

## 10. PROPOSED GENERAL BYLAW

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### PURPOSE OF REPORT

1. To outline the background and options relating to the review of the Council's general bylaws and to recommend that the Planning and Regulatory Committee adopt and recommend the attached draft *Christchurch City Council General Bylaw 2008* (Attachment 1) to the Council.

### EXECUTIVE SUMMARY

2. The Local Government Act 2002 (LGA 2002) requires the Council to review its bylaws in order to determine that they that 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 two general bylaws administered by the Council. The bylaws are:
  - Banks Peninsula District Council Introductory Bylaws 1972
  - Christchurch City General Bylaw 1990
3. These two general bylaws are required to be reviewed by 30 June 2008.
4. The purpose of a general bylaw is to have, in one place, a set of provisions which are common to all bylaws. Such provisions will apply to all present and future Council bylaws except to the extent that those other bylaws or any Act may provide otherwise. This avoids the unnecessary duplication of such provisions in every bylaw. This enables the Council to keep its various bylaws succinct.
5. The matters which are the subject of the general bylaws include:
  - The manner in which notices under any bylaw may be served
  - Who may sign notices which are issued under a bylaw
  - The appointment of enforcement officers for bylaw enforcement
  - The manner in which a licence under a bylaw is issued
  - The grounds and procedure for suspending or revoking a licence issued under a bylaw
  - Offence provisions which are common to all bylaws
  - The removal of works which exist in contravention of a bylaw
  - Authorising the Council to dispense with compliance with a bylaw in certain circumstances.
6. In essence these provisions relate to the general administration of the Council's bylaws. They provide the mechanism for the administration of those bylaws in an efficient, effective, consistent, fair and transparent manner.
7. Apart from the statutory requirement to review these two bylaws, given the recent inclusion of the Banks Peninsula District in the Christchurch City Council's district, it is timely to consolidate the two different bylaws into one bylaw.
8. Both general bylaws were made prior to the coming into force of the LGA 2002. There are number of provisions in this Act which render redundant a number of provisions in the two general bylaws.
9. A clause by clause analysis of the current existing clauses of the two general bylaws has been undertaken in order to determine what clauses should be retained and what should now be revoked. That analysis also sets out the authority for making the provisions contained in those clauses. That analysis is Attachment 2 to this report.

10. This report also outlines the options for dealing with the problem which the two existing general bylaws were designed to address. In essence the problem is to ensure that the Council's bylaws are administered efficiently, effectively, consistently, fairly and in a transparent manner. The following options have been considered:

Option 1: Do nothing

Option 2: Amend each of the Council's existing bylaws so as to incorporate all of the relevant provisions of the general bylaws in each of them

Option 3: Revoke the two existing bylaws and create a consolidated, rationalised and modernised general bylaw.

11. The recommended option is option 3. Options 1 and 2 are not considered to be acceptable options. Option 1 will leave the Council without an effective mechanism for administering its bylaws in the manner referred to above. Option 2 would involve the application of considerable resources in promoting amendments to the various bylaws of the Council.

12. Option 3 is considered to be the most appropriate means by which the Council may ensure that there are effective mechanisms in place which will enable it to administer its bylaws in the manner referred to above. It is considered that making a consolidated rationalised and modernised bylaw is, in terms of section 155(1) of the LGA 2002, the most appropriate way of addressing the problem outlined above.

13. The draft *Christchurch City Council General Bylaw 2008* has been prepared for Councillor's consideration. It rationalises and modernises the two existing bylaws and amalgamates them into a single new bylaw. This draft is considered to be the most appropriate form of bylaw for the purpose of giving effect to Option 3. It is also considered that a bylaw in this form will best meet the requirement in section 155(2) of the LGA 2002 that is, in the event that the Council determines that a bylaw is the most appropriate way of addressing the perceived problem, the proposed bylaw is the most appropriate form of bylaw.

14. The clauses of the two existing bylaws were assessed to ascertain whether:

- The issues that 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
- The issues are covered by other legislation
- The clauses are reasonably able to be enforced
- The clauses are consistent with the New Zealand Bill of Rights Act 1990.

That assessment forms Attachment 2 to this report.

15. A number of the clauses did not meet the tests referred to above. They are identified in Attachment 2. In particular a number of the existing clauses are now covered by other legislation and are no longer necessary.

16. Should the Council determine that Option 3 is the most appropriate way of addressing the problem of ensuring that the Council's bylaws are administered efficiently, effectively, consistently, fairly and in a transparent manner then it will need to determine whether or not the draft *Christchurch City Council General Bylaw 2008* is the most appropriate form of bylaw and whether or not it gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBOR Act). Advice in this regard is provided in the section headed "Legal Considerations".

17. If the Council adopts Option 3 and forms the view that a bylaw is the most appropriate way of addressing the problem, that the draft is the most appropriate form of bylaw and that there are no implications under the NZBOR Act then the draft will go out for public consultation in accordance with the special consultative procedure set out in sections 83 and 86 of the LGA 2002.

## FINANCIAL IMPLICATIONS

18. It is not anticipated that the adoption of the draft bylaw, as recommended, would have any adverse impact or create any additional demands upon the Council's existing budgetary provisions. It is considered that doing this will assist the Council in administering its current and future bylaws in a cost effective manner.

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

19. The administration and enforcement of Council bylaws is provided for in the LTCCP Regulatory Services Group of activities.

## LEGAL CONSIDERATIONS

20. The following bylaws have been the subject of this review:
- The Banks Peninsula District Council Introductory Bylaws 1972
  - The Christchurch City General Bylaw 1990
21. The LGA 2002 requires that bylaws made under the Local Government Act 1974 (LGA 1974) be reviewed by 30 June 2008. Most of the provisions of the two bylaws have been made under that Act. Although the Banks Peninsula bylaw predates the LGA 1974 it is deemed to have been made under that Act.
22. There are a number of statutory provisions which confer bylaw making powers on the Council. These include sections 542, 591A and 684 of the LGA 1974, sections 145, 146 and 147 of the LGA 2002, section 72 of the Transport Act 1962, section 64 of the Health Act 1956, section 20 of the Dog Control Act 1996 and section 65 of the Reserves Act 1977. The Council has exercised these powers to make the various bylaws which it now administers.
23. The provisions of the general bylaws provide a framework within which those bylaws may be administered and enforced within the parameters of the statutory provisions pursuant to which they were made. There are also certain provisions in the LGA 2002 which supplement that statutory framework. In particular sections 150, 151, 163.
24. Section 150(1) of the LGA 2002 authorises the Council to set fees or charges for a certificate, authority, approval, permit, or consent from, or inspection by, the Council in respect of a matter provided for in a bylaw made under that Act. Section 151(3) provides that such fees must be set either in bylaws or by using the special consultative procedure.
25. Section 151 of the LGA 2002 provides that in making a bylaw under that Act the bylaw may provide for:
- (a) the licensing of persons or property;*
  - (b) the payment of reasonable licence fees;*
  - (c) recovery of costs incurred by the local authority in relation to an activity licensed under a bylaw."*
26. Section 163(1) of the LGA 2002 provides-
- "If authorised by a bylaw to do so, a local authority may—*
  - (a) remove or alter a work or thing that is, or has been, constructed in breach of a bylaw; and*
  - (b) recover the costs of removal or alteration from the person who committed the breach."*

This section applies to all bylaws of the Council.

27. To the extent to which the empowering provisions under which the Council's various bylaws allow, the general bylaw provides the detail by which those particular bylaws may be administered and enforced. Consequently the power to make the draft general bylaw is derived from those individual empowering provisions together with the supplementary provisions of the LGA 2002 referred to above.
28. In undertaking the bylaw review the Council must, in accordance with section 155 of the LGA 2002 make the following determinations:
  - (a) Identification of a perceived problem and consideration of whether a bylaw is the most appropriate way of addressing the perceived problem; and
  - (b) If it has determined that a bylaw is the most appropriate way of addressing the perceived problem then whether:
    - (i) A new bylaw or the reviewed bylaw is the most appropriate form of bylaw (section 155(2)(a)); and
    - (ii) A new bylaw or the reviewed bylaw gives rise to any implications under the NZBOR Act (no bylaw can be made which is inconsistent with the NZBOR Act (section 155(3))).
29. The nature of the perceived problem is, generally speaking, that of ensuring that the Council's bylaws are administered efficiently, effectively, consistently, fairly and in a transparent manner. The problem is analysed in much further detail in the section of this report headed "Background". It is the view of the Legal Services Unit that the problem outlined is best addressed by making a bylaw. The problem directly relates to the administration of Council bylaws and is best addressed by means of bylaw provisions which supplement the provisions of the Council's existing and future bylaws.
30. The NZBOR Act sets the minimum standards to which public decision making must conform. The relevant part of the NZBOR Act in relation to the proposed draft bylaw is the right of every person to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise. This right is set out in section 21 of that Act.
31. Clause 11 of the draft bylaw authorises the Council to remove or alter any work or thing that is or has been constructed in breach of any Council bylaw. The making of a bylaw provision to this effect is specifically contemplated by section 163 of the LGA 2002 (set out above). Consequently it is considered that this clause does not give rise to any implications under the NZBOR Act.
32. It is the view of the Legal Services Unit that the draft bylaw does not give rise to any implications under the NZBOR Act.
33. In addition, under the general law, there are four requirements for a valid bylaw. These are:
  - (a) an Act of Parliament must empower the Council to make the bylaw. In other words, the Council must have clear statutory authority to make the proposed bylaw.
  - (b) the bylaw must not be repugnant to the general laws of New Zealand. The basic proposition is that delegated legislation must not override primary legislation. With respect to a bylaw, if it were to override another statute or the common law, then the bylaw could be found to be invalid because it is repugnant to the general laws of New Zealand.
  - (c) the bylaw must be certain. There must be adequate information as to the duties of those who are to obey it.

- (d) the bylaw must be reasonable. The reasonableness of any bylaw is a major consideration. The leading case setting out factors that the courts will consider when assessing the reasonableness of a bylaw is *McCarthy v Madden* (1914) 33 NZLR 1251. Relevant principles from this case include:
- (i) where a bylaw necessarily affects a right common to all citizens, it must be scrutinised with greater care than a bylaw which simply affects the inhabitants of a particular district;
  - (ii) the reasonableness of the bylaw can only be ascertained in relation to the surrounding facts, including the nature and condition of the locality in which it takes effect, the danger or inconvenience it is designed to remedy, and whether or not public or private rights are unnecessarily or unjustly invaded;
  - (iii) a bylaw which unnecessarily interferes with a public right without producing a corresponding benefit to the inhabitants of the locality in which it applies must necessarily be unreasonable.

It is considered that the draft bylaw meets each of the abovementioned criteria.

34. This report also covers matters relating to section 77 of the LGA 2002. That section relates to decision making and requires the Council 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. This analysis is set out in the section of this report headed "Assessment of Options".
35. 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 LGA 2002. If the Council agrees to the attached draft bylaw it will need to appoint a hearings panel, to agree to a period of time in which submissions will be received, and to approve a statement of proposal and a summary of information for consultation. For this purpose appended to this report is a draft Statement of Proposal (Attachment 3) and a draft Summary of Information (Attachment 4) for the Council's approval.
36. Section 81 of the LGA 2002 requires the Council to establish and maintain processes to provide opportunities for Maori to contribute to the decision making processes. The Ngāi Tahu Runanga company Mahaanui Kurataiao Ltd (MKT) have already been advised of the purpose and content of the proposed draft bylaw. 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?**

37. Yes, as above.
38. The clause by clause analysis (Attachment 2) compares the current clauses across the two bylaws under review and contains advice on whether each clause should be included in the new draft bylaw. The clauses were assessed having regard to the matters outlined in paragraph 14 of this report.
39. When making any regulation, including bylaws, account should be taken of the Ministry of Economic Development's Code of Good Regulatory Practice. That suggests that the following matters 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 the 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.

40. To summarise the legal conclusions reached:

- The draft *Christchurch City Council General Bylaw 2008* is considered to be the best way of dealing with the problem of ensuring that the Council's bylaws are administered efficiently, effectively, consistently, fairly and in a transparent manner
- The draft *Christchurch City Council General Bylaw 2008* is considered to be the most appropriate form of bylaw
- The draft *Christchurch City Council General Bylaw 2008* does not give rise to any implications under the NZBOR Act such that the draft bylaw could be said to be inconsistent with that Act
- The draft bylaw is authorised by the statutory provisions referred to in paragraphs 22-26 above
- The draft bylaw is not considered to be repugnant to the general laws of New Zealand
- The draft bylaw is certain
- The draft bylaw is reasonable.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

41. The draft *Christchurch City Council General Bylaw 2008* would provide a means by which the Council's bylaws may be administered in an efficient, effective, consistent, fair and transparent manner thereby assisting in the administration and enforcement of those bylaws as provided for in the LTCCP regulatory services group of activities.

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

42. The draft *Christchurch City Council General Bylaw 2008* 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**

43. As above.

#### **CONSULTATION FULFILMENT**

44. If the draft bylaw is adopted by the Council, then as part of the special consultative procedure stakeholder groups that may have an interest in the matters covered by the draft bylaw will be given the opportunity to make submissions and be heard before a Hearings Panel if they so wish.

45. As stated in paragraph 36, MKT has been notified of the proposed draft bylaw and will be given the opportunity to make submissions and be heard before a Hearings Panel if it so wishes as part of the special consultative procedure.

## STAFF RECOMMENDATION

It is recommended that the Committee recommends to the Council:

- (a) That the following bylaws be revoked and replaced by the draft *Christchurch City Council General Bylaw 2008* (Attachment 1), subject to any changes that the Committee resolves:
  - (i) Banks Peninsula District Council Introductory Bylaws 1972
  - (ii) Christchurch City General Bylaw 1990
- (b) That the attached draft bylaw, in terms of section 155 of the LGA 2002:
  - (i) is the most appropriate way of addressing the perceived problem of ensuring that the Council's bylaws are administered in an efficient, effective, consistent, fair and transparent manner; and
  - (ii) is the most appropriate form of bylaw; and
  - (iii) does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (c) That the draft Statement of Proposal (Attachment 3) be adopted, subject to any changes the Committee resolves.
- (d) That the draft Summary of Information (Attachment 4) be adopted, subject to any changes that the Committee resolves.
- (e) That the period within which submissions may be made to the Council in the course of the Special Consultative Procedure be from 12 April 2008 until 14 May 2008 (inclusive).
- (f) That a Hearings Panel be appointed to hear submissions received during the Special Consultative Procedure.

## BACKGROUND (THE ISSUES)

46. This review covers the two general bylaws presently administered by the Council namely the, Banks Peninsula District Council Introductory Bylaws 1972 and the Christchurch City General Bylaw 1990.
47. The two bylaws contain similar provisions which apply to all bylaws of the two local authorities which made them. Those provisions are detailed in the attached analysis (Attachment 2).
48. The problems or issues which are covered by those bylaws are:
  - Ensuring that minor deviations from forms prescribed by bylaws do not invalidate those forms
  - Specifying how notices given under bylaws may be served
  - Specifying who may sign such notices
  - Authorising the Council to appoint persons to enforce its bylaws
  - Specifying the manner in which a person may apply for a licence under a bylaw
  - Providing a procedure whereby the Council may suspend or cancel a licence issued under a bylaw.
  - Providing general offence provisions for breaches of its bylaws
  - Authorising the Council to remove any work or thing which exists in breach of a bylaw
  - Providing for penalties for bylaw offences
  - Authorising the Council to dispense with the observance of a bylaw in certain circumstances
  - Authorising bylaw enforcement officers to require persons found committing bylaw offences to provide their names and addresses
  - Authorising the Council to delegate any of its powers under its bylaws
  - Requiring the Council to make available printed copies of its bylaws
  - Authorising the Council to approve the use of something which has not been previously used and which does not fully comply with the provisions of a bylaw
  - Requiring the Council to reduce an annual bylaw licence fee where the licence is issued for less than 1 year
  - Providing bylaw enforcement officers with a power of entry on to private land for the purpose of enforcing its bylaws.
  - Authorising the Council to fix fees for a licence payable under a bylaw.

These issues are each discussed in turn below. In those cases where it is recommended that provision be made in the draft bylaw to address the issue the statutory authority for making such a provision is set out in the corresponding section of Attachment 2.

49. It is desirable that the Council make provision to the effect that where a form is prescribed in a bylaw any form is not invalid just because it contains some minor differences from the prescribed form. This is of course provided that the form still has the same effect and is not misleading. A similar provision is contained in section 26 the Interpretation Act 1999 however it does not extend to forms prescribed by bylaws. It is considered that the most appropriate means of addressing this matter is by way of a bylaw provision.
50. It is desirable that the Council has a transparent, standard, and effective mechanism for serving, on a any person, notices or other documents which are required to be served under any of its bylaws. Without this doubts are likely to arise as to how a notice or other document may be validly served. It is considered that the most appropriate way of providing this is by way of bylaw.
51. It is desirable that provision be made for who may sign a notice, order or other document which is given by the Council under a bylaw in those cases where there is no statutory or bylaw provision which provides who may sign such a document. It is considered that the most appropriate way of providing this is by way of bylaw.



52. In most cases the specific legislation under which a particular bylaw is made will specifically authorise the Council to appoint enforcement officers to ensure that the provisions of that bylaw are observed. A good example is section 177 of the LGA 2002. It authorises the Council to appoint enforcement officers in relation to any offence against bylaws made under that Act. It is necessary however to have a means by which enforcement officers may be appointed by the Council for bylaws where there is no such statutory provision authorising their appointment. There a number of powers given by the LGA 2002 to enforcement officers appointed by the Council to enforce its bylaws, irrespective of what statutory authority those bylaws were made under. It is considered that the most appropriate way of providing this is by way of bylaw.
53. It is desirable that the Council has a transparent, standard, and effective procedure by which persons may apply for licences under its bylaws. Such a procedure should of course be subject to any modifications specifically provided for in a particular bylaw in the case of a particular licence. It is considered that the most appropriate way of providing this is by way of bylaw.
54. It is desirable that the Council have fair, transparent, standard, efficient and effective procedure by which it may suspend or cancel a licence which it has issued under a bylaw. There should be in place a set of criteria upon which the Council may suspend or cancel a licence, a set procedure which the Council must follow if it wishes to suspend or cancel a licence, and statement of the effect that the suspension or cancellation of a licence would have on the licence holder. The system should be transparent and fair to the licence holder. It is considered that the most appropriate way of providing for such a system is by way of bylaw.
55. It is necessary that the Council have in place detailed provisions under which it may prosecute offences against its bylaws. It is also desirable that those provision are common to all its bylaws that they are transparent and will ensure the effective enforcement of its bylaws. It is considered that the most appropriate way of providing for such a system is by way of provision in a bylaw which applies to all Council bylaws.
56. There are frequent occasions when a thing has been placed or a work has been constructed in breach of a bylaw. As part of an effective enforcement regime the Council may wish to alter or remove that thing or work. Section 163 of the LGA 2002 (set out in paragraph 26 above) contemplates this situation and provides the Council with the authority to do this by means of a bylaw provision. The only appropriate means of providing the Council with such an enforcement tool to deal with such matters is by way of a bylaw provision as contemplated by section 163.
57. It is desirable that there be mention in the Council's bylaws of the penalties for the breach of those bylaws or, at the very least, a direction as to where one can find the penalties applicable in the case of a breach of a particular bylaw. The penalties for a breach of a bylaw will usually be set out in the empowering legislation under which the bylaw was made. If that legislation makes no such provision then section 20 of the Bylaws Act 1910 provides a penalty. Bylaw penalties are changed from time to time by way of amendment to the empowering legislation. Consequently rather than specify in a bylaw the penalty applying at the time the bylaw was made it is better practice to refer directly to the empowering legislation. It is considered that the most appropriate way of dealing with this issue is to provide, by way of a general bylaw provision, a direction as to where a person may find the penalties applicable to a particular bylaw offence.
58. Situations will often arise where compliance with a Council bylaw in a particular situation would needlessly affect a person without providing any corresponding benefit to the community. Consequently it is highly desirable that the Council have the power to dispense with the strict compliance with any of its bylaws in certain situations. It is also desirable that there be a fair, transparent, standard, efficient and effective procedure under which a person may apply to the Council for a dispensation. It is considered that the most appropriate way of providing this is by way of bylaw.

59. In order to provide for the effective enforcement of Council bylaws it is necessary that there be a mechanism which will aid Council enforcement officers in identifying persons that the officers find committing offences or suspect of having committed offences. One such mechanism is to authorise enforcement officers to require such persons to provide their names and addresses and to provide that if they fail to do so they commit an offence. It is considered that the most appropriate way of providing such a mechanism is by way of bylaw.
60. Both bylaws under review contain provisions which authorise the Council to delegate any of its powers under all Council bylaws generally. There is no longer any need to have such a provision in Council bylaws as clauses 32AA and 32 of the 7<sup>th</sup> Schedule to the LGA 2002 now provide the Council with general powers of delegation which encompass its powers under its bylaws. Consequently there is no corresponding provision in the draft bylaw.
61. Clause 8 of the Christchurch City General Bylaw 1990 requires the Council to keep at its main office printed copies of all its bylaws and to make them available to the public at the published prices. Such a provision is no longer necessary. Section 157 of the LGA 2002 requires the Council to keep copies of all its bylaws at its office and to make them available for public inspection without fee. The section also authorises the Council to impose a reasonable charge for supplying a copy of a bylaw to any person. Consequently there is no corresponding provision in the draft bylaw.
62. Both bylaws under review contain similar provisions which authorise the Council to approve the use of something which has not previously been used when that thing does not fully comply with the provision of any particular Council bylaw. Such a provision appears to be quite unnecessary as there is no ascertainable record of it ever having been used. In essence there appears to be no evidence of a problem which would justify retaining such a provision. It is noteworthy that the provision is a standard provision from very old model bylaws. Since those model bylaws were developed a considerable body of central government legislation has evolved which has lessened the need for such a provision. One particular example of such legislation is the Health and Safety in Employment Act 1992. Consequently there is no corresponding provision in the draft bylaw.
63. Clause 106 of the Banks Peninsula bylaw provides that where the Council has set an annual fee for a licence under any of its bylaws and a licence is issued for less than 1 year then the licence fee shall be reduced by 1/12<sup>th</sup> for every month less than a year for which the licence is issued. This provision is unnecessary as the Council may, when setting individual licence fees, make specific provision to that effect. There was no such provision in the Christchurch City General Bylaw 1990. Consequently there is no corresponding provision in the draft bylaw.
64. Clause 105 of the Banks Peninsula bylaw confers a power of entry on to private land for authorised Council officers and inspectors to carry out inspections for the purposes of its bylaws. There is no corresponding provision in the Christchurch City General Bylaw 1990. Such a provision is no longer necessary having regard to the powers of entry conferred upon Council enforcement officers under sections 172 and 182 of the LGA 2002. Consequently there is no corresponding provision in the draft bylaw.
65. Clause 11 of the Christchurch City General Bylaw 1990 provides that the Council may fix, alter or abolish the fees payable to it for any licence required pursuant to any bylaw. There is no corresponding provision in the Banks Peninsula bylaw. Such a provision is now considered unnecessary having regard to the fact that most Council bylaws are now made under the LGA 2002 and section 150 of that Act authorises the Council to set fees or charges payable for licences required under bylaws made under that Act. It also specifies procedures which the Council must follow in setting such fees. Where a bylaw which is made under other legislation requires a licence that bylaw will specify, in accordance with the particular empowering legislation, whether a fee is required and the manner in which the fee may be set. Consequently there is no corresponding provision in the draft bylaw.

## **THE OBJECTIVES**

66. The objective of the draft *Christchurch City Council General Bylaw 2008* is to have, in one place, a set of provisions which are common to all bylaws. Those common provisions concern the general administration and enforcement of all of the bylaws administered by the Council. They provide the mechanism for the administration and enforcement of those bylaws in an efficient, effective, consistent, fair and transparent manner. The provisions will apply to all present and future Council bylaws except to the extent that those other bylaws or any Act may provide otherwise.
67. The advantages of having such common provisions in one bylaw is to standardise the administration and enforcement of the Council's various bylaws and to avoid unnecessary duplication of such provisions in every bylaw. This enables the Council to keep its various bylaws succinct.
68. This report outlines the options for dealing with the problems addressed by present general bylaws, includes a draft new general bylaw, and recommends that the Council adopt the draft bylaw subject to the necessary public consultation to seek the views of the community on the draft.

## **THE OPTIONS**

### **Option 1**

69. Do nothing, is not considered to be acceptable as the two general bylaws must be reviewed by 30 June 2008 under the requirements of section 158 of the LGA 2002. Failing to review the two bylaws by this date would lead to confusion and uncertainty as to the validity of the various provisions of those bylaws after the review date. Additionally because of the amalgamation of the Christchurch City Council and the Banks Peninsula District Council it is sensible to combine the relevant provisions of each bylaw into one new bylaw in order to ensure the uniformity of bylaw administration and enforcement across the whole of the Council's district.

### **Option 2**

70. The amending of each of the Council's existing bylaws so as to incorporate all of the relevant provisions of the two existing general bylaws, is not considered to be an acceptable option. This would be very time consuming and wasteful of Council resources as it would require the amending of most, if not all, of the existing bylaws administered by the Council. The amendment processes would necessarily involve the Special Consultative Procedure. The outcome would result in the addition of repetitive and lengthy provisions to most of the Council's bylaws.

### **Option 3**

71. Revoke the two existing bylaws and create a consolidated, rationalised and modernised general bylaw.

## **THE PREFERRED OPTION**

### **Option 3**

72. Revoking the two existing bylaws and making a consolidated, rationalised and modernised general bylaw. This option is considered to be the most appropriate means by which the Council may ensure that there are effective mechanisms in place which will enable it to administer its bylaws in a fair, transparent, and consistent manner.

## ASSESSMENT OF THE OPTIONS

### The Preferred Option

#### 73. Option 3

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>• An easier to understand bylaw as it would be written in modern plain English</li> <li>• Able to delete redundant provisions</li> <li>• A consolidated bylaw to cover the whole of the Council's jurisdiction rather than having separate bylaws for different areas</li> <li>• Uniformity in the administration and enforcement of the Council's bylaws generally</li> <li>• Avoids the uncertainty of maintaining the status quo</li> </ul>	<ul style="list-style-type: none"> <li>• Need to advertise and communicate to the public of the changes</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>

**Extent to which community outcome are achieved:**

The community outcome that this option would contribute to is a well governed city which has certainty and consistency in the administration and enforcement of its various bylaws.

**Impact on the Council's capacity and responsibilities:**

This option would assist the Council in administering and enforcing its bylaws in a fair, transparent, and consistent manner.

**Effects on Maori:**

There will be no specific effect on Maori.

**Consistency with existing Council policies:**

The Council has many policies which are implemented through its various bylaws. This option will enhance the implementation of those policies by ensuring that the relevant bylaws are able to be administered and enforced in an efficient, fair, transparent, and consistent manner.

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

Both the Legal Services Unit and the Inspections and Enforcement Unit are in favour of this option. Further views may be obtained through the Special Consultative Procedure.

The MED's Guide to Good Regulatory Practice promotes the importance of clarity through plain English drafting in order to increase the public's understanding of it legal obligations and legal rights.

**Other relevant matters:**

Section 158(2) of the LGA 2002 requires the Council to review the bylaws by 30 June 2008. The amalgamation of the CCC and the BPDC requires an amalgamation of the bylaws which cover the whole region under the CCC jurisdiction.

**Maintain the Status Quo (if not preferred option)**

74. Option 1

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>Existing bylaws may be known to some people – no new requirement to publicise</li> </ul>	<ul style="list-style-type: none"> <li>Confusion and uncertainty as to the status and enforceability of the bylaws</li> <li>Reputation of the Council tarnished by not meeting the LGA 2002 review requirements</li> <li>Reputation of the Council tarnished by failing to update bylaws as a result of the CCC/BPDC amalgamation</li> <li>Retention of bylaw provisions which are no longer necessary</li> <li>Some of the clauses are repetitive</li> <li>The language used is sometimes convoluted and confusing</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>Legal uncertainty as to the status and enforceability of the bylaws</li> <li>Open to legal challenge</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p>The community outcome of a well governed city would not be met as the maintaining of the current situation would be confusing and uncertain and would not comply with the LGA 2002.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>Section 158(2) of the LGA 2002 requires the Council to review the bylaws by 1 June 2008. Failing to meet this requirement would tarnish the council's reputation. It would also create an uncertain legal environment as to which clauses are enforceable.</p> <p><b>Effects on Maori:</b></p> <p>There will be no specific effect on Maori – maintaining the status quo would have a negative impact upon the city as a whole.</p> <p><b>Consistency with existing Council policies:</b></p> <p>The Council has policies which currently cover a wide range of matters covered by its bylaws. However without a modernised general bylaw to assist in the administration and enforcement of those bylaws those policies may be difficult to implement.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Legal services unit does not support the maintaining of the status quo nor does the Inspections and Enforcement Unit.</p> <p><b>Other relevant matters:</b></p> <p>The confusion on the legality of the clauses within the bylaws as a result of failing to review those bylaws by the time specified by the LGA 2002 for both the community and anyone who needs to enforce them.</p>		

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

75. Option 2

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>All of the provisions relating to the administration and enforcement of a particular bylaw would be wholly contained in that bylaw</li> </ul>	<ul style="list-style-type: none"> <li>Necessarily increases the length of most Council bylaws</li> <li>Many bylaws would contain many identical provisions which could otherwise have been prescribed in one single bylaw</li> <li>A danger that there could be a loss of uniformity in the administration and enforcement of various Council bylaws should such provisions vary from bylaw to bylaw</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>Considerable cost to the Council in amending each of its existing bylaws in order to incorporate into those bylaws the relevant provisions of a general bylaw</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p>The option would not contribute to a well governed city as it would add considerably to the volume of bylaw provisions and could well result in the various bylaws of the Council not being administered in a uniform manner.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>The option would necessarily involve the allocation of considerable resources by the Council in undertaking the amendment of most of its existing bylaws.</p> <p><b>Effects on Maori:</b></p> <p>There will be no specific effect on Maori.</p> <p><b>Consistency with existing Council policies:</b></p> <p>The Council currently has policies which cover a wide range of matters which are the subject of its bylaws. The adoption of this option could hamper the timely implementation of those policies due to the delays which are likely to be experienced as a result of undertaking a multitude of bylaw amendments.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Legal Services Unit does not support this option as it is not considered to be an efficient use of Council resources.</p> <p><b>Other relevant matters:</b></p>		