage if it became protracted to the point where it affected the ability to make important parts of the Banks Peninsula District Plan operative.
10. That the Team Leader City Plan be given delegated authority to decide on requests to prepare variations to the Banks Peninsula District Plan under this policy. All such variations, authorised to be prepared by the Team Leader City Plan, are to be considered by the Council.

8. THE REVOCATION OF THE BANKS PENINSULA DISTRICT COUNCIL NUISANCES BYLAW 1996

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941 8549
Officer responsible:	Legal Services Manager
Author:	Judith Cheyne

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Committee that it recommend to Council the revocation of the Banks Peninsula District Council Nuisances Bylaw 1996 (the "Bylaw") (attached - Appendix 1) on the grounds that adequate provision for the management of the nuisances in the Banks Peninsula area exist under other legislation.

EXECUTIVE SUMMARY

2. The purpose of the Bylaw was to control various nuisances in the Banks Peninsula District. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have a bylaw to cover these nuisances.
3. A review of the Bylaw has been undertaken to ascertain whether the provisions of the Bylaw are still required. There seems to be no need to continue or replace the Bylaw because the problem addressed in the Bylaw can be dealt with by the Council either under the enforcement powers of the Health Act 1956, the Resource Management Act 1991, or in other ways.
4. It is recommended that the Bylaw be revoked by way of a special consultative procedure. This can be carried out concurrently with another special consultative procedure being held in relation to another bylaw review.

FINANCIAL IMPLICATIONS

5. The financial implications with the revocation of the Bylaw largely relate to whether the special consultative procedure is used to revoke the Bylaw. However, the proposal to revoke this Bylaw can be included at the same time as consultation on other bylaws, under s83A of the Local Government Act 2002 (LGA 02), which would reduce the expense for the Council.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

6. Not applicable.

LEGAL CONSIDERATIONS

7. The Banks Peninsula District Council Nuisances Bylaw 1996 that was adopted was the 1972 NZ Standard Model General Bylaw, chapter 11. The Bylaw may have been made under both the Local Government Act 1974 (LGA 74) and the Health Act 1956, although it is not clear. Section 648(1)(8) LGA 74 was the power to make a bylaw for the purposes of "*conserving public health, wellbeing, safety, and convenience, and regulating drainage and sanitation*", but it seems more likely that the Bylaw was made under the more specific provisions of the Health Act 1956, under the bylaw-making powers for local authorities provided for in sections 23(e) and 64 of that Act. In addition, the Bylaw adopted by Banks Peninsula was the pre LGA 74 model bylaw.
8. The Model Bylaw itself does not identify which Act or Acts the various provisions of the Bylaw were made under. The text of the resolution of the Banks Peninsula District Council when it approved the adoption of the Model General Bylaws in 1996, stated that "*in terms of section 716B of the Local Government Act 1974 the following special order on bylaws be confirmed to take effect from 1 July 1996...*" and listed all the bylaws, again without reference back to the Act or Acts they were made under.
9. Section 716B related to the procedural use of special orders to make a bylaw, rather than the authorising bylaw-making power coming from that section. Bylaws made under the Health Act had to be made using a special order (and in accordance with section 681 of the LGA74), because of the former wording of section 67(1) of the Health Act 1956.

8 Cont'd

10. Section 67 currently provides that: "*All bylaws made by a local authority under this Act must be made in the same manner in all respects as if they were bylaws made pursuant to the Local Government Act 2002*". However, such bylaws are not *deemed* to have been made under the LGA 02, and there is no requirement that they be reviewed under section 158 of the LGA 02.
11. Council staff have, however, considered this bylaw in the context of the Bylaws review process and concluded that the provisions of this bylaw are not necessary, because there is other legislation that the Council can use instead to enforce the matters covered by the bylaw (see the analysis table attached as appendix 2). This means that the first test in section 155 of the LGA 02, that a bylaw must be the most appropriate way of addressing the perceived problem, is not likely to be met.
12. The LGA 02 specifies in section 156 that the special consultative procedure must be used when making, amending or revoking a bylaw "*made under this Act*". This may mean that the Council would not have to use the special consultative procedure to revoke this bylaw, because it was not made under the LGA 02 (it has been made under the Health Act, or the Health Act and the LGA 74 together). In addition, section 67 of the Health Act only refers to how bylaws under the Health Act are made; there is nothing about how to revoke a Health Act bylaw. The LGA 74 provisions for revoking a bylaw have been repealed.
13. A Council resolution is definitely required before the Bylaw can be revoked, but it is not clear from the legislation, and there is no case law on this issue, whether or not the special consultative procedure needs to be used first. However, as section 67 provides the manner for making a bylaw (which would require the use of the special consultative procedure), it seems more appropriate that it also be revoked in the same manner.
14. The Legal Services Unit recommends that the special consultative procedure be used, even though there is very little risk of a challenge being made if it is not used. It is a better from a public relations point of view to consult with the Banks Peninsula ward as to whether or not they consider this bylaw is required. Section 83A of the LGA 02 provides that a special consultative procedure can be carried out at the same time as another special consultative procedure.

Have you considered the legal implications of the issue under consideration?

14. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

15. Page 146 of the LTCCP, level of service under regulatory services.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

16. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

17. Aligns with the "Strong Communities" strategic direction by giving the public a chance to be consulted, via an SCP, and thereby be involved in the decision making process before this bylaw is revoked.

CONSULTATION FULFILMENT

18. As above for external consultation. Internal consultation has taken place with the Inspections and Enforcement Unit who do not consider this Bylaw to be necessary.

8 Cont'd

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council to resolve:

- (a) To revoke the Banks Peninsula Nuisances Bylaw 1996 following a special consultative procedure.
- (b) To adopt the attached statement of proposal and summary of information (Appendix 3) to be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website, from 17 March 2008.
- (c) That public notice of the proposal be given as close as possible to 17 March 2008.
- (d) That the period within which written submissions may be made to the Council be between 17 March and 16 April 2008.
- (e) To appoint a Hearings Panel comprising [the members to be named at the Council meeting] to consider and, where necessary, hear any submissions on the proposal to revoke the Banks Peninsula District Council Nuisances Bylaw 1996.

8 Cont'd

BACKGROUND (THE ISSUES)

Background On Banks Peninsula District Council Nuisances Bylaw 1996

19. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 11:1972 Nuisances.
20. The 1972 model bylaw standard was simply a revision of a 1952 standard bylaw. It covered a number of matters that are now covered by the nuisance sections of the Health Act 1956, and indeed were covered at the time of the 1972 review. Section 29 of the Health Act 1956, defines nuisances and then other sections of the Health Act give the Council the powers to take action in relation to those nuisances, including bringing enforcement proceedings and in some cases abating a nuisance without notice. Some parts of the Bylaw are also covered by provisions of the Resource Management Act 1991 and the Building Act 2004. See the table analysing the bylaws provisions attached as appendix 2.
21. Clauses 3, 16 and 17 of the Christchurch City Refuse Bylaw 1995 may also apply to some "nuisance" situations in this Bylaw although they are not intended to be used in this way, and the nuisance sections in the Health Act 1956 would be the preferred option for dealing with any issues.
22. The conclusion is that this bylaw is obsolete and should be revoked, rather than be allowed to continue "on the books", but never acted upon by the Council.

THE OBJECTIVES

23. To recommend the revocation of the Banks Peninsula Nuisances Bylaw 1996, by way of the special consultative procedure.

THE OPTIONS

24. The Council has the following options:
 - (a) Do nothing and not revoke the Bylaw - in which case it will continue until legislation is introduced to revoke the Bylaw, or the Council later chooses to revoke the Bylaw, but the Council would never act upon or enforce the bylaw because it has more relevant powers, with higher penalties, under other legislation.
 - (b) Revoke the bylaw by resolution only – there is a very minor risk that someone could challenge the Council by arguing that the procedure used was not correct, if it does not use the special consultative procedure. However, it is difficult to imagine what loss might be caused to someone if the revocation is not carried out using the correct procedure.
 - (c) Revoke the bylaw by using the special consultative procedure – although it is not clear from the legislation that this procedure is required for a bylaw not made under the LGA 74 or the LGA 02, it seems the likely procedure and it is appropriate to consult with the community on this matter.

THE PREFERRED OPTION

25. Option (c) is the preferred option.

8 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option (option (c))

26. The Council uses the special consultative procedure before revoking the Bylaw.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public can have a say on whether or not the Council should revoke the Bylaws</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by revoking such Bylaws</p>	None
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation is in effect to deal with the subject matter of the Bylaw's environmental issues	None
Economic	Revoking the Bylaw means there will be no ongoing obligation on Council to monitor this Bylaw	Costs of the SCP
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation deals with the same subject areas. Consulting first will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities: None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: Consistent.</p> <p>Views and preferences of persons affected or likely to have an interest: The preferred option of Inspections and Enforcement staff.</p> <p>Other relevant matters: None known.</p>		

8 Cont'd

Option 2

27. The Bylaw is revoked by resolution only, without an SCP.

	Benefits (current and future)	Costs (current and future)
Social	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked	Without consulting with the public first there may be criticism of the Council for not acting transparently
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaw's environmental issues	None
Economic	Revoking the Bylaw means there will be no ongoing requirement that Council should monitor this Bylaw	No effect on cost, as the Bylaws are not enforced/acted on in anyway currently; any enforcement required is carried out through other legislation
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaw will still be achieved because other legislation or policies deal with the same subject areas. Failing to consult with the public first means the community outcome "a well governed city" may not be achieved.</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>Consistent.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

8 Cont'd

Option 1

28. Do nothing.

	Benefits (current and future)	Costs (current and future)
Social	None	No benefit for the community in having an obsolete and redundant Bylaw remain in existence
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	None
<p>Extent to which community outcomes are achieved: "A well governed city" may not be achieved because having old redundant bylaws still current is not good governance.</p> <p>Impact on Council's capacity and responsibilities: None.</p> <p>Effects on Maori: None.</p> <p>Consistency with existing Council policies: Potential for inconsistency.</p> <p>Views and preferences of persons affected or likely to have an interest: Not the option preferred by Inspections and Enforcement staff.</p> <p>Other relevant matters: None known.</p>		

9. RESOLUTION TO EXCLUDE THE PUBLIC

Attached.