



Christchurch City Council

**REGULATORY AND PLANNING COMMITTEE
AGENDA**

EXTRAORDINARY MEETING

TUESDAY 29 JANUARY 2008

AT 9.30AM

IN THE COUNCIL CHAMBER, CIVIC OFFICES

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

- PART A - MATTERS REQUIRING A COUNCIL DECISION**
- PART B - REPORTS FOR INFORMATION**
- PART C - DELEGATED DECISIONS**

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PART 1 - SEMINAR

1. APOLOGIES

The intention of the first part of the meeting is to allow for discussion in respect to:

- The Council's statutory requirements to review bylaws
- Process, timetables, decision-making and Community Board involvement
- What types of issues can be addressed by bylaws and what issues cannot
- The limitations on the Council's ability to enforce bylaws
- Consideration of how to address the important issues that bylaws are not effective for.

The following reports are attached to allow elected representatives the opportunity to read the relevant information prior to the seminar part of the meeting. (Note: Separately circulated to Councillors is the "Blue Book" guideline to Bylaws.)

An invitation has been extended to the Mayor, all other Councillors and Community Board Chairs to attend the meeting.

2. BACKGROUND ON BYLAWS REVIEW

General Manager responsible:	General Manager Strategy and Planning DDI 941-8177
Officer responsible:	Alan Bywater DDI 941-6430
Authors:	Terence Moody – Principal Adviser (Environmental Health) Teena Caygill – Policy Analyst (Bylaws)

PURPOSE OF REPORT

1. The purpose of this report is to provide background information to the bylaw reviews, in particular, to outline:
 - the bylaws being reviewed
 - the tests applied in making a bylaw
 - the Council's enforcement powers and capability in relation to bylaws
 - the main issues covered by the bylaws being reviewed and any controversial/headline issues
 - the consultation/communications planned for the reviews.

(Note: this report and process is about reviewing the existing bylaws to meet statutory requirements and **not** about the creation of new bylaws.)

2. Information on bylaws has been compiled in the Blue Bylaws Book, which contains useful information and guidance on a range of issues relating to bylaws – for example, it contains guidance on the legal powers Council has to make bylaws, the process for reviewing bylaws, the Special Consultative Procedure, the Bill of Rights Act and how it relates to bylaws, the Code of Good Regulatory Practice, the enforcement of bylaws, prosecutions for breaches of bylaws, case law on bylaws challenged in the Courts, and guidance on a range of other matters.

BYLAWS BEING REVIEWED AND THE STATUTORY TIMEFRAMES FOR THEIR REVIEW

Bylaws with statutory review deadlines of 30 June 2008

3. The Local Government Act 2002 sets out the procedural requirements for making, amending or revoking bylaws (ss 155 and 156). In each case, the Special Consultative Procedure must be used (ss 83 and 86).

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4. The bylaws that are required by the Local Government Act 2002 to be reviewed by 30 June 2008 include:
- the dog control bylaws
 - the public places bylaws
 - the traffic and parking bylaws
 - the parks and reserves bylaws
 - the marine facilities bylaws
 - the refuse bylaws
 - the water services bylaws
 - the general/introductory bylaws
 - the swimming pool bylaws
 - the amusement devices and shooting galleries bylaw
 - the nuisances bylaw
 - the gin traps bylaw.
5. The bylaws need to be reviewed to assess whether they are still necessary, that they are appropriate and that they meet the purpose they were designed for. A table listing the full titles of all the bylaws, grouped by each review, is attached as Appendix A.
6. The implications for the Council of not reviewing these bylaws by 30 June 2008 vary from bylaw to bylaw (depending on the powers the bylaw was made under) and broadly fit into three categories:

Category of bylaw	Implications if not reviewed by 30 June 2008
Bylaws made before 1 July 2003 under still current provisions of the Local Government Act 1974	<p>If these bylaws have not been reviewed by 30 June 2008, there is no specific requirement to review them after that date.</p> <p>Whether or not they are reviewed by 30 June 2008, these bylaws continue in force and are not automatically revoked until 1 July 2010.</p> <p>However, s.155 applies, and the Special Consultative Procedure must be used if the bylaw is to be amended, or revoked, before 1 July 2010 (s.156).</p> <p>These bylaws are considered s.293 bylaws, which means they are automatically revoked on 1 July 2008.</p>
Bylaws made before 1 July 2003 under now repealed provisions of the Local Government Act 1974	<p>They are not required to be reviewed under s.158 but unless new bylaws are made by 30 June 2008, there will be no effective bylaw from 1 July 2008.</p> <p>If a bylaw covering the same subject matter is still required by the Council, then provided there is a relevant bylaw-making power in the LGA 02 or another Act, then the Council can make a new bylaw by using the procedures in s.155 and s.156.</p>
Bylaws made under bylaw-making powers in other Acts (not the Local Government Act 1974 or the Local Government Act 2002)	<p>Although procedurally they may have been "made" under the LGA 74, these bylaws do not need to be reviewed by 30 June 2008, and are not automatically revoked, unless those other Acts which they were made under, provide that s.155-s.160(a) LGA 02 (in full or in part) apply. The Dog Control Act 1996 applies both the making and review requirements of the LGA 02, but the other statutes under which Council's bylaws are made only apply the bylaw making procedure and not the review procedure.</p>

7. There are several bylaws which will not undergo a full review, but will be recommended for revocation before 30 June 2008, for a variety of reasons. These are largely procedural revocations. For example, there may no longer be any power to make the bylaw, so the existing bylaw can no longer exist and should be revoked. These bylaws cover:
- swimming pools
 - amusement devices and shooting galleries
 - nuisances
 - gin traps.

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8. The Refuse bylaws have statutory timelines for review ending on 30 June 2008. However, these bylaws cannot be reviewed until the details of the future kerbside collection system are finalised and the contractor selected. Consequently, the bylaws will not be reviewed within the statutory timeframe. Fortunately, these bylaws were made under a bylaw-making power (s542) of the Local Government Act 1974 which remains in force. Consequently, the existing bylaws will remain in force for a further two years if they are not reviewed by 30 June 2008.

Bylaws that do not have statutory review deadlines of 30 June 2008

9. The Cemeteries bylaws were primarily made under the Burial and Cremation Act 1964 (as well as the Local Government Act 1974). As the bylaw-making powers under the Burial and Cremation Act are quite specific and remain current, these bylaws do not have to be reviewed by 30 June 2008 and will remain in force until they are amended or revoked.
10. The rest of the bylaws fit one of two categories – either they were made under the 2002 Act and need to be reviewed within five years (s.158(b)), or they have already been reviewed once since the 2002 Act came into force, and they need to be reviewed within ten years (s.159).
11. The rest of the bylaws, and an indicative timeline for their review, are:
 - brothel signage – late 2008
 - cemeteries – 2008/2009
 - liquor control – late 2008
 - speed limits – 2010
 - trade waste – 2011
 - licensed waste-handling facilities – 2017
 - fire safety – 2017
 - cleanfill licensing – 2018.
12. There is also the possibility that existing bylaws may need to be reviewed/amended for reasons other than statutory requirements – for example, if a bylaw no longer meets the purpose for which it was designed; the bylaw needs to be updated to address a significant and new problem; or if the legislative environment changes.
13. A summary of the content of each of the bylaws requiring action during 2008/9 is attached as Appendix B. To assist the Committee, the potentially contentious issues for each bylaw have been identified.

TESTS APPLIED TO MAKING BYLAWS

14. Bylaws enable local authorities to develop laws that are relevant to the local community and that are technically suited to local conditions. The Local Government Act 2002 and other pieces of legislation provide the Council with the power to create bylaws for specific purposes, rather than for any reason the Council feels fit.. Under section 155 of the Local Government Act 2002, the Council must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem. Once satisfied on this point, the Council must determine whether the proposed bylaw is (a) the most appropriate form of bylaw; and (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.
15. Making or amending a bylaw is a law-making process. Both the bylaw itself and the process can be challenged through the Courts and held up for scrutiny.
16. 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. It is important that these tests are rigorously applied and bylaw provisions are only made where they are deemed to satisfy the tests.

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17. In reviewing bylaws, the existing clauses are 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
 - or not a bylaw is an effective tool to manage the issues
 - the issues are covered by new or amended legislation, by city and district plans, or by other bylaws
 - the clauses are consistent with the Bill of Rights Act
 - the matters fall within the bylaw-making powers of the Local Government Act 2002, and
 - the clauses are reasonably able to be enforced.

18. The bylaw-making powers in the Local Government Act 2002 are substantially different to those in the Local Government Act 1974. Some prescriptive powers remain in section 146, but the general bylaw-making powers in the 2002 Act are much less prescriptive than the powers in the 1974 Act. However, the bylaw offence penalty has increased from a maximum of \$500 under the 1974 Act, to \$20,000 under the 2002 Act. This implies that bylaws should only be made for matters of significance.

19. In assessing whether a bylaw is the most appropriate way of addressing a perceived problem, other options for addressing the problem need to be considered. Possible options include:
 - doing nothing
 - educate or communicate
 - adopt a partnership approach with other agencies to work together on the issue
 - develop a policy, plan or strategy
 - increase funding to existing services
 - enter into commercial contracts for service provision
 - regulate via a bylaw
 - amend the city plan to address the issue
 - lobby for legislative change.

20. Central Government guidance from the Ministry of Economic Development suggests that the following principles should be applied when considering the regulation of activities:
 - efficiency, by adopting and maintaining regulations for which the costs are justified by the benefits, at the lowest cost, taking into account alternative approaches
 - effectiveness, by designing regulation to achieve the desired policy outcome
 - transparency, by utilising a process that is transparent to both the decision-makers and those affected by the regulation
 - clarity, by ensuring the processes and requirements are as understandable and accessible as practicable
 - equity, by ensuring the regulation is fair and treats those affected equitably.

21. Additionally, a bylaw cannot be made if it is inconsistent with the New Zealand Bill of Rights Act 1990.¹ The Bills of Rights Act affirms, protects, and promotes human rights and fundamental freedoms in New Zealand. In essence, it provides a set of minimum standards to which public decision-making in New Zealand must conform.² The most relevant aspects of the Bill of Rights Act in relation to bylaws are: Section 14: Freedom of expression, Section 16: Freedom of peaceful assembly, Section 17: Freedom of association, Section 18: Freedom of movement, Section 19: Freedom from discrimination.

¹ Section 155 (3) of the Local Government Act - No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990...

² *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*, Ministry of Justice, 2004

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COUNCIL'S ENFORCEMENT POWERS AND CAPABILITY

22. Bylaws are enforced by Council staff that hold warrants empowering them to undertake enforcement action.³ Each warrant holder needs to be empowered for each separate piece of legislation/bylaw, so not all Officers hold the same powers.⁴ Officers can be empowered to undertake enforcement action under different laws, such as the Litter Act and the Building Act, as well as to enforce bylaws. It is an offence to prevent an Enforcement Officer from carrying out their duties.⁵
23. Complaints relating to breaches of bylaws should be reported to the Council Customer Centre, which logs the calls. This system allows complaints to be allocated to an Enforcement Officer and to be tracked. The statistics from the calls are useful for reviewing the bylaws, as they give an indication of the frequency of complaints and indicate how much of a problem issues covered by bylaws are.
24. The Council responds to complaints, and assesses each situation on a case-by-case basis. Generally, a warranted Council Enforcement Officer will contact the party that the complaint has been made about, and will discuss the allegation (unless the Officer witnesses the offence, in which case they will speak directly with the offender). The first action is to communicate, to ensure that people understand the law and their responsibilities. If this does not lead to a remedy, and it is in the public interest to take the matter further, then prosecution may be an option, but there are a range of tools that may be more appropriate in the first instance.
25. The Local Government Act 2002 contains a range of enforcement actions that can be taken in relation to bylaws, including:
- serving an injunction, for example, to compel someone to cease an activity (s.162)
 - removing works or things that are in breach of a bylaw (s.163.), and costs can be recovered for removing the work or thing
 - seizing and impounding property on public land if it is involved in an offence against a bylaw (s.164), in certain circumstances
 - seizing and impounding property on private land with a warrant issued by a judicial officer (s.165, s.166 and s.167), in certain circumstances
 - entering property for enforcement purposes (s.172), in certain circumstances
 - recovering the costs of damage arising from a breach of a bylaw (s.176) in addition to the penalty for breaching a bylaw
 - an Enforcement Officer requiring the name and address of someone who they believe may have committed an offence (s.178)
 - taking a prosecution in the District Court. A person who is convicted of an offence against a bylaw is liable to a fine not exceeding \$20,000 (s. 239 and s.242(1)). The exception to this is an offence against a trade-wastes bylaw, from which a person is liable to a fine not exceeding \$200,000 (s.242(5)).
26. A bylaw made under the Local Government Act and another act (such as the Transport Act or the Dog Control Act), will have different enforcement tools to those bylaws made solely under the Local Government Act. For example, both the Transport Act and the Dog Control Act enable local authorities to issue infringement notices (instant fines), whereas a bylaw made solely under the Local Government Act (such as the public places bylaw) does not empower local authorities to issue infringement fines, and only allows prosecution.

³ The Local Government Act 2002 (s.179) also allows local authorities to contract out the administrative and operational aspects of enforcement activity (but the council retains legal responsibility).

⁴ Section 177 of the Local Government Act covers the administrative aspects of enforcement functions, including the appointment of enforcement officers. Each enforcement officer must be issued a warrant specifying the powers delegated to them and the infringement offences in relation to which they are appointed. Their warrant and evidence of identity must be produced when they are undertaking enforcement activities.

⁵ Under section 229 of the Local Government Act 2002

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27. Discretion is a fundamental feature of New Zealand's prosecution system.⁶ Mandatory formal prosecution is not in the public interest, as it would put a strain on limited resources, and frequently, alternatives (such as warnings) may be more effective methods of promoting the aims of the law.⁷ In order to take a prosecution, two tests must be met – firstly, a prima facie (on the face of it) case must be established, and secondly, a prosecution must be in the public interest.⁸
28. The Council's small Inspections and Enforcement Unit applies a range of inspection and enforcement tools to encourage/gain compliance. The Unit's approach to prosecution is based on evidential sufficiency and a clear understanding of public interest, with the aim of obtaining greater overall compliance.
29. This philosophy, as well as constraints around the Council's resources for enforcement, mean that there are significant limits to what the Council is able to enforce in terms of bylaw regulations, either because the balance of public interest is not to enforce and/or there are higher priorities in terms of enforcement of other regulations. The responsibility for the decision to prosecute in relation to any statutory or bylaw offence is vested solely in the Council's Inspections and Enforcement Manager. This is required to ensure consistency of approach and to ensure there is a clear delineation between the governance arm of Council and the regulatory/prosecutorial arm of Council. The Inspections and Enforcement Unit is required by statute to enforce aspects of the Hazardous Substances and New Organisms Act; the Health Act; the Building Act; the Resource Management Act; the Dog Control Act; the Sale of Liquor Act; the Fencing of Swimming Pools Act; and the Local Government Act.

There are a number of examples of non-regulatory measures proving much more effective than bylaw enforcement in resolving issues. One example is the current successful focus of much of the current Animal Control work around educating and informing the public about dogs and safety to reduce and avoid issues arising. Another is the provision of street skating facilities at the Washington Parade Skateboarding park which has made a significant impact on reducing skateboarding problems in other public places. The Council also worked with the operators of ATMs to provide litter receptacles to deal with the issue of litter from ATM receipts.

30. In considering bylaw reviews and in making bylaws generally, Councillors need to consider both the legal limits and the practicalities of enforcing them. A practical limitation of bylaw enforcement is the inability of Council staff to take definitive action in circumstances where those breaching a bylaw cannot be identified and who refuse to provide Council enforcement staff with their name and address. This is particularly relevant in relation to existing bylaws that have attempted to regulate/prohibit behavioural-based offending. Council staff called to attend to a behavioural based complaint, ultimately are redundant unless the co-operation of the offender is obtained. If the name and address of the offender is not supplied or available through other means, Council enforcement staff have no power to take the matter further (unlike Police who ultimately have the power of arrest for offenders who fail to co-operate or supply their name and address).

CONSULTATION AND COMMUNICATIONS

31. To avoid unnecessary work and duplication, a generic communications and consultation plan has been developed for the bylaw reviews. This generic plan will provide a core to the communications and consultation with the plan being tailored to the particular needs of each of the bylaw reviews to ensure that it fits the specifics of each case.
32. The broad aims of the generic communications and consultation plan are:
- to communicate effectively with stakeholders about each of the bylaw reviews
 - to encourage stakeholders to engage with the review processes
 - to encourage stakeholder buy-in with the individual bylaw review outcomes.

⁶ See the Law Commission report: "Report 66, Criminal Prosecution", 2000, p.46

⁷ See the Law Commission report: "Report 66, Criminal Prosecution", 2000

⁸ See the Law Commission report: "Report 66, Criminal Prosecution", 2000, p.47

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33. A core group of stakeholders has been identified that are likely to have an interest in all the bylaw reviews (for example, all residents' groups). Details of each of the bylaw reviews and an invitation to participate in the consultation process will be sent to each of these groups. The list of groups identified in this category is attached as Appendix C.
34. In addition, there will be specific stakeholders for each bylaw that will need to be contacted as part of the reviews. Appendix D provides a list of the broad types of stakeholders identified for the upcoming bylaw reviews. In each case, direct mail will be used as much as possible to contact the stakeholder groups. In some cases, for example, the Dog Control Policy and Bylaw, there are specific statutory requirements around consultation.
35. There will be a need to raise awareness amongst the general public for each review. The standard media channels (including those covering Banks Peninsula) will be used. Information brochures and publicity material will be made available through the Council's libraries and service centres, with the Customer Centre dealing with telephone enquiries. Additionally, all relevant information will be placed on the Council's website.
36. Public meetings around the city and meetings with specific stakeholder groups will be used where appropriate.
37. The aim of the communications material produced will be to convey the information in ways that are simple and easy to understand. However, it should be recognised that some of the matters covered in bylaws will be technical in nature, and there are limits to how simple the information can be made before its meaning or potential interpretation begins to change.
38. As discussed elsewhere in this report, all bylaw reviews are required to use the Special Consultative Procedure. Consequently, processes will be put in place to receive and record all submissions, and public hearings will be arranged to hear oral submissions. Staff will summarise and analyse the submissions received and present this to the relevant hearings panel to assist with its deliberations.

3. BYLAW REVIEW PROCESS - TIMETABLE AND DECISION-MAKING

General Manager responsible:	General Manager Strategy and Planning DDI 941-8177
Officer responsible:	Alan Bywater DDI 941-6430
Authors:	Terence Moody – Principal Adviser (Environmental Health) Teena Caygill – Policy Analyst (Bylaws)

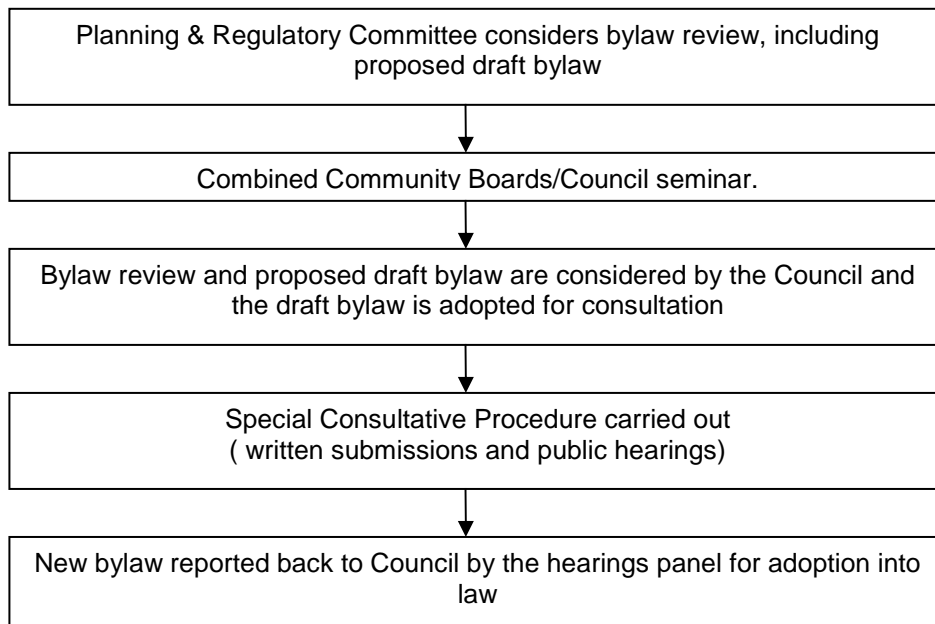
PURPOSE OF REPORT

1. The purpose of this report is to determine the timetable and decision-making processes to be used in reviewing bylaws.

(Note: this report and process is about reviewing the existing bylaws to meet statutory requirements and **not** about the creation of new bylaws.)

DECISION-MAKING PROCESSES FOR MAKING, AMENDING OR REVOKING BYLAWS

2. The process to review certain bylaws is set out in ss 158 and 160 of the Local Government Act 2002. A review of a bylaw requires that the Council make the determinations in s.155 and then whether the bylaw is to be continued without amendment, amended or revoked, or revoked and replaced, the Special Consultative Procedure must be used. The Local Government Act 2002 sets out the procedural requirements for making, amending or revoking bylaws (ss 155 and 156). In each case, the Special Consultative Procedure must be used as set out in ss 83 and 86.
3. It is important that the decision-making processes used by the Council facilitate the timely completion of the bylaw reviews, given the tight statutory timeframes and the potential impact from failing to achieve these statutory timeframes.
4. The involvement of Community Boards in the review of bylaws prior to the Council considering a proposed bylaw is both desirable and helpful in ensuring that all local issues have been adequately considered.
5. The suggested process to consider the bylaw reviews is as follows:



6. The proposed schedule for reviewing bylaws is attached as Appendix A. **It should be noted that there is no room for flexibility in the timelines to complete the review of a number of these bylaws within the statutory timeframes. There is no available time to visit any stage in decision-making more than once, nor to postpone making a decision at any stage.** At a number of points in this timeline the requirements of staff in terms of preparing material, organising hearings etc is very challenging.

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7. The early stages of the timeline are particularly important and any disruption to these have significant and magnified subsequent impacts. **It is critically important that proposed bylaws are approved or decisions to revoke bylaws are made by the Council at its 28 February 2008 meeting for the Dog Control Policy and Bylaw, Public Places Bylaw, the Swimming Pools Bylaw, the Banks Peninsula Amusement Devices Bylaw, the Banks Peninsula Nuisances Bylaw and the Water Related Services Bylaw. Similarly, that a proposed Traffic and Parking Bylaw is approved by the Council at its 13 March 2008 meeting.**

It should be noted that the bylaw review programme in 2009 is being arranged to avoid the major LTCCP period (i.e. most of the first half of 2009). This of course limits the times in which bylaw reviews can be carried out in 2009 to achieve the statutory timelines.

8. The third and fifth stages in the flow diagram above are those in which the risk of the process being held up and potentially resulting in failure to achieve the statutory timelines is greatest due to Council meeting schedules. It is therefore important to try to resolve the significant issues involved in the review of each bylaw prior to it being formally considered as a proposed bylaw at the Council meeting. This means that the discussion and consideration given to each of the bylaws at the Planning and Regulatory Committee is very important. Similarly, resolving any issues that arise at the combined Community Boards/Council seminars **at the time** will be critical.
9. A table is provided below of the schedule of hearings during the first half of 2008.

Week	Hearings to be scheduled
28 April – 2 May 2008	Public Places Bylaw Water Related Services Bylaw Banks Peninsula Nuisances Bylaw
5 May – 9 May 2008	Dog Control Policy and Bylaw
12 May – 16 May	Annual Plan
19 May – 23 May 2008	Traffic and Parking Bylaw
26 May – 30 May	No hearings Parks and Reserves Bylaw
2 June – 6 June	Marine Facilities Bylaw General Bylaw

10. At the final stage in which the final bylaw is considered and approved, it will be difficult for the Council to depart in any material way from the recommendations of the hearings panel, without the risk of failing to achieve the statutory timeframes. For this reason, the selection of and consideration by hearings panels also becomes a very important part of the process.
11. To minimise the risk of a divergence of views between the hearings panel and the majority of the Council on any bylaw, one option available is to select the entire Council as the hearings panel for each bylaw. However, the programme of hearings in the period late April to early June is significant and it may not be feasible for the whole Council to act as a hearings panel for all the bylaws and continue its other work.
12. The Council could select a separate hearings panel for each bylaw and thereby share the work load relatively evenly amongst its members.
13. Alternatively the Council could establish one hearings panel to hear all the bylaw submissions. Given the volume of bylaw hearings, what may be more practical in this case is creating two hearings panels with fixed membership that could share the various bylaw reviews between them. This has the advantage of developing some detailed knowledge on bylaw issues within these two panels, as well as the members becoming used to working with one another in a hearings process.

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14. In the weeks 28 April to 2 May and 2 to 6 June, it is likely to be necessary to have hearings for more than one bylaw taking place in parallel. On these occasions, it is likely be necessary to have two separate hearings panels working simultaneously.
15. It is suggested that to ensure as many of the Councillors as possible are involved in arriving at the hearings panels' recommendations, thereby reducing the risk of a divergence of views between the hearings panel and the Council, that the hearings panels be made up entirely of Councillors (rather than including Community Board Members or other nominated people).

FINANCIAL IMPLICATIONS

16. The review of bylaws can be carried out within existing budgets.
17. The Council should consider the impact of each bylaw review on the costs of enforcement, signage, education, etc, as part of the review of each bylaw.

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

18. The review of bylaws can be carried out within the budgets indicated in the LTCCP.

LEGAL CONSIDERATIONS

19. The legal issues around bylaw reviews have largely been canvassed in the accompanying background report on the bylaw reviews.
20. The Local Government Act 2002 requires bylaw reviews to follow the Special Consultative Procedure. A minimum period for consultation of one month is required by the Act, and all submitters who wish to must be given the opportunity to present their submission verbally.
21. Under the Local Government Act 2002, schedule 7, clause 32(1)(b), the Council cannot delegate the power to make a bylaw to a committee or other subordinate decision-making body, community board, or member or officer of the local authority. Consequently, the final decisions on the making of bylaws must be made through a Council meeting.
22. Many of the bylaws will be automatically revoked on 1 July 2008 (depending on the legislation or parts of legislation under which they were created) and if not reviewed, will not be able to be legally enforced after that time.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

23. The timetables and processes outlined in this report are consistent with the Democracy and Governance Group of activities in the LTCCP which states '*The Council provides opportunities for public participation in decision-making, and it receives and processes the community's input to ensure effective decision-making*'.

ALIGNMENT WITH STRATEGIES

24. The overall timetable and process is not directly applicable to any specific strategy. The content of the individual bylaws relate to and play important roles in contributing to a number of the Strategic directions.

CONSULTATION FULFILMENT

25. Not applicable to this report. Clearly, consultation is an important part of the process to review bylaws.

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STAFF RECOMMENDATION

It is recommended that the Committee:

1. Approve and recommends to Council that:
 - (a) the bylaw review timetable attached as Appendix A be adopted.
 - (b) the Council select two hearings panels for the purpose of carrying out bylaw hearings up to the end of July 2008 and divide up the bylaw reviews between them.
- 2 Identifies a suitable date in the week commencing 11 February 2008 for a combined Council and Community Board seminar on the bylaw reviews the Committee will have considered at its 29 January and 7 February 2008 meetings i.e. Public Places Bylaw, Dog Control Policy and Bylaw, Banks Peninsula Nuisances Bylaw; Swimming Pools and Banks Peninsula Amusement Devices Bylaws, Water Services Bylaw and Traffic and Parking Bylaw.

PART TWO

4. 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,⁹ 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 games¹⁰
 - 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 options¹¹ 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.

⁹ This is required under s.155(1) of the Local Government Act 2002

¹⁰ "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.

¹¹ This is required under s.77 of the Local Government Act 2002

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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.¹²
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.¹³ 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.¹⁴ 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

¹² 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.

¹³ Parliament has not yet introduced any infringement offences in relation to these matters.

¹⁴ 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".

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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.¹⁵

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.¹⁶

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 2008.¹⁷ 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 2009.¹⁸ 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.¹⁹ 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.²⁰

¹⁵ For example, the small team of eleven managed over 3,500 complaints last year across a of range of legislation.

¹⁶ Our Community Plan 2006-2016, Volume 1, page 149.

¹⁷ 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.

¹⁸ As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

¹⁹ Section 146(a)(vi), trading in public places.

²⁰ 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.

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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.²¹ 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.²²
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.²³ 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.

²¹ 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*

²² Sections, 14, 16, 17, 18 and 19 of the New Zealand Bill of Rights Act 1990.

²³ 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.

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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.²⁴
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.²⁵
36. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.²⁶

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..."²⁷ 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..."²⁸ and the number of pedestrians in the Central City is listed as a measurable sign of achievement in a number of the objectives.²⁹
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.³⁰ 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".³¹

²⁴ Our Community Plan 2006-2016, Volume 1, p.60

²⁵ Our Community Plan 2006-2016, Volume 1, p.61

²⁶ Our Community Plan 2006-2016, Volume 1, p.64

²⁷ <http://www.ccc.govt.nz/CentralCity/>

²⁸ 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

²⁹ Central City Strategy, stage II, , pp 48-51, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

³⁰ <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

³¹ Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

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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".³² 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."³³
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".³⁴
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".³⁵ 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)".³⁶
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

³² <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

³³ Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21st Century

³⁴ <http://www.ccc.govt.nz/cycling/future/>

³⁵ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

³⁶ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

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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.

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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 freedoms³⁷
 - 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.³⁸
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.

³⁷ 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))

³⁸ 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.

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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,³⁹ 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.⁴⁰

³⁹ 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).

⁴⁰ 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.

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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)⁴¹ 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.

⁴¹ 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.

4 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”.
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. • 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). • 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.

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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. • Enforcement could put Council staff in danger and Council Enforcement Officers are not trained to deal with such matters.
CCC – no coverage	<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.
BPDC - clause 3.2.1	

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.

4 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)).⁴²
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 2005.⁴³
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).⁴⁴ 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.⁴⁵ 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".⁴⁶ 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.⁴⁷ 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.⁴⁸
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.

⁴² 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.

⁴³ Willowford Family Trust v Christchurch City Council; 29 July 2005; Justice Panckhurst; High Court, Christchurch.

⁴⁴ 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).

⁴⁵ Section 9 of the Prostitution Reform Act 2003, Sex workers and clients must adopt safer sex practices

⁴⁶ Prostitution Reform Bill, As reported from the Justice and Electoral Committee, 29 November 2002, p. 32

⁴⁷ Report by the Chairman of the Christchurch City Council Prostitution Reform Act Subcommittee, 22 April 2004

⁴⁸ For example, indecent exposure is an offence under the Summary Offences Act (s. 27)

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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.⁴⁹
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.⁵⁰

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.⁵¹ 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.⁵² 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.

⁴⁹ The bylaw will regulate lawful matters – unlawful matters are already illegal due to their coverage under other legislation.

⁵⁰ The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

⁵¹ Section 155(1) requires that a local authority must “determine whether a bylaw is the most appropriate way of addressing the perceived problem”.

⁵² As above.

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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...".⁵³ 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.⁵⁴

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

⁵³ 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

⁵⁴ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997.

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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)
<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 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. <p>Impact on the Council's capacity and responsibilities:</p> <p>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.</p> <p>Effects on Maori:</p> <p>There will be no specific effect on Maori – consolidating, rationalising and modernising the three bylaws will make them easier to understand for everyone.</p> <p>Consistency with existing Council policies:</p> <p>Current policies relating to the management or access of public places include:</p> <ul style="list-style-type: none"> • 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). <p>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.</p> <p>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.</p> <p>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.</p>		

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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

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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.⁵⁵ 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.

⁵⁵ 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)

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	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.

5. 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/>.
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.

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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.*⁵⁶

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?*⁵⁷ 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.

⁵⁶ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

⁵⁷ *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.

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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.

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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.

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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.

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	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>

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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.

5 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.

5 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.

5 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: 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.</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: 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: 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>		