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Christchurch City Council

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 6 MARCH 2008

AT 9.30AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

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

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Mike Theelen
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PART A - MATTERS REQUIRING A COUNCIL DECISION
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1. APOLOGIES

SECTION 1 - REGULATORY AND PLANNING

2. CORRECTION OF MINOR ERRORS IN THE CITY PLAN

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Team Leader City Plan
Author:	David Punselie, Planning Officer, City Plan

PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council correct minor errors in the City Plan.

EXECUTIVE SUMMARY

2. In a decision released in 1999 on Filling and Excavation Rules the Council accepted some submissions that sought to amend the maximum volume figures for filling and excavation shown in Table 1 referred to in rule 9-5.5.2 of the City Plan. In its decision the Council agreed to increase the maximum volume of fill allowed as a development standard in the Rural Quarry Zone from 100m^3/ha to 2,000m^3/ha and to introduce a specific maximum volume of 5,000m^3/ha as a development standard for Ruapuna Park Raceway. When the City Plan as amended by the Council decisions was reprinted in 1999 the respective figures were shown as 200m^3/ha and 500m^3/ha and these errors have remained in the plan since that time.

FINANCIAL IMPLICATIONS

3. There are no financial implications in correcting the minor errors identified.

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

4. Covered by existing unit budgets.

LEGAL CONSIDERATIONS

5. Correcting minor errors in District Plans is provided for in the Resource Management Act 1991. Clause 20A of the First Schedule to the Act provides that a local authority may amend, without further formality, an operative plan to correct minor errors.

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

6. Yes. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

7. Aligns with City Plan Activity Plan

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

8. Yes. Support the Maintenance and Review of the City Plan project

ALIGNMENT WITH STRATEGIES

9. Aligns with Urban Development Strategy

Do the recommendations align with the Council's strategies?

10. Yes

2 Cont'd

CONSULTATION FULFILMENT

11. Consultation is not necessary. The recommendation seeks approval to correct minor errors in a statutory plan. The Resource Management Act allows the Council to make such corrections without further formality.

STAFF RECOMMENDATION

It is recommended that the Council, without further formality, and pursuant to clause 20A of the First Schedule to the Resource Management Act 1991, correct errors in the Christchurch City Plan by making the following amendments in Volume 3 Part 9 to Column A of "*Table 1 – Filling and Excavation – volume and depth of material".*

(1) Amend the maximum volume in Column A for "*(k) Rural Quarry Zone"* to read *"2,000m^3/ha"*

(2) Amend the maximum volume in Column A for "*(m) Ruapuna Park Raceway"* to read *"5,000m^3/ha"*

3. SUBMISSION ON VARIATION 30 – FINANCIAL CONTRIBUTIONS TO THE PROPOSED SELWYN DISTRICT PLAN (RURAL AND TOWNSHIPS VOLUMES)

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Liveable City, DDI 941-8902
Author:	Janine Sowerby, Senior Policy Planner, DDI 941-8814

PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Christchurch City Council (CCC):

   - retrospectively adopts the attached submission on Variation 30 – Financial Contributions to the Proposed Selwyn District Plan (Rural and Townships Volumes); and
   - withdraws those parts of a previous submission on the Proposed Selwyn District Plan (Rural Volume) now redundant.

2. Submissions on Variation 30 closed on 22 February 2008. Preparation and presentation of this report to the Regulatory and Planning Committee's February meeting was not possible given the date of receipt of notice of Variation 30 and its necessary consideration. The attached submission was accordingly lodged, along with a covering letter stating that the SDC will be advised of the submission's retrospective adoption or withdrawal following the CCC's Regulatory and Planning Committee and Council meetings on 6 and 27 March 2008 respectively.

EXECUTIVE SUMMARY

New Submission on Variation 30 – Financial Contributions

3. Financial contributions are contributions of cash or land, or a combination of these, provided for under the Resource Management Act 1991 (RMA) to avoid, remedy or mitigate any adverse on-site and localised off-site effects on the natural and physical environment (including from infrastructure) of subdivision and/or development.

4. The Selwyn District Council (SDC) notified Variation 30 – Financial Contributions to the Proposed Selwyn District Plan (Rural and Townships Volumes) on 12 January 2008. The variation removes from the Proposed Selwyn District Plan (Rural and Townships Volumes) unnecessary provisions and references relating to the taking of financial contributions. The major amendments include:

   - amendments to the objectives and policies in the Plan to clarify SDC's decision to require development contributions for reserves, network infrastructure and community infrastructure under the Local Government Act 2002 (LGA);
   - deletion of all rules and references to rules in the Plan which require financial contributions for reserves, network infrastructure and community infrastructure; and
   - introduction of new policies relating to environmental compensation.

5. Environmental compensation is a contribution of land (usually offered by subdividers and/or developers and accepted by councils at their discretion) in addition to development contributions for reserves, resulting in a net environmental benefit for the purpose of allowing a development to proceed where it might not otherwise achieve sustainable management of resources and be declined.

6. The attached submission supports those provisions which:

   - remove all financial contribution provisions from the Proposed Selwyn District Plan in favour of the development contribution provisions within SDC's Development Contribution Policy (DCP); and
   - provide a new environmental compensation policy.

3 Cont'd

7. It does so for the following reasons:

   (1) By removing all financial contribution provisions from the Proposed Selwyn District Plan in favour of the development contribution provisions within SDC's Development Contribution Policy, Variation 30 is consistent with:

   - the CCC's approach to financial contributions under the RMA and development contributions under the LGA; and
   - the direction anticipated by the Greater Christchurch Urban Development Strategy (UDS), particularly:
     - Settlement pattern key action and approach, pg 37 - Align development contributions and other development charges using, wherever practicable, consistent growth assumptions and formulas; and
     - Integrated Land Use, Infrastructure and Funding action, pg 104 - Ensure that development contributions as far as practical fund the infrastructure costs arising from growth in accordance with the sub-regional settlement pattern.

   (2) By providing a new environmental compensation policy, Variation 30 is consistent with the Christchurch City Council's approach to environmental compensation.

8. Submissions on Variation 30 closed on 22 February 2008. Preparation and presentation of this report to the Regulatory and Planning Committee's February meeting was not possible given the date of receipt of notice of Variation 30 and its necessary consideration. SDC staff did not consider an extension of its closing date warranted considering the nature of the variation. The attached submission was accordingly lodged, along with a covering letter stating that the SDC will be advised of the submission's retrospective adoption or withdrawal following the CCC's Regulatory and Planning Committee and Council meetings on 6 and 27 March 2008 respectively.

Previous Submission on Proposed Selwyn District Plan (Rural Volume)

9. In addition to being an adjacent local authority, the CCC has received notice of Variation 30 because it previously submitted to the SDC as follows:

   - The Proposed Selwyn District Plan was publicly notified in December 2000 (Township Volume) and September 2001 (Rural Volume). Both volumes contained financial contribution provisions, albeit different ones.
   - Among other things, the CCC submitted on the financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume), ie provisions 18 and 28 on pages 20 and 30 in its submission dated 7/12/01 attached.
   - Variation 1 - Financial Contributions to the Proposed Selwyn District Plan (Township Volume) was publicly notified in September 2001, its purpose being to make the financial contribution provisions of the Township Volume the same as those in the Rural Volume. The CCC did not submit on this variation.
   - The submissions in respect of the original financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume) were never heard by virtue of the LGA being enacted and the SDC deciding to take contributions towards the cost of the provision of growth-related infrastructure via development contributions under the LGA, rather than via financial contributions under the RMA.
   - Insofar as the previous submissions in respect of the original financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume) are still relevant, they will be heard along with those submissions in respect of Variation 30, unless they are withdrawn.

10. The notice of Variation 30 has accordingly asked the CCC to advise whether it wishes to 'rollover' its previous submission on the original financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume) so that it can be considered as part of Variation 30, or withdraw it, in addition to lodging any new submission on Variation 30.

3 Cont'd

11. Variation 30 seeks to delete all of the original financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume), including the aforementioned provisions which the CCC previously submitted on. It is consistent with the unchallenged approach taken by the CCC and other councils to financial contributions under the RMA and development contributions under the LGA and, as such, is supported by the CCC. It is therefore recommended that the aforementioned provisions of the CCC's previous submission be withdrawn.

FINANCIAL IMPLICATIONS

12. The financial implications in terms of the CCC's capital works (eg the CCC has a number of reserves on the Port Hills within SDC jurisdiction), just like any other developer, relate to:

    - those works requiring resource consent will no longer be subject to any financial contributions (as distinct from works and services on subdivision and development) for the purpose of mitigating adverse effects on the environment; and
    - those works which cause the SDC to incur capital expenditure to construct new or increase the capacity of additional assets will be subject to development contributions, as applicable. The quantum of development contributions is not up for review through this district plan variation process, however.

13. Furthermore, SDC's Development Contributions Policy already provides for the development contributions payable on connection to the CCC's sewerage systems in Lincoln, Prebbleton, Springston and Tai Tapu to be paid to the CCC at the same dollar value it requests, in addition to any development contributions payable to the SDC.

14. Any land bounding CCC-managed reserve accepted by the SDC as environmental compensation is likely to have complementary purposes to that managed by the CCC, potentially making management (including joint management and partnerships with private landowners) more efficient and therefore less expensive over the total area protected.

15. As such, there are no financial implications to lodging the submission to Variation 30, nor are there any in withdrawing the aforementioned provisions of the CCC's previous submission.

LEGAL CONSIDERATIONS

16. Section 6 in Part 1 of the First Schedule of the RMA allows the CCC to make submissions on variations to an adjacent council's district plan.

17. Implicit in the above section is the ability for the CCC to withdraw its submissions at any time.

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

18. A legal review of the submission to Variation 30 has been carried out.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. The submission to Variation 30 and withdrawal of the aforementioned provisions of the CCC's previous submission is consistent with the CCC's approach to financial contributions under the RMA and development contributions under the LGA as documented in the CCC's Development Contributions Policy, being part of the LTCCP.

ALIGNMENT WITH STRATEGIES

20. The submission to Variation 30 and withdrawal of the aforementioned provisions of the CCC's previous submission supports the direction anticipated by the UDS regarding:

    - aligning respective council approaches to development contributions and other development charges; and
    - ensuring that development contributions as far as practical fund the infrastructure costs arising from growth.

3 Cont'd

CONSULTATION FULFILMENT

21. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Retrospectively adopt the attached submission on Variation 30 – Financial Contributions to the Proposed Selwyn District Plan (Rural and Townships Volumes).

(b) Withdraw provisions 18 and 28 on pages 20 of its previous submission, dated 7/12/01, on the financial contribution provisions of the Proposed Selwyn District Plan (Rural Volume), which are now redundant.

4. CHANGE 3 TO THE TRANSITIONAL REGIONAL PLAN

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager- Healthy Environment
Author:	Jenny Ridgen, Programme Manager- Healthy Environment

PURPOSE OF REPORT

1. The purpose of this report is to seek retrospective adoption by the Council of the attached submission on Change 3 to the Transitional Regional Plan (TRP). The submission was lodged with Environment Canterbury prior to the closing date of 29 February 2008.

2. For the Council to decide to either endorse or withdraw the submission.

EXECUTIVE SUMMARY

3. This plan change concerns the Regional Council's General Authorisation (GA) for the discharge of stormwater. This is one of a number of General Authorisations contained in the TRP, which still have effect until the Proposed Natural Resources Regional Plan (PNRRP) becomes operative. The submission supports the change to permit stormwater discharges to land from small residential subdivisions. Environment Canterbury notified Change 3 to the TRP on Saturday 26 January 2008. The submission period closed at 5 pm on Friday 29 February 2008.

4. The plan change will permit the discharge of stormwater to the ground from residential and rural-residential subdivisions of fewer than 30 allotments, under certain conditions. Such discharges are authorised provided highest groundwater levels are deeper than 10 metres from the ground surface. This change gives discharges to the ground the same status as discharges to surface water, for developments of fewer than 30 allotments.

5. The change will have limited significance for the Christchurch City Council area due to the requirement for a 10 metre separation to groundwater. In addition, the PNRRP does not permit the discharge of untreated stormwater within areas where groundwater is used to supply communities with drinking water, nor within Christchurch Groundwater Recharge Zone 1 (Rule WQL5).

6. The main environmental issue is the potential for contamination of groundwater. The proposed change relies on a conservative groundwater depth, providing sufficient separation to groundwater to allow for treatment/contaminant removal by subsoils, rather than specifying stormwater system design and operation. The change would result in approximately 20 resource consents per year not being required, thus allowing Environment Canterbury to target resources in areas where environmental effects are greatest.

7. The submission supports the plan change on the grounds that the 10 metre separation requirement provides sufficient protection for groundwater, the environmental effects will be minimal and the approach is consistent with discharges to surface water. The plan change does not conflict with the City Council's application for an interim global consent for stormwater discharge to ground.

8. The main reason for making a submission is to allow an opportunity for input into the plan change process, particularly if other submitters should seek more liberal changes. It should be noted that, if the Council decides not to make a submission at this time, there will still be an opportunity to make further submissions at a later stage.

9. In addition to this, it is noted that both regional and district councils are often criticised by ratepayers and the development community about compliance costs under the Resource Management Act. The plan change enables the removal of an unnecessary layer of regulation, in circumstances where any potential adverse effects on the environment would be negligible. This would enable Environment Canterbury to direct its resources at assessing subdivision proposals that may have adverse effects on water quality. It would assist Environment Canterbury in achieving better environmental outcomes and the processing of applications in a more timely manner.

4 Cont'd

FINANCIAL IMPLICATIONS

10. The financial implications for the Council are minimal. The plan change is unlikely to directly affect Council operations. Should the plan change be approved in a more liberal form there is a potential risk that groundwater quality will be adversely affected, with implications for the city's community water supply.

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

11. The cost of preparing and presenting submissions is covered by existing unit budgets.

LEGAL CONSIDERATIONS

12. The RMA 1991 (First Schedule, Part 1 (6)) allows Council to make submissions on a variation to a regional plan.

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

13. A legal review of the submission has been carried out.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. This submission supports the LTCCP objective "To conserve and protect the long-term availability and quality of the city's water" (page 166).

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

15. The submission supports the LTCCP target of achieving the highest Ministry of Health water supply grade possible without treatment of water (page 167).

ALIGNMENT WITH STRATEGIES

16. This submission supports work being done in preparation of a draft Water Supply Strategy.

Do the recommendations align with the Council's strategies?

17. As above.

CONSULTATION FULFILMENT

18. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council endorse the attached submission on Change 3 to the Transitional Regional Plan.

5. REVIEW OF DELEGATIONS TO THE DISTRICT PLAN APPEALS SUBCOMMITTEE AND THE RESOURCE MANAGEMENT OFFICER SUBCOMMITTEE

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officers responsible:	Legal Services Manager and Environmental Policy and Approvals Manager
Authors:	John Gibson, Acting Resource Management Manager and Judith Cheyne, Solicitor

PURPOSE OF REPORT

1. This report has been prepared in response to a resolution of Council of 7 November 2007 which stated:

   "*That the Regulatory and Planning Committee be requested to review at its first meeting the delegations granted to the District Plan Appeals Subcommittee and the Resource Management Officer Subcommittee, particularly the delegation enabling the officers subcommittee to consider and make decisions on any resource consent which is not duly notified as does not require a hearing, under the Resource Management Act 1991. A report initiating this review will be placed before the first meeting of the Regulatory and Planning Committee in 2008."*

2. The purpose of the report is to provide background on the present level of delegation to the Resource Management Officer Subcommittee and the District Plan Appeals Subcommittee.

BACKGROUND

Resource Management Officer Subcommittee

3. When the Resource Management Act became law in 1991 the Council delegated the power to make decisions about notification/non-notification of resource consent applications, and the making of decisions on those applications to the Resource Management Officer Subcommittee (comprising two senior staff), Council Hearings Panels (of elected members) and Commissioners. Since 1991 every notification/non-notification decision in Christchurch City has been made by been one of these three groups.

4. There are a wide range of powers delegated to senior Council staff and the Resource Management Officer Subcommittee under the Resource Management Act. Most of these have been in place since 1991. These delegations are in place partly to ensure that the Council carries out its responsibilities for processing resource consent applications in a timely and efficient manner. This is particularly important because of the large number of resource consent applications that are received by the Council, the tight time-frames imposed for their processing by the Resource Management Act and customer expectations.

5. The current delegations to the Resource Management Officer Subcommittee are set out in Appendix A of this report (attached).

District Plans Appeals Subcommittee

6. In December 2001 the Council delegated to the District Plan Appeals Subcommittee (or the City Plan References Subcommittee as it was formerly known) the power to manage the appeals to the Environment Court arising out of the Council's decisions in 1999-2001 on the City Plan. There was seen to be a need to respond to the very short timeframes set by the Environment Court for the Council to respond to resolution of appeals. Since 2001 the Subcommittee has had four Councillors as members. The delegations were most recently amended by the Council on 23 November 2006, to incorporate the Banks Peninsula District Plan and make other minor amendments. An additional appointment of a Banks Peninsula Community Board member was also made.

5 Cont'd

7. The report to the Council on 23 November 2006 provided the following reasoning for the proposed delegations at that time:

   "….gaining full Council approval for any agreement reached through mediation …. is different to that provided for the City Plan and has the potential to become cumbersome and unwieldy given mediation has the potential to require several meetings with Councillors. …. [The proposed option] appears to be the most efficient and effective option because of the ability of the subcommittee to meet as and when required. This option includes adding the ward member for Banks Peninsula for local knowledge. It also renames the subcommittee. Since amalgamation, the Council now has one district plan with two sections, as allowed by the RMA, being the City Plan and the Banks Peninsula District Plan."

8. The current delegations to the District Plan Appeals Subcommittee are set out in Appendix B of this report (attached).

RESOURCE MANAGEMENT ACT

9. The Council has explicit regulatory decision making powers vested in it by virtue of the Resource Management Act 1991 and the delegations discussed in this report are only concerned with Council's powers under that Act.

10. Under the Resource Management Act the Council may legally delegate its resource management powers to a committee, subcommittee, community board (except the power to approve a Plan or to change a Plan), an employee or a commissioner (except with these last two the power to approve a Plan).

11. Whether or not the Council should delegate any decision making power is not solely a legal issue as questions of compliance, administrative and management efficiency arise. The Council has a statutory duty under the RMA to process resource consent applications promptly and within a statutory maximum time period of 20 working days to grant a resource consent. If there is to be a change to the existing processes the Council's ability to handle the volume and comply with the statutory time limits may become an issue. The Council should carefully consider the reason why it wishes to alter a system which has worked well for many years.

12. Determining whether a resource consent application should be processed on a notified or non-notified basis is not a political decision by the Council, committee, community board, officer or commissioner. It is a quasi judicial decision which has to be made in accordance with the clear statutory criteria in Section 93 of the Resource Management Act. Any decision by the Council, whether it is made by the Council, a Council committee, an officer subcommittee, a board, or a Commissioner, may be subject to judicial review by the High Court so the Council has to be very careful about observing the legal principles in any decision making. Notification decisions are the most frequent cause of judicial reviews against councils nationally.

13. Each resource consent application must be assessed on its merits within the planning framework and the Council cannot notify an application simply because it may be controversial. Neither can the Council decide to notify an application because it may be opposed by a large number of people or there may be a clamour for public notification. An application which is not required to be notified because of City Plan rules cannot be notified just because it is unpopular.

14. The Council has only 10 working days from the time it receives a complete application to make the decision about notification/non-notification. This time frame requires that an efficient system is in place to deal with the large number of applications the Council receives. In the 2006/07 year, for example, the Council processed 2612 applications (1,833 land use and 779 subdivision). For all but a handful of these, the decision about notification/non-notification was made by an officer subcommittee.

15. The current delegations, which enable decisions about notification/non-notification to be made by the Resource Management Officer Subcommittee, provide for efficient processing. Changing this delegation may slow processing times and make it more difficult to achieve the statutory timeframes..

5 Cont'd

16. The Council has previously decided that only elected members who been trained under the national "Making Good Decisions" programme can be involved in decision making on the resource consent process. Given the Council has already decided to adopt the national training programme and has paid for the elected members who chose to be trained, it would seem to be inconsistent for the Council to decide that elected members who have not received any training should be involved in making decisions about notification of applications. As at the date of this report there are six Councillors and nine Community Board members who have qualified under the "Making Good Decisions' programme.

17. Because of Councillor and Community Board member workloads and commitments it is currently sometimes difficult to assemble panels of elected members who have undertaken the "Making Good Decisions" training for hearing the relatively low number of applications which have been notified or limited notified. In view of this, it may be unrealistic to expect elected members who have done this course to also be involved in making decisions about notification/non-notification on anything other than a small number of the resource consent applications the Council receives. .

18. While most decisions on notification/non-notification are made by the Officer Subcommittee, in cases where applications are potentially controversial or arouse widespread public interest, the standard practice for many years has been for the Officer Subcommittee to decline to exercise its power and to refer decision making to a Hearings Panel of elected members or a commissioner. In other words elected members or commissioners already make the decisions on controversial applications when it can be anticipated the application may be controversial.

19. The decision to refer an application to a Hearings Panel or Commissioner is based on the judgement of the Resource Management Officer Subcommittee. If elected members are concerned that decisions on some applications made by the Officer Subcommittee ought to have been made by a Hearings Panel or Commissioner a solution may be for a formal direction to be prepared setting out the types of applications that are to be referred to the Hearings Panels and Commissioners.

20. The track record on decisions about notification/non-notification by the Resource Management Officer Subcommittee, Hearings Panels and Commissioners is exceptionally good. Since the Resource Management Act became law there has only been one case of such a decision made by the Christchurch City Council being heard by the High Court as a judicial review. In that case the Court declined to overturn the Council's decision not to notify. Given the controversial nature of some of the applications involved, this indicates the decisions made have been both robust and procedurally sound. We can say this because we are aware that on a number of occasions legal input has been obtained by aggrieved parties as to the likelihood of a successful challenge.

21. Copies of applications and decisions on applications which are potentially controversial are circulated to the elected members in whose ward the application site is located. This is done in accordance with the Planning Administration Team's communication strategy so that elected members are aware of these applications and how they have been processed. Elected members can also look at all applications issued via the elected member Intranet – www.ccc.govt.nz/ElectedMemberIntranet/Resource.asp. This is updated weekly.

22. There are a number of significant benefits which flow from the delegation of decision making about notification/non-notification of resource consent applications to senior staff:

    - It enables the large number of applications received and processed by the Council at four Service Centres to be dealt with in an efficient and timely manner. This in turn enables a high degree of compliance with meeting statutory time-frames (and hence KPI's) and meeting customer expectations.
    - It enables a high degree of quality control. Senior staff are qualified planners and are familiar with the requirements of the Resource Management Act, current case law regarding notification/non-notification issues and with the provisions of the City Plan. In addition, senior staff who make up the Resource Management Officer Subcommittees meet regularly to discuss how various types of applications are being processed in order to ensure consistency.

5 Cont'd

23. It is the officers view that the current level of delegation to the Resource Management Officer Subcommittee, Hearings Panels and Commissioners to make decisions on notification/non-notification works very well. Most importantly, it enables decisions on the large number of resource consents received to be made speedily, for decisions to be consistent, robust and procedurally sound. Long standing practice means that potentially controversial applications or those which have aroused widespread public interest are made by a Hearings Panel of elected members or by Commissioners who have been trained and accredited.

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

24. Yes, see above.

FINANCIAL IMPLICATIONS

25. The possible extra financial cost of officers servicing the Committee has not been accounted for in the EPA budget.

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

26. Not applicable.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

27. Not applicable.

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

28. If the status quo is continued then the achievement of Levels of Service and KPI's will be met. There is a risk that these standards may not be able to be achieved without additional resources should the delegation be changed.

ALIGNMENT WITH STRATEGIES

29. Not applicable.

Do the recommendations align with the Council's strategies?

30. Not applicable.

CONSULTATION FULFILMENT

31. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Committee:

(a) Receive this report.

(b) If required, request a further officer's report addressing the delegations to the Resource Management Officer Subcommittee and the District Plan Appeals Subcommittee on matters identified by the Committee.

6. REGULATORY AND PLANNING COMMITTEE - TERMS OF REFERENCE

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Democracy Services Manager
Author:	Warren Brixton

PURPOSE OF REPORT

1. The purpose of this report is to provide a basis for the Committee to review its Terms of Reference as established at the Council meeting of 13 December 2007, as attached, in light of its experience to date. It is appropriate that this consideration is done in conjunction with the Review of Delegations to the District Plan Appeals Subcommittee and the Resource Management Officers Subcommittee, the subject of a separate report.

BACKGROUND

2. The Regulatory and Planning Committee is a new standing Committee of the Council established to give recognition to the volume of regulatory and planning matters coming before the Council and enable due and proper consideration of specialised matters.

FINANCIAL IMPLICATIONS

3. There are no direct financial considerations

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

4. This recommendation has no implications for the LTCCP budgets.

LEGAL CONSIDERATIONS

5. Not applicable

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

6. Not applicable

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

7. The proposal has no impact on the LTCCP or activity management plans

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

8. Not applicable

ALIGNMENT WITH STRATEGIES

9. Not applicable

Do the recommendations align with the Council's strategies?

10. Not applicable

CONSULTATION FULFILMENT

11. There is no statutory requirement for public consultation.

STAFF RECOMMENDATION

The attached Terms of Reference form the basis of discussion for formulating more defined Terms of Reference.

7. COUNCIL SUBMISSION ON IMPROVING PUBLIC SAFETY UNDER THE DOG CONTROL ACT 1996

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Inspections and Enforcement Manager
Author:	Team Leader Animal Control

PURPOSE OF REPORT

1. The Department of Internal Affairs has instituted a review of the Dog Control Act 1996, the purpose of the Act being to make for better provision for the control of dogs. As part of the review public comment has been sought seeking input as to how to further improve dog control and public safety around dogs.

2. Council staff have reviewed the discussion documentation and staff advice is attached (see Appendix A) in the approved submission format for consideration by the Regulatory and Planning Committee.

EXECUTIVE SUMMARY

3. In response to recent dog attacks the Department of Internal Affairs was directed by the Minister of Local Government to consider options to improve dog safety and control, while maintaining a balance between the interests and freedoms of responsible dog owners with the need to protect the general public from harm from dogs. In October 2007 the Government decided on a package of initiatives, one of which was to publish a discussion document summarising a number of ideas that have been identified to improve dog safety and control and requesting public feedback on these ideas. The ideas presented in the document relate to measures to manage risks to the public associated with dogs. Should any of these ideas be pursued they would likely require further changes to the Dog Control Act 1996. They would also be likely to create costs for councils and therefore dog owners and/or ratepayers. The Government is seeking input about these ideas before it decides to develop them further. The discussion document outlines nine options and with each option raises questions respondents are asked to consider. The options and associated questions are worked through below.

4. It is recommended that, as a general principle, the Council should not support breed specific legislation. However, as the current legislation identifies three dog breeds and one dog type (as specified in Schedule 4) of the Dog Control Act 1996, that have been banned from importation into New Zealand, it is recommended that the dog breed, Presa Canario, be added to Schedule 4 of the Dog Control Act. This recommendation is based on the fact that as there is expert overseas evidence of extensive aggression demonstrated by dogs of this breed and on the basis of the evidence presented to DIA. In addition this breed is not currently in New Zealand and based on the evidence it would be opportune to discourage it entering the country.

5. It is recommended that Council should not support the mandatory destruction of dogs classified as dangerous. The current controls imposed on dangerous dogs are sufficient to control such dogs and these would be more effective if there was a consistent application of those controls across the country. Mandatory destruction of dogs classified as dangerous is not supported as it may result in enforcement officers scaling down the classification from a “dangerous dog classification” to a “menacing dog classification” to avoid the destruction option as proposed. The current legislative framework provides a range of options to staff to deal with dogs classified as dangerous such as neutering, secure fencing, muzzling and leashing in public, higher registration fees and Council approval of dog being given to other people. Staff suggest that the legislation should be amended to specify that all dangerous dogs are required to wear a distinctive reflective collar and that the owners property be required to have clear signage indicating a dangerous dog ‘in residence’. Both the collar and signage would be required to meet nationally set standards.

6. It is recommended that the Council should not support an elevation of the controls on dogs classified as menacing to the level of controls for dogs classified as dangerous. Staff consider the current ‘risk factor matrix’ utilised by officers to determine the classification is very effective. With this approach officers review factors such as degree of injury, type of victim (ie human, animal etc) situation of incident, impact on the victim, circumstances relating to the offence, minimum action the officer will take.

7 Cont'd

7. It is recommended that Council should not support the mandatory neutering of all dogs classified as menacing as this issue is not breed specific. However it is recommended that the Council should support the mandatory neutering of all dogs classified as menacing as long as the classification is based on dog behaviour not breed; this would require a change in the legislation. Dogs that demonstrate aggressive tendencies should be neutered to stop them breeding. There is also supportive evidence indicating that neutering can reduce the aggressive tendencies in some dogs.

8. It is recommended that the Council should not support the initiative of licensing all owners, as responsible dog owners would have to pay for the cost of this scheme primarily for irresponsible dog owners. Licensing all owners is impractical and would not have any real enforcement benefits and would not enhance public safety. Effectively the dog owner is licensed now, as they provide their details on registration of their dog and information through responsible dog owner application. Targeted owner licensing, focused on 'high risk' dogs which demonstrate aggressive tendencies, is considered a more appropriate approach as this would focus animal control staff on the problem dogs and their owners and thereby provide for better utilisation of Council resources. Should the Government introduce owner licensing then staff recommend that this be funded and operated by Central Government as there are insufficient local resources to implement such a scheme and its lack of outcome value would make it a very low priority for Animal Control Enforcement.

9. It is recommended that the Council should not support the proof of breed requirement. The only time breed matters is when a dog is classified on breed; breed per sé does not determine if a dog is menacing or dangerous. Evidence of breed may only be appropriate where there is discussion on whether the dog is considered a Schedule 4 dog, and in such circumstances the owner can object to this and would need to provide proof of breed. Animal Control staff recommend to the Council that a broader threshold for breed and type of classification would not enable the Council to improve public safety round dogs. Such an approach dilutes a breed based classification.

10. It is recommended to the Council that an owner placed on probation should be able to retain their dog(s), as any alternative actions may be in conflict with a court decision where they are permitted to retain the dog (unless that part of the Act was also amended). In addition it is considered that the surrender of dogs by probationary owners may have the negative impact of driving the ownership of high-risk dogs underground.

11. It is recommended that the Council should support a general initiative to increase dog containment standards for dogs classified as menacing or dangerous. Section 52A is sufficiently clear and gives dog owners options on how to contain their non classified dogs (ie not classified as menacing or dangerous). Staff believe that dog owner education is the key to generally resolving wandering dog matters for unclassified dogs. However in relation to dogs classified as menacing or dangerous, there is a need to decrease the potential contact and intimidation between menacing and dangerous dogs and the public. It is recommended to the Council that a new clause 52A(2A) under section 52A(2) be included to read:

    (2A) If a dog has been classified as dangerous or menacing then the owner of the dog must, at all times, ensure that it is controlled on a leash or confined within a securely fenced portion of the owner's property, set back from the street frontage or public access areas.

    Section 52A(2) would also need to be amended to read: The owner of a dog [that has not been classified as dangerous or menacing] must, at all times, ensure that ....

12. It is recommended to the Council that the current legislation is adequate and there is no need for a change in the Act to include round-up and faster destruction of unregistered dogs. To improve the application of the Act it is considered that territorial authorities need to enforce the legislation relating to unregistered dogs properly and consistently across the country. It is recommended that the current timeframe of a minimum of seven days for destruction of unclaimed unregistered dogs is not changed, as this is currently working effectively and has the ability to accommodate a wide range of situations faced in the animal control process.

7 Cont'd

FINANCIAL IMPLICATIONS

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

13. The submissions as recommended with no significant financial implications for the Council.

LEGAL CONSIDERATIONS

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

14. Yes. There are no legal implications arising from the DIA discussion document, and for the Council in making submissions on the discussion document. The Legal Services Unit has considered whether any issues arise under the New Zealand Bill of Rights Act 1990 in relation to the suggestions in the document around the licensing of dog owners, but consider that none arise. In any event this is an issue that must be considered by Central Government before implementing any changes to the legislation, such as introducing licenses for owners. When, and if, amendments to the Dog Control Act are made following this process then the exact nature of the amendments will be clear and there will be the ability for the Council to make further and, where necessary, more detailed submissions.

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?

15. Yes. The submission detailed supports the Council's Regulatory Services activities, which includes minimising potential hazards and nuisances from dogs (page 145 of the LTCCP, level of service under Regulatory Services).

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

16. Not applicable.

Do the recommendations align with the Council's strategies?

17. Not applicable.

CONSULTATION FULFILMENT

18. Not applicable on the basis that the report is responding to a request for response from Central Government.

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Adopt the recommendations from staff as attached (refer Appendix A), in relation to each of the policy options identified in the discussion document "Improving Public Safety under the Dog Control Act 1996: Policy Options".

(b) That the attached recommendations (Appendix A) be submitted to the Department of Internal Affairs as the CCC response to the discussion document "Improving Public Safety under the Dog Control Act 1996: Policy Options".

8. PROPOSED SUBMISSION ON THE PUBLIC HEALTH BILL 2007

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Manager
Authors:	Judith Cheyne, Terence Moody, Willis Heney,

PURPOSE OF REPORT

1. The purpose of this report is to report to the Committee on the Public Health Bill and for them to recommend to Council to make a submission on the Bill.

EXECUTIVE SUMMARY

2. The Public Health Bill will largely replace the Health Act 1956 and the Tuberculosis Act 1948 in order to update the public health legislation. Consultation on this update has been underway for the last 10 years, and the Council has made submissions on previous discussion documents, as has Local Government New Zealand.

3. Under the Health Act 1956 the Council has a number of powers to control and regulate issues relating to public/environmental health (eg nuisances, bylaws, sanitary works and the regulation of certain activities, such as hairdressing and camping grounds). These have largely been carried over into the Bill and are discussed in detail in the background section to this report. This report does not discuss aspects of the Bill that are not relevant to the Council. Staff have reviewed Local Government New Zealand's draft submission, and many of the Council's proposed submissions takes a similar approach to LGNZ.

4. The draft submission attached generally supports the provisions in the Bill that affect territorial authorities (such as the power to make bylaws, and the powers that are equivalent to those the Council currently has under the Health Act 1956), but specific submissions are included on certain aspects of the Bill, with the major matters relating to:

   - the definition of public health, and the need for it to cover small groups of persons in the community, such as one or two families (see paras 28 and 29 below, and para 11 of the draft submission);
   - the Bill needs to retain the term "offensive" in the definition of a nuisance not remove it (see paras 28 and 29 below and paras 28 and 29 of the draft submission));
   - there needs to be a clear relationship between all of the public health agencies, and a need for equality between central and local government. Plans that territorial authorities have made in conjunction with their communities should not be subject to being easily overridden by central government agencies(see paras 22 and 26 below, and paras 13 to 23 of the draft submission);
   - There should be an enforceable infringement offences regime operating within the Public Health Bill as an additional enforcement tool for councils (see para 33 below and paras 32 and 37 of the draft submission).

5. Submissions were due on this Bill on 7 March 2008, but Council staff have obtained an extension until 21 March 2008 for the Council to make its submission.

FINANCIAL IMPLICATIONS

6. No financial implications in making the submission other than the cost of having a Council representative go to Wellington to appear in support of the submission, if required.

7. In terms of the financial implications in relation to the introduction of the Bill in its present form, it is not anticipated that the proposed provisions will create any significant additional financial costs to Council. Although it is not clear, it is expected that any additional costs would be offset from revenue from the proposed consent fees, However, councils attention is drawn to the comments in paragraph 71 and the uncertain impact arising out of the likely need for Council assessors.

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

8. Not applicable.

8 Cont'd

LEGAL CONSIDERATIONS

9. The legal considerations have been taken into account in drafting the submission on the bill.

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

10. The Bill proposes several changes to the legal requirements and duties on the Council under the Health Act 1956. The legal issues are identified and discussed in the submission.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. Not applicable.

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

12. No.

ALIGNMENT WITH STRATEGIES

13. Yes.

Do the recommendations align with the Council's strategies?

14. Yes - the submission is consistent with the Council's strategies that incorporate or address aspects of public health.

CONSULTATION FULFILMENT

15. Internal consultation has been carried out between the Strategy and Planning Unit, the Inspection and Enforcement Unit and the Legal Services Unit.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council to:

(a) Approve the draft submission to be sent to the Health Select Committee.

(b) Decide whether the Council wishes to appear in support of its submission on the Bill, and if so, who will represent the Council at the hearing.

8 Cont'd

BACKGROUND (THE ISSUES)

16. The Public Health Bill is the result of a long process of replacing the Health Act 1956 which commenced a decade or so ago. The Council has made submissions on a number of Ministry of Health ("the Ministry"), and other, discussion documents associated with public health and local government over the years.[1] One report[2] made the clear distinction of public health as relating to the health of the public as distinct from publicly-funded health care, a distinction often not understood widely. It was noted that major improvements in health status have resulted from the work of local authorities in water supply and waste disposal over the last century but could also have included the areas of housing and food hygiene improvements as determinants of health. In addition there have been matters related to physical and other recreational activities that are provided by territorial authorities that have influence on the health of the public.[3]

17. The Council has previously accepted the concept of the general powers and duties of territorial authorities to improve, promote and protect public health in its district both under the Health Act 1956 and in submissions on the Public Health Legislation Review.[4] The Council also indicated its support for the introduction of public health management plans which are risk related and suggested that the Act should bind the Crown, particularly in relation to Crown owned operational or regulatory organisations. A submission made suggested that a general duty, similar to that contained in section 17 of the Resource Management Act 1991, related to public health should be included. The Bill as currently proposed does not include some matters that were raised in the above discussion document so other submissions made at that time are largely irrelevant. For example the discussion document did not spell out any role for territorial authorities while the current Bill does so. The Council supported the concept of declarations of public health emergencies which could cover the cases of emerging diseases in addition to pre-existing conditions. Support was expressed for the requirement of consultation as part of public health policy development and this has been included in the Bill as a duty of the Director-General.

18. The Bill is based on decisions made by the Cabinet as to elements and a general framework in 2001. These were as follows:

- It provides for a responsible Minister and functions
- It provides for the designation of public health services by the Director-General
- It enables effective management of all significant risks to public health
- It provides for an explicit methodology for assessing risks to public health and actions
- It provides for some activities with public health significance or risks to have consents or licences
- It provides for what may happen in a public health emergency.

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1 These included submissions on *The Public Health Role of Local Government* in October 1996. In 1998[2] the Council made submissions on the Discussion Document *Public Health Legislation Review* prepared by the Ministry and subsequently on a further discussion paper in 2003[3] which had further developed the concepts to be included in the reviewed Act. These views were in addition to a report on a Local Government New Zealand ("LGNZ") commissioned document for the analysis of future public health reform which fed into the 1998 submission.[4] This was entitled *Localising Public Health – A Background Document* and the purpose was to assist LGNZ members towards developing an agreed policy on the role of local authorities in the provision of public health services.

2 *Localising Public Health – A Background Document,* Strategic Alignment and Ingrid van Aalst and Associates, Local Government New Zealand, 1998

3 For *example*

Population-based services and facilities

- *Utilities such as water and sewerage reticulation contributed historically towards large improvements in population health in New Zealand.*
- *Maintenance of these services, which should not be taken for granted, is essential to protecting population health and should be a high priority.*
- *The funding and provision of these basic utilities has changed in the past few years in New Zealand and issues of maintenance, infrastructure development and user charges have implications for health.*
- *Transport, recreational facilities and environmental protection are also important for improving and protecting health.*
- *Public transport and recreational facilities are absent or missing in some new residential areas in New Zealand.*

Social cohesion

- *People with strong family, cultural and community ties have better health than people who are socially isolated.*
- *Social cohesion or 'connectedness' is related to the health of individuals and communities.* The Social, Cultural and Economic Determinants of Health in New Zealand, The National Health Committee, June 1998

4 Submission of the Christchurch City Council on the Public Health Legislation Review, September 1998

8 Cont'd

19. The Bill continues the traditional public health focus on communicable disease control (such as tuberculosis and HIV/AIDs) and environmental health (such as sewerage and insanitary dwellings); expands health emergency provisions, which currently deal only with epidemics of communicable diseases, to all actual or potential public health emergencies irrespective of cause; take account of changes in international travel patterns, and threats such as SARS and pandemic influenza, to enable the range of risks to public health, to be managed at our borders; include new guideline provisions aimed at reducing risks of non-communicable disease (risk factors such as those that can lead to diabetes). The Bill is based on the Health Act 1956, but modernises and updates approaches and terminology to reflect life in the 21st century. The principles of risk management and proportionality underlie the Bill as a whole. Public health powers are to be exercised within a human rights framework. This is reflected in the powers of entry provisions, the provisions for dealing with people "at risk" (Infirm or neglected persons) and the requirement that abatement of nuisances and the issue of Closure Orders on dwellings must be confirmed by the Court rather than simply be subject to appeal as at present.

Territorial authorities (TAs) duties (paras 15 to 20 of the draft submission)

20. The explanatory note to the Bill identifies the role of TAs as follows:

"The Bill continues the Health Act 1956's mandate for a significant role for TAs, principally in relation to environmental health (that is, public health matters related primarily to the physical environment). Territorial authorities will have duties and discretionary powers to improve, promote, and protect public health within their districts. As with the current Health Act 1956, the TA role will span nuisances, bylaws, sanitary works, and, subject to regulations, activity consents and assessor/verification functions. As under the Health Act 1956 at present, TAs will have a duty to employ or otherwise provide for the employment of 1 or more environmental health officers. Territorial authorities will also be required to inspect their districts for nuisances and to take steps to manage them. In addition, as now, TAs will be required to comply with any direction by the Minister of Health relating to provision for sanitary works."

21. Clause 153 sets out the general powers and duties of territorial authorities in respect of public health. A territorial authority must have as many environmental health officers and other officers and employees as, in its opinion, are necessary for the proper discharge of its duties under this Act. A territorial authority must inspect its district regularly for nuisances and stop nuisances. If premises present a risk to public health, it must take any remedial action required to prevent that risk. It is also required to make bylaws, where appropriate, to protect public health.

22. Under clause 155 a territorial authority may be required to give the relevant DHB a report on any matter within an area of that district that affects or may affect public health. Clause 157 provides that every territorial authority must be able to access the services of a sufficient number of environmental health officers. The Director-General may direct a territorial authority to appoint, or make arrangements for the appointment of, a minimum number of environmental health officers. Clause 158 provides for the appointment of environmental health officers. Clause 159 sets out the functions of environmental health officers (EHOs), which include taking action under Part 5 of the Bill any bylaws, and under clause 329 (which provides for the service of compliance orders) to detect, prevent, stop, and prosecute nuisances, and to assist any medical officer of health or health protection officer responsible within an area in the district, on request, to take such action. This appropriately gives the powers directly to the EHOs rather than to the Council.

23. In respect of TA and EHO duties, little has changed from the 1956 Act, but there appears to be greater emphasis (or clarification) of the duty of TAs to comply with the requirements of the proposed new Act. The powers of the Director-General in clauses 157 and 158 inappropriately appear to override TAs LTCCP processes, carried out in conjunction with its communities, and there is no recognition of whether or not the labour market will provide for sufficient EHOs for TAs to appoint. In addition there should be equality between EHOs and health protection officers – both should be required to met specified qualifications.

8 Cont'd

Sanitary Services (paras 21 to 27 of the draft submission)

24. Sanitary services include facilities to procure raw water and supply drinking-water; works for the treatment, reticulation, or safe disposal of sewage; the collection and disposal of human waste; public toilets; activities and facilities to manage storm-water; activities and facilities to manage solid waste and other refuse; mortuaries, cemeteries, and crematoria; and disinfecting stations. (clause 160) The Minister of Health may direct a territorial authority to provide for or amend provisions for a particular type of sanitary service in the water and sanitary services assessment undertaken under Part 7 of the Local Government Act 2002, or provide for or amend provisions for a type of sanitary work specified in the LTCCP, or to undertake a sanitary service to meet any standards or level of performance specified by the Minister.

25. Before deciding to give a direction as above the Minister must consider whether the direction is likely to address a risk to public health in the district, any evidence-based analysis of the risk, costs and benefits arising from the proposed direction, and any alternative courses of action that could be taken to address the risk. In considering the above matters the Minister must consult with the territorial authority and other interested persons and be guided by the interests of public health. Provision exists for grants or subsidies to be provided by the Minister for the investigation, planning, or construction of "(a) public water supplies; (b) refuse disposal works; (c) sewerage works; (d) works for the disposal of sewerage (sic)". The term "sewerage" refers to the pipes and associated equipment for handling and transporting "sewage", which term needs correcting.

26. Provisions exist that enable territorial authorities to establish mortuaries for the reception of dead bodies pending post mortem examination and to establish disinfecting stations or provide vehicles for the conveyance of material that has been exposed to a communicable condition or are a public health risk. Duties of local authorities relating to the disposal of bodies where it is considered there is a risk to public health are dealt with in clause 165. The submission suggests that issues relating to burials might be better incorporated as an amendment to the Burial and Cremation Act 1964 rather than included in the Public Health Bill.

27. Again there are issues about the power to direct inappropriately overriding a level of service determined, with the community, through the LTCCP process. Clause 164 does not require the TA to provide mortuary facilities so it is not considered necessary that it be included in the Bill, and clause 165 needs to clearly articulate the TA role, and provide greater clarity on how costs can be recovered.

Control of nuisances (paras 11, and 28-41 of the draft submission)

28. Clause 166 defines what a nuisance is. It is an activity or state of affairs that is, or is likely to be, injurious to public health. A nuisance may arise from or be constituted by any one or more of the following:- buildings or structures; land, air, water, or land covered by water; animals, insects, or birds; refuse or accumulations of material; noise or vibrations; emissions or discharge. A nuisance may arise from, among other matters, human or animal waste, defective toilets, sewers, or drains, locations that are breeding grounds for rats, mosquitoes, or other vectors and vermin, dwellings that are overcrowded or otherwise insanitary, dirt or odour, animal carcasses and composting.

29. The definition of a nuisance is more general than the 1956 Act and in some ways more specific. All references to being "offensive" have been removed from the definition and "injurious to health" has been replaced with "injurious to public health". Public Health is defined in part 4 as:

Public health means the health of all of—

(a) the people of new Zealand; or
(b) a community or section of those people.

8 Cont'd

30. The definition of public health may not deal appropriately with situations where the health of only a small group, such as one or two families, is affected (it is not clear whether they would constitute "a community or section" of the people of New Zealand). Although there is case law (in relation to nuisances under the Health Act) that says the threat to health must go beyond the occupier of the premises on which the nuisance arose and must involve a significant proportion or number of the public, the matters the Council controls should also apply to smaller groups of persons. There is also a lot of case law around the term "offensive" in the Public Health Act, and it is submitted that this term is still required, to provide for the enforcement of odours or other "lower level" annoyances that may not be injurious to public health but which materially diminish the comfort of a section of the community.

31. A territorial authority must regularly inspect its district for nuisances, and where it finds a nuisance, the territorial authority must take all proper steps to stop the nuisance (clause 167), although this provisions appears to overlap unnecessarily with clause 153(1). An environmental health officer is given power to enter any land or premises to inspect for nuisances (clause 168). It is a requirement (clause 355) that the occupier of the premises be given a copy of the authority that authorises the entry and produce evidence of identity (warrant of appointment), which is largely consistent with the requirement under the LGA 02 for enforcement officers.

32. It is an offence to do anything in the knowledge that it causes or continues a nuisance (clause 169(1)), or, having been convicted of an offence under clause 169(1), and the person is lawfully able to stop the nuisance, they fail to do so (clause 169(2)). It is recommended that the penalty of $10,000 should be increased to $20,000 for consistency with the majority of offences under the LGA 02. It is not clear whether, if a compliance order (under clause 329) is served on a person requiring them to stop the nuisance, ad the person fails to do so, whether the penalty of $1000 for failing to comply with a compliance order would apply, or the penalty for failing to stop a nuisance under clause 169(2) would apply (if the other requirements for that clause were met).

33. A District Court may also require an owner or occupier to stop a nuisance and prohibit its recurrence. Such an order is called a rectification order (clause 171). In making a rectification order, the Court may find that a dwelling or other building is unfit for human occupation. In that case, the Court may prohibit the use of the dwelling or building for human habitation until the nuisance has been effectively stopped (clauses 172 and 173). The subpart requires a territorial authority to undertake the remedial work required to stop a nuisance if the owner or occupier fails to do so (clause 176). Clause 177 authorises an environmental health officer to enter any land without notice to stop a nuisance if he or she believes on reasonable grounds that the nuisance poses a significant risk to public health in the area.

34. As soon as possible after stopping, or attempting to stop, a nuisance under this clause, the environmental health officer must apply for a rectification order under section 171. This differs from the 1956 Act which provides the power to abate a nuisance without notice and does not require the matter to be confirmed by the Court. However, a compliance order may be more similar to an abatement notice, but the link between compliance orders and rectification orders is not at all clear and the draft submission covers these matters. The range of enforcement tools available to TAs should also extend to infringement notices, to make it easier for Councils to enforce minor non-compliances.

35. If the insanitary condition of a dwellinghouse constitutes a nuisance that poses a significant risk to the health of the occupants, the environmental health officer may serve notice of a prohibition on the occupier of the dwellinghouse, prohibiting the use of the dwellinghouse for human occupation while occupants are subject to that risk (clause 178). An application must then be made to the Court for a rectification order in accordance with clause 177. This and/or clauses 172 and 173 appear to replace the cleansing order/closing order procedures under the 1956 Act (although as noted, clause 177 requires the involvement of the Court). The 1956 Act also provides authority for the Council to make advances to owners of properties served with a cleansing order or closing order – this does not appear to be the case in the Bill.

8 Cont'd

36. Clause 180 provides that all expenses incurred by or on behalf of a territorial authority in stopping a nuisance or in preventing its recurrence, together with reasonable costs in respect of the services of the territorial authority, are recoverable from the owner or the occupier of the land or premises concerned. The subpart authorises a medical officer of health to exercise the territorial authority's powers of stopping a nuisance if the territorial authority fails to do so (Clauses 181 and 182).

37. Clause 183 provides that the subpart does not affect any determination under an enactment (including a resource consent granted under the Resource Management Act 1991) by which an activity (a permitted activity) is permitted. No action or determination under this subpart may stop a permitted activity, but any such action or determination may mitigate any health risks posed by the activity. However, the activity may be stopped if the health risks posed by the activity were not foreseen at the time that the activity was permitted under an enactment.

Power to make bylaws (paras 42 to 44 of the draft submission)

38. This subpart authorises territorial authorities to make public health bylaws. A public health bylaw is defined in clause 184 as a bylaw made under this Bill or under the Local Government Act 2002 or under any other enactment for any of the purposes specified in this subpart.

39. Clause 185 requires a territorial authority to consult with the relevant District Health Board before making a public health bylaw. The purposes for which public health bylaws may be made are substantially carried forward from the Health Act 1956 (see clause 186), but the level of prescription is unnecessary particularly when compared with the bylaw making powers in sections 145 and 146 of the LGA02. The subjects of the bylaws in a) – (c) and (p) provide appropriate generic clauses, but (d) – (f) are largely RMA/Building Act matters, and the other sub-clauses do not need to be so specific.

40. If national consistency is sought in relation to those specific matters, then the performance standards could be specified in the Act (or regulations). However, the matters listed are considered to be matters of local discretion and generic enabling powers are adequate to provide for bylaws to be made for local situations as appropriate.

Review of TAs (paras 45 to 47 of the draft submission)

41. These clauses are not required because there is a clear process for the review of Councils under schedule 15 of the LGA. No equivalent review provisions are provided in the Bill for other parties with functions, duties and powers eg DHBs, assessors.

42. Clause 192 is not necessary as it reflects common sense and the Council's statutory requirements under the LGA02: ie where a range of statutory responses are available to a TA, it will choose the most appropriate option, as assessed following consideration of more than just the matters in clause 192(2), but also the matters in part 6 of the LGA02.

43. Clause 193 provides that bylaws made under the Bill/new Act will prevail over other bylaws, which provides some certainty in case there is any inconsistency, although it is not clear whether this also applies to bylaws made under section 64 of the Health Act compared to other Acts. Arguably it should since the bylaw making powers are the same under the Bill as the Health Act. Clause 382 provides that a bylaw made under section 64 continues in effect "as if it had been made" under clause 186. If the clause said a s64 Bylaw was deemed to be a bylaw made under this Act then there would be no doubt that clause 193 also applies to s64 bylaws.

Regulated Activities (paras 48 to 51 of the draft submission)

44. Section 194 sets out the objective of this Part, which is to prevent, reduce, or eliminate the risks to public health associated with regulated activities. These are activities specified in Schedule 3. Schedule 3 currently specifies services connected with camping grounds, mortuaries and hairdressing as Class 1 activities and microwave ovens, plastic wrapping, and needles and syringes as Class 2 activities. This will replace the existing provisions for registering hairdressers, camping grounds and mortuaries.

8 Cont'd

45. As with food premises under the Domestic Food Review, the emphasis is moving from inspection of the premises to ensuring that the person responsible for the activity has the knowledge to identify any risks and prevent those risks.

46. Persons undertaking a regulated activity must comply with the Act and regulations made under it. Some activities will be subject to a consent requirement. In that case, operators must comply with the conditions attaching to the consent. An additional or alternative requirement for an activity may be a public health risk management plan approved for the activity (clause 195 in conjunction with clause 243). Every person responsible for carrying on a regulated activity must identify all reasonably identifiable risks to public health that may arise from the activity and must take all practicable steps to prevent those risks (which are appropriately defined - clause 196). Regulations may require an operator of a regulated activity to obtain a periodic assessment by an assessor of the operator's compliance with relevant requirements (clauses 199 and 243(e)).

47. The Bill updates the existing regulation-making powers in the Health Act to enable various controls to be set on a specified 'activity' in order to prevent, reduce or eliminate the risks to public health associated with that activity. These provisions have the potential to have wide application and cover activities relating to goods and services with potential to pose public health risk.

48. The Bill sets out a framework for managing risks by ensuring a range of approaches can be used depending on the nature of the activity and extent of the risk. When regulations are made about an activity, a determination will be made whether it requires a consent from a consent authority and/or whether the activity requires an approved public health risk management plan and/or whether the activity needs to be periodically assessed by an assessor. The Bill allows for a 'mix and match' approach so that a high risk activity may require the full range of interventions but lower risk activities may require only a consent.

49. There are a large number of regulations that have been made under the Health Act, which include regulations for the following activities which the Council administers, which are proposed to be continued under the Bill until 1 July 2012; camping grounds; hairdressing; burials/funeral directors. (Other regulations being continued that are relevant to the Council relate to, environmental health officers qualifications, registration of premises, and housing improvement regulations.)

50. After the Bill is enacted, these regulations will be reviewed under the new framework provided for in the Bill. No additional activities are included in the Bill, but any that might be in the future, for example tattooing, will be included only after a consultation process.

51. If the activity is to be considered by an assessor, and the assessor is satisfied that the operator complies, the assessor must issue to the consent holder a certificate to that effect and send a copy to the relevant consent authority (either the territorial authority or the DHB of the locality). If the assessor considers that a regulated activity fails to comply, the assessor must report that assessment to the consent holder and to the relevant consent authority. As previously noted, greater responsibility must be taken by the owner/operator in terms of how the regulated activity is carried out. If required by regulations, the operator must arrange for an assessor (see subpart 9) to conduct an assessment of the activity.

Applications for, and granting of, consents (paras 52 to 55 of the draft submission)

52. This applies to those regulated activities that require a consent (which, for some, the TA will be the consent authority). Applications for a consent are made to the relevant consent authority (clause 201). Regulations may also require the completion of a public health risk management plan for the activity. In that case, a duly completed plan must accompany the application (clause 202).

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53. The relevant consent authority must obtain a report on the application from an EHO (if the consent authority is a territorial authority) or a medical officer of health or health protection officer (if the consent authority is a DHB). The report assesses the compliance of the application with applicable requirements (clause 203). A consent authority may issue the consent subject to any conditions that, in the opinion of the consent authority, are necessary to minimise any risks from the activity to public health (clause 204).

54. If a non-complying application is not brought into compliance, or any further information requested by the relevant consent authority is not supplied, within 6 months or within such further time as the consent authority allows, the application lapses (clause 206). Consents are granted for stated periods and may be renewed. On a renewal, amendments to the public health risk management plan may be required (clauses 207 and 208).

55. A consent authority may fix charges payable by applicants for a consent or renewal of a consent. All applications for regulated activities specified by regulations as requiring a consent the Council (where it is the consent authority) must obtain a report on the application from an EHO. If the activity requires a public health risk management plan, then the report must state if this has been duly completed and approved by an assessor. The charges payable by applicants for a consent or renewal of a consent may be fixed only after using the special consultative procedure set out in section 83 of the Local Government Act 2002. It is appropriate for fees to be set at a local level rather than nationally because distances travelled vary by district and within districts services can be contracted out and costs may vary.

Cancellation of consents by consent authority and surrender of consents (paras 52 to 55 of the draft submission)

56. This subpart provides for mandatory cancellation of a consent on the detection of certain occurrences, such as fraud on the part of the applicant (clause 211). It also provides for discretionary cancellation of consents by the relevant consent authority if, after giving notice to the consent holder and considering any submissions made by the consent holder, the authority is satisfied that the consent holder has breached 1 or more applicable requirements and that cancellation is in the interests of protecting public health (clause 212).

57. A consent holder whose consent has been cancelled may apply to the chief executive of the consent authority for a review of the cancellation or of a condition imposed on a consent (clause 215). The review must be undertaken by a person who may be an employee of the consent authority but who must not have had any previous involvement in the case. The reviewer must act independently. The reviewer may confirm the decision.

58. If the reviewer does not consider the decision well-founded, the reviewer must direct the consent authority to reconsider the decision, and to have regard to any matters specified by the reviewer (clauses 216 and 217). The test of whether the decision is "well founded" introduces an additional test that may not be necessary. The decision would more appropriately be based on a reconsideration of the statutory requirements for granting or refusing an application or cancelling a consent.

59. The subpart also confers a right of appeal to the District Court against the refusal of a consent or for a renewal of a consent or against the cancellation of a consent (clauses 218 to 224). Applications for a review of the cancellation of a consent or of a condition imposed on a consent must be made to the chief executive who must appoint a person to conduct the review. This potentially adds to the work for TAs, as the "review" provision is new, but it is an appropriate step. The Chief Executive will need to appoint several persons as reviewers under the Act.

Public health risk management plans (paras 56 to 58 of the draft submission)

60. This deals with those regulated activities for which a public health risk management plan is required. The Director-General may publish guidelines on the completion of such plans (clause 226). Every public health risk management plan prepared for a regulated activity of a particular kind must identify the risks to public health that may arise from that activity, identify mechanisms for preventing risks to public health arising from that activity and for reducing and eliminating those risks if they do arise, and set out a timetable for managing the risks (clause 228).

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61. Every public health risk management plan must be submitted by the person proposing to carry on the regulated activity to an assessor for approval. An assessor may approve the plan and issue to the operator a certificate to that effect (clause 229). The subpart makes provision for the duration of plans and for their review and renewal (clauses 230 and 231). If the introduction of public health risk management plans is intended to control lower risk activities, then it is not clear that the process of an assessor approving a plan will be any less complex than a consent authority approving a consent (particularly if the assessor is also an employee of the Council)

62. Care will need to taken to ensure separation of the roles of the EHO who reports on a consent application, the person appointed to conduct any reviews, and any Council employee appointed as an assessor who approves a public health risk management plan.

63. The use of the word "certificate", issued by an assessor to state that a plan has been approved, may cause confusion as to whether this constitutes a consent for the activity. This is particularly likely where the assessor issuing the certificate is an employee of the consent authority. A "record" or "report" of the plan approval may cause less confusion than a "certificate".

Records of consents (para 59 of the draft submission)

64. This subpart requires consent authorities to keep records of the consents they issue (clause 232).The Director-General may keep a nationwide record of consents (clause 233). A consent authority must keep a published form of the record open for public inspection. If the Director-General keeps a nationwide record, the Director-General must keep a published form of the record open for public inspection (clause 238).

Amendments to Schedule 3 and regulations (paras 60 to 63 of the draft submission)

65. Schedule 3, which lists the regulated activities, may be amended by Order in Council on the recommendation of the Minister of Health. Consultation is required before the Minister makes a recommendation (clause 239). In deciding whether to recommend that an activity be added to Schedule 3, the Minister must consider, among other matters, whether the activity poses a risk to public health and, if so, the nature and magnitude of the risk, and whether the risk of that harm is likely to be prevented, mitigated, or adequately managed by regulations (see section 240).

66. At this stage Schedule 3 currently specifies services connected with camping grounds, mortuaries and hairdressing as Class 1 activities and microwave ovens, plastic wrapping, and needles and syringes as Class 2 activities. No provision is made for the regulation of tattooing and body piercing. It is not recommended that Council make a submission suggesting that these things be added to Schedule 3, but instead the submission will remind central government that this council in the past has made submissions for the inclusion of tattooing and body piercing in particular and request that central government investigate the addition of these activities in accordance with clause 240.

67. It should also be noted that the licensing and control of offensive trades previously contained in the Health Act 1956 has been continued in the Bill (clause 392) but they expire 12 months from the date of commencement. Currently there are some 77 offensive trades listed for registration in the district, including 61 around refuse collection and disposal; 13 relating to septic tank desludging; 2 for nightsoil collection and disposal; 1 relating to the collection of used bottles for sale; 1 concerning dag crushing; 2 around tanning; 1 for fellmongering; and 1 relating to the slaughtering of animals for any purpose other than human consumption. It appears that the reason for their removal is that these "trades" can be, or are, dealt with under the RMA in district plans, and other legislation/bylaws. However, it is not clear whether or not, once an offensive trade licence has expired, the existing use provisions in the RMA will allow operators to continue with their activities. It is not clear whether an existing use with a licence is regarded as the same use if it does not have a licence, or whether the operators will be required to apply for a resource consent. This could have the potential to be unfair to these operators unless it is made clear in the new Act, or by amendment to the RMA that they do have existing use rights.

8 Cont'd

68. Clause 243 authorises, among other matters, regulations that prescribe requirements, standards, criteria, mandatory objectives, functional requirements, performance measures, or objectives that must be observed or attained; prescribe the premises in which a regulated activity is carried on; require a current consent from the relevant consent authority; require a current public health risk management plan approved by the relevant consent authority for the activity; require periodic assessments by an assessor of the activity; and determine whether the relevant consent authority for any district is the territorial authority for the district or the DHB for the district.

Assessors (paras 64 to 70 of the draft submission)

69. The Bill provides for the appointment of assessors to assess compliance with the requirements for regulated activities (clause 253). The Director-General of Health or a consent authority may appoint an assessor. This subpart provides assessors with powers, including powers to inspect and seize the records of those conducting regulated activities (clause 253). Assessors have powers of entry in order to exercise their powers. The power of entry for Assessors under clause 253 is restricted by clause 255 which provides that an assessor may not exercise the powers conferred by clause 253 to enter a dwellinghouse or a marae unless that assessor has obtained a warrant in accordance with subsection (2). Subsection (3) provides that this section is subject to sections 346 to 351 (general provisions about search warrants)

70. There are a number of activities described in the City Plan as "Small Scale Home Based Employment in Living Zones" or "other activities" that are currently registered under regulations made under the 1956 Act and located within a dwellinghouse. These include hairdressers and some food based activities, and there may well be similar activities located on a marae. Entry to these premises is normally "by invitation" to conduct a routine inspection or assessment so power of entry is not normally an issue. However, if an assessor has received information of an illegal activity occurring at such a premises, or he or she wishes to conduct a revisit to ascertain if areas of non-compliance have been rectified, then a warrant must be obtained. Although this reduces the power under the existing Health Act, it is consistent with other more recent legislation and the New Zealand Bill of Rights Act.

71. However, overall, it is considered that the provision for assessors in the Bill is likely to place additional costs on the Council, as, given the Council's experiences in relation to food regulation, these independent assessors will more than likely be Council employees, carrying out an additional role as an assessor. The separation of assessors from Councils may also compromise a public good activity, as well as adding to the complexity for Councils carrying out its required public health functions. It also adds cost and duplication to the person using the regulatory system. For this reason it is suggested that the Council submit against the introduction of assessors, while also commenting on aspects of the Bill that need to be fixed if assessors are to be included.

Emergencies (no submission)

72. Clauses 259 to 279 deals with emergencies. It is based on and closely reflects many of the provisions of Part 3 of the Health Act 1956. The Minister may declare an emergency if he or she has reasonable grounds to believe that a serious risk to public health exists in any place or area within New Zealand and that the exercise of powers under this subpart will help to prevent, reduce, or eliminate that risk. A declaration of emergency by the Minister lasts for 90 days unless it is revoked or extended (only one period of extension is permissible). If a longer period of emergency is required, a declaration of emergency can be made by Order in Council (see sections 259 to 263). Emergency powers may be exercised by a medical officer of health when an emergency is declared by the Minister or by Order in Council, or when a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 or an epidemic notice is in force (clause 264). Clause 265 deals with the interrelationship between the exercise of emergency powers under this subpart and the exercise of powers arising from a declaration of a state of emergency under the Civil Defence Emergency Management Act 2002.

8 Cont'd

73. The general emergency powers (clause 266) include the power to declare things to be insanitary, to prohibit or limit their use, or to require them to be disinfected, isolated, quarantined, destroyed, or otherwise disposed of. People may be required to report for examination or testing. They may be required to remain in isolation or quarantine until they have been medically examined and found to be free from a condition or until they have undergone preventive treatment (for example, vaccination). Freedom of movement of people, animals, and other things may be restricted. Clause 267 sets out certain safeguards in relation to persons who are isolated or made subject to quarantine under Clause 266. These sections only impact on the Council if the Medical Officer of Health requests that Council's EHOs assist his team for all or part of the Emergency.

Health Impact Assessments (para 71 of the draft submission)

74. Clauses 323 to 325 provide for the conduct of health impact assessments on a voluntary basis. The purpose of a health impact assessment is, in general terms, to enable departments of State, Crown entities, and local authorities to identify and assess whether proposed actions have a positive or negative effect on public health, before those actions are taken. If a health impact assessment is undertaken, it must be undertaken in accordance with criteria specified by the Director-General and a copy must be supplied to the Director-General.

75. This introduces into legislation for the first time the use of health impact assessments. The policy purpose is to encourage the use of health impact assessments in the development of new policy proposals or in decision-making processes. There is no requirement in the Bill that health impact assessments must be carried out. This Council has already been involved, with the DHB and others, in undertaking assessments that could be categorised as a health impact assessment. It has been able to do so under its general power of competence in section 12 of the LGA02, so it is not clear that this section is required, when it is simply an enabling power that already exists.

76. Clause 365 provides for the attendance of medical officers of health at the request of or with the consent of any local authority at any committee or meeting to take part in the discussion on matters related to public health or powers and duties of local authorities under the Bill.

General powers of entry and inspection (paras 72 and 73 of the draft submission)

77. No powers of entry and inspection are given to TA officers in relation to Part 6 (regulated activities). While it may be intended that assessors carry out a monitoring role, assessors should not be undertaking enforcement. EHOs need powers to undertake enforcement, on behalf of the consent authority, including the power of entry and inspection in relation to that enforcement power.

78. Due to the definition of "dwellinghouse" in the Bill, the requirement for a search warrant would also include the land associated with the dwellinghouse. This needs to be amended as under other legislation, entry on to land, without going into a dwellinghouse does not require a warrant.

Compliance orders (paras 74 to 76 of the draft submission)

79. Compliance orders have already been partly discussed in relation to rectification orders above. It is considered they will be a useful enforcement tool in relation to nuisances and other matters under part 5, but clause 329(4(b) needs to make it clear that it includes bylaws made under Part 5 and it should also include Part 6.

80. The consent regime being split between various Consent Authorities and assessors may also create confusion, duplication and gaps. A medical officer of health or HPO also has powers to issue compliance orders in relation to nuisances or bylaws.

81. A time limit for lodging an appeal against a compliance order is required to provide certainty for all parties.

9. SUMMARY OFFENCES TAGGING AND GRAFFITI VANDALISM BILL

To be tabled.

SECTION 2 - BYLAWS

10. PROPOSED GENERAL BYLAW

General Manager responsible:	General Manager Regulation and democracy Services, DDI 941-8549
Officer responsible:	Legal Services Manager
Author:	David Rolls

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 Cont'd

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.

10 Cont'd

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.

10 Cont'd

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.

10 Cont'd

(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.

10 Cont'd

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.

10 Cont'd

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.

10 Cont'd

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 I 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.

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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.

10 Cont'd

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 7th 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 1/12th 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.

10 Cont'd

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.

10 Cont'd

ASSESSMENT OF THE OPTIONS

The Preferred Option

73. **Option 3**

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

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.

10 Cont'd

Maintain the Status Quo (if not preferred option)

74. **Option 1**

	Benefits (current and future)	**Costs (current and future)**
Social	• Existing bylaws may be known to some people – no new requirement to publicise	• Confusion and uncertainty as to the status and enforceability of the bylaws • Reputation of the Council tarnished by not meeting the LGA 2002 review requirements • Reputation of the Council tarnished by failing to update bylaws as a result of the CCC/BPDC amalgamation • Retention of bylaw provisions which are no longer necessary • Some of the clauses are repetitive • The language used is sometimes convoluted and confusing
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• None specific	• Legal uncertainty as to the status and enforceability of the bylaws • Open to legal challenge

Extent to which community outcomes are achieved:

The community outcome of a well governed city would not be met as the maintaining of the current situation would be confusing and uncertain and would not comply with the LGA 2002.

Impact on the Council's capacity and responsibilities:

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.

Effects on Maori:

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

Consistency with existing Council policies:

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.

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

The Legal services unit does not support the maintaining of the status quo nor does the Inspections and Enforcement Unit.

Other relevant matters:

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.

10 Cont'd

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

75. **Option 2**

	Benefits (current and future)	**Costs (current and future)**
Social	• All of the provisions relating to the administration and enforcement of a particular bylaw would be wholly contained in that bylaw	• Necessarily increases the length of most Council bylaws • Many bylaws would contain many identical provisions which could otherwise have been prescribed in one single bylaw • 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
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• None specific	• 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

Extent to which community outcomes are achieved:

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.

Impact on the Council's capacity and responsibilities:

The option would necessarily involve the allocation of considerable resources by the Council in undertaking the amendment of most of its existing bylaws.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

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.

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

The Legal Services Unit does not support this option as it is not considered to be an efficient use of Council resources.

Other relevant matters:

11. PROPOSED DRAFT TRAFFIC AND PARKING BYLAW 2008

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

PURPOSE OF REPORT

1. The purpose of this report is to seek agreement that a Bylaw is the most appropriate way of addressing traffic and parking issues, including the movement of stock and to recommend, on behalf of the Regulatory and Planning Committee, that the Council adopt the proposed *draft Traffic and Parking Bylaw 2008* (Attachment 2) for consultation and commence the Special Consultative Procedure.

EXECUTIVE SUMMARY

2. Two reports on this matter have been considered by the Regulatory and Planning Committee meeting on 13 February 2008 and 6 March 2008. Attachment 1 outlines the issue that to be further discussed and considered by the Committee and the recommendations from the Regulatory and Planning Committee on 6 March 2008 will be tabled at the meeting. This reflects the requirement of section 155 of the Local Government Act 2002 (LGA 02) to identify a perceived problem and consider whether a Bylaw is the most appropriate way of addressing the perceived problem.

3. The following Bylaws have been considered as part of this review:

   - Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
   - Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
   - DC Stock Control Bylaw 1994
   - BPDC Licences for Vehicle Stands on Streets

4. The Local Government Act 2002 (LGA 02) introduced a new requirement for Councils to review their Bylaws. However, the LGA 02 also contained a transitional regime for those Bylaws made under repealed provisions of the Local Government Act 1974 (LGA 74).

5. Under section 293 of the LGA 02, Bylaws made under repealed provisions of the LGA 74 that were in force immediately before 1 July 2003, are deemed to be validly made under the LGA 02 and continue to be in force. However section 293 also provides that those Bylaws that have not been subsequently revoked or that have not expired before 1 July 2008 are automatically revoked on 1 July 2008.

6. Section 158(2) of the LGA 02 also provides that the Council must review a Bylaw made by it under the LGA 74 (other than Bylaws to which section 293 apply) no later than 1 July 2008 if the Bylaw was made *before* 1 July 2003 (section 158(2) (a)).

7. The effect of these provisions is that the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets Bylaw must be reviewed before 30 June 2008 to determine which provisions will be automatically revoked, which provisions should be subsequently replaced and which provisions can be revoked in any case.

8. In addition, with the inclusion of the BPDC into CCC, it is also timely to consolidate the two different Council's Bylaws into one.

9. A clause by clause analysis of the current existing clauses was undertaken to compare the clauses between the four different Bylaws and whether the provisions should be retained or revoked. The clause by clause analysis table of the clauses to be retained and clauses to be revoked is in Attachment 3 and Attachment 4, respectively.

11 Cont'd

10. There is a number of traffic and parking issues faced by local authorities across New Zealand and Christchurch is no different. One of the issues is the competing demand on the road space for different types of uses eg parking and traffic flow, whilst still providing a safe and efficient infrastructure. An analysis of the various options available for dealing with traffic and parking issues has been undertaken. The following options have been considered:

    (a) Do nothing. Under this option, those parts of the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets that are made under now repealed provisions of the LGA 74 will automatically be revoked on 1 July 2008. While unnecessary Bylaws should be revoked if they are no longer required, using this option (ie doing nothing), it will be difficult to determine what has been revoked and what has not been revoked.

    (b) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and rely on other legislation to deal with any issues that may arise.

    (c) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and replace these Bylaws with a consolidated Traffic and Parking Bylaw 2008. Under this option, redundant Bylaw provisions can be revoked and a clear set of rules for traffic and parking will apply in the City.

11. Options (a) and (b) are not acceptable options as there is no legislation in place to deal with some of the perceived problems except by way of a Bylaw. Option (c) - the consolidated draft Traffic and Parking Bylaw 2008 will address these issues by providing the Council with a means to address the various parking concerns of the local communities and also as to the use of a particular road. Option (c) is considered to be the best way of dealing with any perceived problems.

12. The proposed Traffic and Parking Bylaw 2008 is considered to be the most appropriate form of Bylaw. The proposed Bylaw will be reformatted so that the language of the Bylaw is updated and simplified and so that provisions made under the powers from different Acts are divided into the appropriate section. This is due to the different maximum penalty liable for a breach of an offence made under the different Bylaw making powers. For example, under the *Transport Act 1962* there is a maximum penalty of $500 for the breach of a Bylaw made under that Act, whereas under the *LGA 02* there is a maximum penalty of $20,000 for the breach of a Bylaw made under that Act. It is important that the different penalties payable are clearly identified.

13. The proposed Traffic and Parking Bylaw 2008 will also contain some new provisions. The clause by clause analysis of these is contained in Attachment 5. In the August 2007 seminar, it was proposed that one of the new clauses to be added was the misuse of an operation mobility card. There was however, a recent amendment to Clause 6.4 of the Land Transport (Road User) Rule 2004 which covers this situation. The new provision in the Land Transport (Road User) Rule 2004 which came into force on 17 January 2008 is:

    6.4(1A) Without limiting subclause (1), a driver or person in charge of a vehicle must not stop, stand, or park the vehicle in any parking area reserved for disabled persons unless:

        (a) the driver or any passenger is disabled; and
        (b) an approved disabled person's parking permit is prominently displayed in the vehicle.

14. The previously proposed new clause is therefore, no longer required.

15. One of the new clauses to be introduced relating to heavy vehicles will likely be controversial. There are a number of possible ways to restrict heavy vehicles being parked on residential streets. In the seminar presented to the Council in August 2007, it was proposed that a provision be included which enables the Council by way of a resolution to restrict heavy vehicles parked on a residential street at night. Since then, the Council has received other views on this issue. Possible options include:

11 Cont'd

- banning heavy vehicles parked on residential streets unless the Council has by resolution allowed the parking, stopping or standing of heavy vehicles on those streets, or
- allowing heavy vehicles to be parked on residential streets for no more than an hour, which essentially is a complete ban on heavy vehicles parking on residential streets.

16. Draft options are included in Attachment 1 to this report and set out various possible ways in which the Bylaw could provide an answer to the perceived problems.

17. The issues that need to be considered with the different options are the impact it would have on all road users and whether the response to the perceived problems is appropriate in the circumstances. In other words, is it a proportionate and reasonable response? There is a perceived safety issue from motorists with heavy vehicles parked on residential streets. The Parking Section receives between 200 and 250 calls a year regarding whether large heavy vehicles are allowed under Bylaws to be parked on residential streets in Christchurch. As it is not an offence to do so, no exact records have been kept of the number of calls received. However, 29 requests for services (RFS) were logged from 2006 and 2007 for complaints relating to heavy motor vehicles parked on the street. There are also 1075 owners/operators who reside in the Christchurch area owning one heavy vehicle. The total number of owners/operators would be great than this if the number of owners/operators who own multiple vehicles are included. If there was a complete ban on heavy vehicles parked on residential streets, those owners will have to find alternative storage areas which may result in increased freight cost which would be passed onto the consumers.

18. In addition to the clauses, there are amendments to existing clauses which may bring in new provisions that were not previously covered. This applies in the clause relating to restriction on movement of stock. There was previously no provision to determine the type of stock crossing that would be most appropriate on a particular road. A graph which is used by other Council's is therefore to be adopted. This graph assesses the type of stock crossing control that is required dependent on the number of stock to be moved, the intensity of the stock movement and also the average daily traffic volume.

FINANCIAL IMPLICATIONS

19. Inspection and enforcement activity for the proposed new Bylaw arising from this review is likely to be similar to that required under the current Bylaws.

20. Staff resources would be required to process the permit for stock movement.

21. New signage will be required at the attended off-street parking buildings outlining the conditions of entry. The estimated total cost to supply and install the required signage is $10,000.

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

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

LEGAL CONSIDERATIONS

23. Section 145 of the LGA 2002 provides general Bylaw making powers for local authorities for the purposes of:

    (a) protecting the public from nuisance
    (b) protecting, promoting, and maintaining public health and safety
    (c) minimising the potential for offensive behaviour in public places

24. Section 146(a) of the LGA 02 authorises the Council to make Bylaws regulating trading in public places. Section 146(b) of the LGA 02 authorises the Council to make Bylaws for the purposes of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the Council.

11 Cont'd

25. Section 72 of the Transport Act 1962 also has specific Bylaw making powers relating to the use of roads. These powers relate to stock on roads, heavy traffic, one way streets, and various other traffic restrictions.

26. Section 591A of the LGA 74 contains specific Bylaw making powers in relation to parking places and transport stations. Section 684(1)(13) of the LGA 74 authorises the Council to make Bylaws generally concerning roads, cycle tracks, and the construction of anything upon or over a road or cycle track.

27. Reviews must be carried out in accordance with LGA 02. Relevant parts of the Act include section 155, which requires that the Council is satisfied that a Bylaw is necessary and that it is the most appropriate way of addressing the perceived problems; section 77, which sets out the requirements in relation to decisions, in particular, identifying options and assessing them; and section 83, which sets out the Special Consultative Procedure, outlining the consultation process, including notification, submissions, hearings etc.

28. In undertaking the review, in accordance with *Section 155* of the LGA 02, the Council must make the following determinations:

    (a) Identification of a perceived problem, and consideration of whether a Bylaw is the most appropriate way of addressing the perceived problem; and

    (b) If it has determined that a Bylaw is the most appropriate way of addressing the perceived problem, then whether:

        (i) A new Bylaw or the reviewed Bylaw is the most appropriate form of Bylaw (section 155(2) (a)); and

        (ii) A new Bylaw or the reviewed Bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (no Bylaw can be made which is inconsistent with the New Zealand Bill of Rights Act 1990 (section 155(3))).

29. 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;

11 Cont'd

(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.

30. 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.

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

31. Yes, as above.

32. The clause by clause analysis compares the current clauses across the Bylaws, and contains advice on whether a clause should be included in the new draft Bylaw. The clauses were assessed to see whether:

- the issues they were designed to address still exist
- the issues are significant, either by frequency or seriousness
- the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a Bylaw is an effective tool
- the issues are covered by new or amended legislation
- the clauses are reasonably able to be enforced, and
- the clauses are consistent with the Bill of Rights Act.

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.

34. To summarise the legal conclusions reached

- a consolidated Traffic and Parking Bylaw is considered to be the best way of dealing with perceived traffic and parking problems in the City
- the draft Traffic and Parking Bylaw is the most appropriate form of Bylaw
- the draft Traffic and Parking Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the Bylaw can be said to be inconsistent with that Act. In this respect, particular regard has been given to the clause relating to prohibited times on roads.
- the draft Traffic and Parking Bylaw is authorised under sections 145 and 146 of the LGA 02, section 591A and 684(1)(13) of the LGA 74, and section 72 of the Transport Act 1962.
- the draft Traffic and Parking Bylaw is not considered to be repugnant to the general laws of New Zealand. Again particular consideration has been given to the clause relating to prohibited times on roads.
- the draft Bylaw is certain.
- the draft Bylaw is reasonable. While the Bylaw does interfere with the public's right to park in a given space, then benefits of controlled parking and traffic movement give a reasonable public benefit in return. Further analysis of "reasonableness" concerns is contained below in paragraphs 41 to 71.

11 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

35. Aligns with the Streets and Transport activities by contributing to the Council's Community outcomes:

    - safety (by providing a safe transport system); and
    - community (by providing easy access to facilities).
    - governance (by providing the opportunity for the community to participate in decision-making through consultation on plans and projects).

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

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

ALIGNMENT WITH STRATEGIES

37. The proposed new Bylaw will manage and control traffic and parking including the movement of stock in such as way as to balance the various and competing demands of the road space to ensure that it is safe for all users.

38. The Parking Strategy for the Garden City 2003 aims to have a City where parking is provided and managed to integrate with the community's aspirations for its development; protect the environment; support economic vitality; and complement the overall transport system.

39. The Christchurch *Central City Revitalisation Strategy* aims to develop a "vibrant, fun, exciting, safe and sustainable heart of Christchurch…" The Strategy aims to "enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City…"

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. 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".

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. The 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" .

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 the Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch's sustainable transport mix".

43. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "the Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau". Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed".

Do the recommendations align with the Council's strategies?

44. as above.

11 Cont'd

CONSULTATION FULFILMENT

45. A seminar was presented to the Council on 28 August 2007 on the Bylaw review. A further joint Council and Community Board seminar was held on 13 February to give a summary of the Bylaws being reviewed, including traffic and parking.

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

47. A report was initially considered by the Regulatory and Planning Committee on 13 February 2008 and as part of that meeting, the Committee had requested further information including the rationale and justification for some of the clauses that are to be included in the proposed Traffic and Parking Bylaw 2008. A further report was presented to the Regulatory and Planning Committee on 6 March 2008. The recommendations from the Regulatory and Planning Committee meeting on 6 March 2008 are to be tabled at the Council meeting.

48. Initial consultation with the Road Transport Association and NZ Trucking Association was undertaken on 21 February 2008. Their feedback from the consultation will be presented at the meeting.

REGULATORY AND PLANNING COMMITTEE RECOMMENDATIONS

The Regulatory and Planning Committee recommends to the Council subject to any further changes the Committee resolves at its 6 March 2008 meeting:

(a) That the following Bylaws be revoked and replaced by the attached draft Traffic and Parking Bylaw 2008 (Attachment 1), subject to any changes the Committee resolves;

- BPDC Traffic and Parking Bylaw 1998
- CCC Traffic and Parking Bylaw 1991
- BPDC Stock Control Bylaw 1994
- BPDC Licences for Vehicle Stands on Streets

(b) That the following registers be established:

(i) One Way Streets Register

(ii) Restricted Vehicles on Specified Roads Register

(iii) Prohibited Times on Roads for Vehicles below 3,500kg Register

(iv) Vehicles on Grass Verges Register

(v) Heavy Vehicles on Residential Streets Register

(vi) Stock Droving Routes Register

(vii) Stock Droving Prohibited/Restricted Routes Register

(c) That the content in the Schedules be transferred onto the following registers:

(i) the content in the Fifth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the One Way Streets Register

(ii) the content in the Third Schedule of the Banks Peninsula District Council Traffic and Parking Bylaw 1998 be transferred onto the One Way Streets Register

11 Cont'd

(iii) the content in the Second Schedule and the Sixth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the Restricted Vehicles on Specified Roads Register

(iv) the content in the Fourth Schedule of the Banks Peninsula District Council Traffic and Parking Bylaw 1998 be transferred onto the Restricted Vehicles on Specified Roads Register

(v) the content in the Ninth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the Prohibited Times on Roads for Vehicles below 3,500kg Register

(d) That the attached draft Bylaw, in terms of section 155 of the LGA 02

(i) is the most appropriate way to address perceived problems relating to traffic, parking, and movement of livestock issues in the City; and

(ii) is the most appropriate form of Bylaw; and

(iii) does not give rise to any implications under the New Zealand Bill of Rights Act 1990;

(e) That the attached draft Bylaw

(i) is authorised by the LGA 74, the LGA 02 and the Transport Act 1962:

(ii) is not repugnant to the general laws of New Zealand;

(iii) is certain; and

(iv) is reasonable.

(f) That the draft Statement of Proposal (Attachment 6) is adopted, subject to any changes the Committee resolves;

(g) That the draft Summary of Information (Attachment 7) is adopted, subject to any changes the Committee resolves;

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(h) That Special Consultative Procedure commences on 29 March 2008 and the last submission date shall be 1 May 2008;

(i) That a Hearings Panel be appointed.

11 Cont'd

BACKGROUND (THE ISSUES)

DISCUSSION

49. The following Bylaws have been considered as part of this review:

- Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
- Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
- BPDC Stock Control Bylaw 1994
- BPDC Licences for Vehicle Stands on Streets

50. The main issues to be covered by the draft Traffic and Parking Bylaw 2008 is the management of traffic and parking and the movement of livestock. There are some clauses contained in the current Bylaws which are covered by existing legislation or by other Bylaws and therefore should be revoked. The following section analyses the requirement of the provisions to be included in the propose draft CCC Traffic and Parking Bylaw 2008.

Traffic and Parking

51. *Sections 591A and 684(1) (13) of the LGA 74* and *Section 72 of the Transport Act 1962* authorise the Council to make Bylaws for the purpose of imposing any parking, stopping or standing restrictions. This allows Council to restrict or limit the time vehicles may use parking spaces and also prohibit stopping in certain places where capacity is limited or safety is required. One of the main parking issues is the conflict between commuter parking and parking for visitors/shoppers to a particular area. Imposing parking restrictions is the only way to achieve a balance between the competing demands. A Bylaw is therefore the most appropriate and reasonable way to deal with the problems associated with parking in the City.

52. The provision in the proposed Bylaw will not only cover general restrictions in relation to parking, stopping or standing but be further expanded to incorporate the different means and methods of controlling a restricted parking area eg by way of meters or otherwise (eg coupon parking). This will also remove the need for some of the other provisions in the current Bylaws.

53. The proposed provision caters for restrictions for the different classes of road users eg motorcycles and buses, thereby removing the need for a specific clause relating to the parking of vehicles by disabled persons which is another class of road users.

54. Provisions relating to vehicles parked on grass berm or verges are provided mainly for pedestrian safety. The draft Bylaw provides that no person may park a vehicle on a grass berm. It also provides that a vehicle may only be parked on a grass verge if the grass verge is on a road which is listed on the Vehicles on Grass Verges Register. These provisions have been included because there are some areas where no footpaths are provided and pedestrians use the berm or verge area. If a vehicle was parked on the berm/verge, the vehicle may obstruct the pedestrian's path and force the pedestrian to step out onto the roadway. In addition, there may be damage caused to the berm/verge with vehicles travelling on it as it is not constructed to the same standard as the roadway. A Bylaw is the most appropriate way and reasonable way to deal with this problem.

55. The provision relating to heavy vehicles on residential streets is one of the new clauses to be included. There are currently a number of local streets in Christchurch where the Council signs prohibit the use of heavy vehicles on those streets except for heavy vehicles making deliveries. These signs were erected due to requests from the community regarding traffic, in particular heavy vehicles using these roads as a "short cut". These signs appear to have been erected under *Section 70AA* of the *Transport Act 1962* which provides that in the case of any road under its control, the Council may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any 2 places by way of any road or roads specified in the notice. However, rather than rely on this provision which does not relate to a Bylaw (or require the policy analysis that is associated with making a Bylaw), it is proposed that a provision is introduced into the Traffic and Parking Bylaw 2008 which enables the Council by resolution, to prohibit, limit or restrict the use of any road by any heavy motor vehicle at any time.

11 Cont'd

56. The issues with heavy vehicles on some roads are due to the classification of those roads and the type of traffic that is reasonably expected to be travelling on those roads. All roads within CCC are classified into local, collector or arterial roads and as an example, any traffic travelling on a local road should be local traffic ie. the person driving the vehicle has a reason to be on that street because the driver or their passenger either lives or is visiting someone on that street or travelling through that street because there is no other alternative route. It would be unfair to the local community who have specifically chosen to live on a local road to then have a road which functions like an arterial road due to the nature of the traffic travelling on it. Another issue with heavy vehicles on some roads, especially local roads, is the road environment that has been created. The junctions/intersections may also have been narrowed and it would be unsuitable for heavy vehicles to manoeuvre through the intersections safely without encroaching onto the opposing lane or damaging parts of the road (eg footpaths).

57. Section 72(1) (i) of the Transport Act 1962 authorises the Council to make a Bylaw which prohibits or restricts absolutely or conditionally any specified class of traffic (whether heavy traffic or not), or any specified motor vehicle or class of motor vehicle which by reason of its size or nature or the nature of the goods carried is unsuitable for use on any road or roads specified in the Bylaw. The draft Bylaw relies on this section to enable the Council to establish a Heavy Vehicles on Residential Streets Register which will specify local road or part of a local road in an area zoned "living" or "residential" which may not be used by heavy motor vehicles. This provision is considered to be reasonable because the Council will need to pass a resolution in relation to each local road to add that road to the register. Therefore a sound case will need to be established before the Council will make such a resolution. The draft Bylaw also provides that the prohibition will not apply if-

    (a) the heavy motor vehicle is conveying an owner or occupier of, or a bona fide visitor to, a property fronting the residential road; or
    (b) there is no other alternative route other than to use the residential road.

58. Nor will the prohibition apply to apply to heavy motor vehicles

    (a) providing an emergency service on the road or in the immediate vicinity; or
    (b) loading or unloading that vehicle in the course of trade; or
    (c) carrying out work as a network utility operator on the road.

59. The parking of heavy vehicles on residential streets is another issue relating to heavy vehicles that is included in the proposed draft CCC Traffic and Parking Bylaw. *Section 591A(1)(d)* of the *LGA 74* authorises the Council to make a Bylaw prohibiting or restricting parking in residential areas by specified classes of vehicles, either generally or at specified times where in the Council's opinion such parking is likely to cause a nuisance or danger. There has been a number of incidences where complaints have been received by the Council regarding heavy vehicles being parked outside a resident's property and causing a nuisance to the residents affected. It is believed that it is not reasonable for a community to be living in a residential area to expect heavy vehicles to be parked in front of their property at all times. There are different provisions that could be applied and these are contained in Attachment 1 to this report.

60. There are other provisions contained in this part which relates to the parking restrictions provisions and ensure better compliance and effectiveness of the parking restrictions eg allowing an authorised officer to temporarily discontinue a parking space or temporarily discontinue a parking space except for the use of a trade's vehicle or other specified vehicle, the use of parking coupons etc.

Traffic Movement Restrictions

61. Bylaws relating to one way streets, roads or traffic lanes restricted to specific classes or vehicles and turning, stock droving routes are provided for under section 72 of the Transport Act 1962. One way streets and prohibitions on u-turns, left or right turns are created for safety and capacity reasons. Special vehicle lanes on roads or traffic lanes or any turning movement to be made only by specified classes or vehicles carrying specified classes of loads or not less than a specified number of occupants allows the Council the authority, if they wish to promote or allow a certain class of vehicle priority.

11 Cont'd

62. The provision relating to prohibited times on roads was included to prevent car enthusiasts congregating on roads and causing a nuisance to the adjacent residents. A recent Council report was presented on 21 June 2007 and this considered the legal implications of this provision in light of the *New Zealand Bill of Rights Act 1990 (BORA)*. Further legal advice has been obtained on this issue and a copy of this is in Attachment 8. The legal advice concludes that while the matter is not beyond doubt, there is a good argument that the benefits to local residents, the temporal and other exceptions to the limitation, and the degree of harm the Bylaw is seeking to prevent combine to make the Bylaw reasonable and subsequently not repugnant to the general laws of New Zealand.

63. This provision relies on *Section 684(1) (30)* of the *LGA 74* which has been repealed and consequently, this provision will be automatically revoked on 1 July 2008. However, *Sections 145 and 146* of the *LGA 02* provide the Council with the authority to make this provision and therefore this provision can be retained. It is recommended that this provision be located in the 'Traffic Movement Restrictions' part in the proposed Traffic and Parking Bylaw.

Events

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

Vehicle crossings

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

Machinery or equipment on road

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

67. Caravans, immobilised/immobile vehicles and using a vehicle to attach advertising materials, are vehicles which are parked on the road and effectively using the road as a storage facility. This means that the parking spaces are not available to other users and it causes inconvenience to the general public especially in areas where there is a high parking demand.

68. In relation to caravans, BPDC has a provision which does not allow caravans and campervans for the purpose of temporary living accommodation for any continuous period exceeding 24 hour whereas the CCC had a seven days period. It is proposed that a seven days period be applied to be consistent with clause 6.19 of the Land Transport (Road User) Rule 2004 regarding parking a trailer on the roadway. The Public Places Bylaw deals with people temporarily residing or sleeping in public places.

11 Cont'd

69. In relation to the clause relating to immobilised/immobile vehicle, it is acknowledged, that in the case where a vehicle has broken down, the owner may have no alternative but to leave the vehicle on the street while remedial works to the vehicle have been organised. Therefore the provision will provide that an immobilised vehicle may be parked on the road for a 7 day period until the owner rectifies the situation. This provision is not considered to be inconsistent with sections 356 and 356A of the LGA 74 which relate to the removal of certain vehicles from roads eg abandoned vehicles or vehicles with no warrant of fitness.

70. The provision on displaying vehicles on street is included in the Bylaw to address the issue of businesses which use the road as an extension of their business to store and/or advertise their vehicles and thereby causing an inconvenience and nuisance to the general public as the spaces are then not available to other road users and also act as a distraction to passing traffic. It is considered that this provision is authorised by section 145 of the LGA 02 which authorises the Council to make Bylaws protecting the public from nuisance as well as section 146 of the LGA 02 which authorises the Council to make Bylaws regulating trading in public places. Storage of vehicles on public places for business purposes can be viewed as one aspect of trading in a public place.

71. The provision prohibiting parking vehicles on the road to be worked on unless the repairs are of an urgent but minor matter is included not only for the safety for both the passing motorists as well as the person working on the vehicle but also to prevent damage to the road, environment and noise control.

Stock Control

72. Sections 145(a) and 145(b) of the LGA 02 provide the Council with the authority to make a Bylaw to protect the public from nuisance and to protect, promote, and maintain public health and safety. In addition, Section 146(b) (vi) authorises the Council to make a Bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. There is a clear safety issue for both stock, drovers and other road users when stock are moved on the roads. There are also issues about effluent on roads. Effluent can be a nuisance as it sticks to vehicles. It also corrodes the road surface, potentially requiring the Council to reseal roads earlier than anticipated.

73. Previously, CCC did not have any Bylaw to control the movement of stock but Banks Peninsula has had such a Bylaw. The draft Bylaw introduces some new rules about the movement of stock on City roads. These rules are considered to be a reasonable balance between the needs of stock drovers and the other users of roads. It also requires stock owners and drovers to ensure that the amount of faecal waste deposited on the carriageway is kept to a minimum and removed either as soon as practicable for stock other than milking cows or within 30 minutes after the conclusion of each milking in the case of milking cows.

74. An additional further restriction is included in Part VI of this Bylaw to further improve the safety for both stock movement and other traffic. The Bylaw implements a stock movement permit system for milking cows. Part of the application process for a permit requires the Council to consider whether a stock underpass would be more appropriate than a stock crossing. A graph to determine the stock crossing status is adopted from other local authorities. It means that for roads which carry a higher volume of traffic may require a stock underpass.

Miscellaneous

75. This provision relating to materials/debris on road and damage to road is one of the new provisions to be included in this Bylaw.

76. Traffic hazards on roads are caused when contractors working on a site are not vigilant with the way they access a site or not ensuring that they rectify the situation as soon as it occurs. There are situations where materials/debris eg mud, stones etc. are brought onto the road and causes damage to passing road users with the materials being flicked up. It also causes other issues such as blocked drains with materials being washed into the stormwater system. Excess materials being discharged into the waterways also create environmental problems.

11 Cont'd

77. Damage to the roads especially to footpaths is also another safety concern that the Council has particularly for pedestrians. The contractors should therefore be responsible to ensure that they take better care to avoid such situations.

78. *Section 357(1)* of the *LGA 74* provides that it is an offence to cause certain types of damage to roads. The penalties are as follows: a fine not exceeding $1,000 and, where the offence is a continuing one, to a further fine not exceeding $50 for every day on which the offence has continued. The defendant may be ordered to pay the cost incurred by the Council in removing any matter, or in repairing any damage caused. This penalty is considered to be inappropriate especially for contractors who are aware of the requirements to ensure that roads must not be damaged and also if there are any materials/debris brought onto or left on the road from a site.

79. *Section 146(b)(vi)* of the *LGA 02* authorises the Council to make a Bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. Including a provision in the proposed Bylaw to deal with damage to roads, berms, and footpaths will ensure that better care is undertaken to avoid such damage.

80. The powers of the police officer, enforcement officers and parking warden/officer are provided for in the Transport Act 1962, sections 356 and 356A of the LGA 74 and section 113 of the Land Transport Act 1998. This is provided to further clarify the authority of the police officer, enforcement officer and parking warden/officer to remove any vehicle or thing which are parked or placed on the road in breach of any provisions in this Bylaw.

ASSESSMENT OF OPTIONS

The Preferred Option

81. The preferred option is to revoke the four Bylaws and create a new consolidated traffic and parking Bylaw which would be rationalised and modernised.

	Benefits (current and future)	**Costs (current and future)**
Social	• An easier to understand Bylaw as it would be written in modern plain English • Able to include new provisions • A consolidated Bylaw to cover the whole of CCC jurisdiction rather than having separate Bylaws	• Need to advertise and communicate to the public of the changes
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• None specific	• None specific

11 Cont'd

Extent to which community outcomes are achieved:

The community outcomes that this option would contribute to include:

- a **well governed city** by having a new consolidated traffic and parking Bylaw which is
- a **safe transport system** and **access to facilities for the community** by providing the mechanism to regulate and control traffic and parking

Impact on the Council's capacity and responsibilities:

Inspection and enforcement activity for the Bylaw, as proposed, is likely to be similar to that required under the current Bylaws.

The introduction of a permit system for the movement of stock would require additional staff resources to process the permits. A permit system would enable the Council to determine the type of crossing required eg whether a level crossing or a stock underpass is appropriate.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

Current policies relating to the regulation and control of traffic and parking include:

- Bus stop location policy (adopted 16 December 1999)
- Central City Transport Concept Plan (adopted 27 October 2005)
- Christchurch Road Safety Strategy (adopted 26 August 2004)
- Citywide Public Transport Priority Plan (adopted 26 August 2004)
- Cycling (adopted 27 April 1994)
- Give way/stop Controls (adopted 27 July 2000)
- Maintenance of Private Rights-of-Way (adopted 22 April 1991, reconfirmed 24 October 2002)
- Parking – Kerbside Parking Limit Lines (adopted 23 October 1996)
- Parking Strategy (adopted 26 June 2003)
- Public Transport Policy (adopted 24 June 1998)
- Right Turn Phases at Traffic Signals (adopted 27 May 1998)
- Traffic Calming Policy (adopted 28 June 1995, reconfirmed 25 February 1999)

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

The Inspections and Enforcement Unit is in favour of this option.

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(2) of the LGA 02 requires the Council to review the Bylaws by 30 June 2008.

The amalgamation of the BPDC and the CCC requires an amalgamation of the Bylaws which cover the whole region under CCC jurisdiction.

11 Cont'd

Maintain the Status Quo (if not preferred option)

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

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

Extent to which community outcomes are achieved:

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

Impact on the Council's capacity and responsibilities:

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

Effects on Maori:

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

Consistency with existing Council policies:

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

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

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

Other relevant matters:

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

11 Cont'd

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

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

	Benefits (current and future)	**Costs (current and future)**
Social	• no Bylaws to enforce	• public expectations will not be met • no or low compliance of traffic direction and parking restrictions as it will not be enforceable • negative impact on the safety and efficiency of the road network
Cultural	• none specific	• none specific
Environmental	• none specific	• the efficiency of the road network would have environmental impact
Economic	• none specific	• there may be financial impact on businesses if there are no regulation and control on parking

Extent to which community outcomes are achieved:

The community outcome of a **well governed city,** providing a **safe transport system** and **access to facilities for the community** will not be met as there will be no or low compliance of the controls in place as they will not be enforceable.

Impact on the Council's capacity and responsibilities:

The community expectations on the regulation and control of traffic and parking will not be met as there may not be any legislation under which Council can enforce on.

Effects on Maori:

There will be no specific effect on Maori – revoking the Bylaws will have a negative impact on the city as a whole.

Consistency with existing Council policies:

Will not be consistent with existing Council's policies especially in relation to safety and parking (see preferred option list).

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

The Legal Services Unit, Inspections and Enforcement Unit and the Transport and Greenspace Unit do not support revoking the Bylaws.

Other relevant matters:

As discussed above, it is not appropriate for traffic movement and parking to be left uncontrolled.