



Christchurch City Council

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 8 MAY 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.

Principal Adviser
Mike Theelen
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Committee Adviser
Warren Brixton
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1. APOLOGIES

Councillor Sally Buck and Councillor Ngaire Button.

2. DELEGATIONS

Fairfield Avenue Residents – Housing Development Control

Alex Clark, Fairfield Avenue residents spokesperson presented a report to the Spreydon/Heathcote Community Board about the need for more adequate controls on housing development in the city and in particular in Fairfield Avenue.

The Board **decided** to request a Council staff report on the following matters:

- (a) An explanation of the means by which the Board and community groups could have meaningful input as the City Plan was reviewed, particularly in light of the Urban Development Strategy.
- (b) The status of the matters in the current work plan and the proposed work plan in Fairfield Avenue.
- (c) How an advisory group for Fairfield Avenue might be established with a view to developing more adequate controls on housing redevelopment, comprising representatives of the street, Community Board members, Council staff, an advisory planner and members of a professional planning organisation.

The Board further **resolved** to extend an invitation to representatives of Fairfield Avenue to present their material to a meeting of the Council's Regulatory and Planning Committee.

Mr Clark along with other residents have accepted the invitation to speak to the Committee.

SECTION 1 – REGULATORY AND PLANNING

3. PROPOSED NEW ZEALAND COASTAL POLICY STATEMENT 2008

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| General Manager responsible: | General Manager Strategy and Planning DDI 941-8177 |
| Officer responsible: | Programme Manager Healthy Environment |
| Author: | Melissa Renganathan, Policy Analyst, Strategy and Planning Group |

PURPOSE OF REPORT

1. The purpose of this report is to seek retrospective adoption by the Council of the attached submission on the proposed New Zealand Coastal Policy Statement 2008 (NZCPS). The submission was lodged with the Department of Conservation prior to the closing date of 7 May 2008.

EXECUTIVE SUMMARY

2. The purpose of a Coastal Policy Statement is to state policies to achieve the purpose of the RMA (to promote the sustainable management of natural resources) in relation to the coastal environment. The first Coastal Policy Statement came into force in 1994 and includes a policy requiring an independent review of its effectiveness within 9 years. A review was completed in 2004 and recommended a formal review of the NZCPS to update it and clarify some policy and address emerging issues including the effects of climate change and development pressures on coastal areas.
3. The City Council provided feedback on possible policy directions during the initial consultation on an "Issues and Options" document released by the Department of Conservation in 2006.

3 Cont'd

4. The main reason for making this submission to the draft New Zealand Coastal Policy Statement 2008 is to allow an opportunity for input into the document. As a national document, the Council will have to give effect to the Objectives and Policies of the NZCPS in its Plans and Policies, which may mean changes to the City and Banks Peninsula Plans will be required.
5. The NZCPS consists of nine Objectives promoting social, economic and cultural wellbeing through the sustainable management of the coastal environment. There are 57 Policies covering general issues (e.g. the coastal environment in general, biosecurity issues and Treaty principles), subdivision and development, natural character, public access, water quality, coastal hazards and historic heritage. Please refer to the attachment.
6. The Council in general supports the draft NZCPS. The format of the Statement has been altered to that used for local authority plans, having both objectives and policies and which provides a better framework for the policies. The Council also supports the grouping of "like" policies together and in relation to this has proposed some amendments to the proposed policies.
7. The 1994 NZCPS contained significant uncertainty due to the use of terms such as "appropriate" and "where practical". The proposed Statement's wording has become more directive as this provides greater guidance for local authorities. However, there will always be situations where some flexibility is required and the Council has identified in the submission where this is necessary.
8. Local authorities must be able to "give effect" to the Policies within the NZCPS, many of which are "national priorities". There are a number of Policies (e.g. many of the Natural Character Policies) which local authorities may be unable to "give effect to" as there is little (or no) guidance and/or methods provided. The submission has addressed this issue in its submission by suggesting the Statement also provide guidance and/or methods to how such Policies be incorporated into District Plans.
9. The proposed submission also suggests that all Policies within the NZCPS should be specific to the coastal environment. If in general they could relate to other parts of the environment (e.g. the subdivision and development Policies) they should not be included within the NZCPS as they do not provide any additional value to the NZCPS.
10. The submission also states that Council has concerns that there are a number of Policies which restate aspects of the RMA, but do not provide any additional development or guidance. The Council has submitted that as presently written these policies do not add anything to the NZCPS. The submission requests that these Policies be reworded or removed from the Statement.
11. In general the CCC generally supports the NZCPS and its objectives and policies, however the CCC is concerned that there are a number of policies where national guidance is needed (but not provided for) to enable local authorities to give effect to them.

FINANCIAL IMPLICATIONS

12. The NZCPS could result in additional resources being required to amend planning documents in order to give effect to the Statement and may require additional work around coastal hazard identification. The financial implications should support the inclusion of coastal areas in the mix of open space purchased by the Council and the associated infrastructure the Council provides. Giving effect to the final NZCPS will be achieved through a variety of mechanisms including Council District Plan and the LTCCP.

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

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

3 Cont'd

LEGAL CONSIDERATIONS

14. The RMA provides for the Crown to issue National Policy Statements. The opportunity to influence and shape the proposed NPS is being taken by Council through the submission process.

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

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

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

16. This submission supports several of the LTCCP objectives that aim to protect and manage Christchurch and Banks Peninsula's natural areas and open space, its biodiversity and ecosystems (pg 62 and 124).

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

17. The Council provides and manages 71 regional parks some of which are located near the coast. These parks are used for informal recreation, conservation of natural resources and scenic values and cultural and heritage preservation. The submission supports the LTCCP target of achieving a total of 5020 ha of regional parks (including those within coastal areas) by 2016 (page 125).

ALIGNMENT WITH STRATEGIES

18. This submission supports work being done in preparation of a draft Biodiversity, Open Space, and Climate Change Strategies.

Do the recommendations align with the Council's strategies?

19. As above.

CONSULTATION FULFILMENT

20. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council endorse the attached submission on the Proposed New Zealand Coastal Policy Statement 2008.

4. APPLICATION FOR CHANGE TO CITY PLAN NO. 37 – REZONING 458 – 464 FERRY ROAD

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| General Manager responsible: | General Manager Strategy and Planning DDI 941-8177 |
| Officer responsible: | Team Leader, City Plan |
| Author: | Anita Hansbury, Planning Officer, City Plan & Consultant Planners, Boffa Miskell Ltd |

PURPOSE OF REPORT

1. This report describes an application to the Council for a change to the City Plan and recommends the process for dealing with the application in terms of the provisions of the Resource Management Act 1991 (RMA) (refer attachments).

EXECUTIVE SUMMARY

2. The application is to rezone 458-464 Ferry Road from Living 2 to Business 1. No changes are proposed to any of the Business 1 zone standards and the scheduled activity status for a service station is to be retained.
3. The purpose of this report is not to consider the requested plan change on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the application. The consideration of the merits of the application will occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.
4. The process options available to the Council are to accept the request as a private plan change and publicly notify for submissions and hold a hearing at the cost of the applicant. A further option is to adopt the proposed change as the Council's own plan change and accept the responsibility and costs of processing it; to treat the proposal as a resource consent application; or to reject the request on one of the limited grounds set out in the Act. The Council is obliged to consider this request under the statutory process set out in the RMA.
5. The Hagley/Ferrymead Community Board was briefed on the application at an informal meeting on 2 April 2008. The Board expressed concerns in relation to traffic matters and the potential cumulative effects of similar dislocated rezonings to Business 1 on the achievement of commercial consolidation policy. Further information regarding this matter was requested from the applicant and that information was received on 14 April 2008.

FINANCIAL IMPLICATIONS

6. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application or decide that it should be treated as a resource consent, it is possible that the applicant would challenge this decision in the Environment Court, which would be a costly process for the Council regardless of the outcome. Costs cannot be predicted accurately, but could be in the vicinity of \$20,000 for this preliminary step.
7. Should the Council accept and notify the change at the expense of the applicant there would be no direct costs as these would be recovered. However there would be an impost on staff time.
8. Should the Council adopt the change as its own then the Council will need to absorb all the costs, likely to run to at least \$15,000.

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

9. Yes.

LEGAL CONSIDERATIONS**Have you considered the legal implications of the issue under consideration?**

10. There is a legal process set out in the RMA which must be followed. It includes initial consideration of how the plan change is to be processed, followed by notification, submissions, reporting, hearings, decisions and possible appeals. It is a process which is very familiar to Council and should create no particular risks or liabilities if followed correctly.

4 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. City Development - ongoing programme of improvements (page 145 of the LTCCP) to enhance the planning documents of the City, to ensure an attractive built environment and minimise adverse effects on the environment.

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

12. Yes

ALIGNMENT WITH STRATEGIES

13. Yes

Do the recommendations align with the Council's strategies?

14. Yes

CONSULTATION FULFILMENT

15. The applicant has directly contacted the owners of adjoining properties by way of a letter. The only response to that letter has been a telephone conversation with the owner of the immediately adjoining residential property to the south, at 4 Hopkins Street. That person sought clarification of the proposal but did not express any opinion on the benefits or costs of the proposal.

STAFF RECOMMENDATION

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

- (a) That the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.
- (b) That in accordance with Council policy the cost of processing the plan change be at the applicant's expense.

5. MISCELLANEOUS DELEGATIONS

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| General Manager responsible: | General Manager Regulation and Democracy Services, DDI 941-5849 |
| Officer responsible: | Chris Gilbert, Manager, Legal Services Unit |
| Author: | Judith Cheyne, Solicitor |

PURPOSE OF REPORT

1. To recommend that the Council delegate a number of new routine administrative powers to the Chief Executive.

EXECUTIVE SUMMARY

2. In recent times the Council has been conferred with a number of new routine administrative powers. These powers have arisen as a result of recent amendments to the Dog Control Act 1996, and the passing of the new Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007.
3. There are also three statutory powers which have not been delegated to staff in the past either at all or fully, and which, in the interests of administrative efficiency, should be. These are contained in section 139 of the Animal Welfare Act 1999 and section 171 and 173 of the Local Government Act 2002. The powers in question are detailed in the sections of this report headed "Background" and "Staff Recommendations".
4. To enable the Council to exercise these powers in an efficient manner it is desirable that the Council delegate them to its staff.
5. The most effective way of ensuring that these powers are able to be exercised at all times by the appropriate officers is for the Council to delegate those powers to the Chief Executive. The Chief Executive may then, in turn, sub-delegate those powers from time to time as he sees fit to the appropriate officers of the Council.
6. If the Council was to delegate directly to the specific officer who will be charged with exercising that power, as it has done in the past, then every time it becomes necessary to have that power exercised by a different officer it is necessary to go back to Council to have a new delegation made. This is wasteful of the Council's time and can often result in considerable delays in the exercise of the administrative functions of the Council.
7. In the past the Council has individually delegated each of its routine administrative powers under the Dog Control Act 1996 directly to various officers of the Animal Control Unit. This has resulted in reports being presented to Council which contain lengthy lists of delegations. The danger with this approach is that on occasion a routine administrative power may be overlooked.
8. It is the authors' view that in the case of the Dog Control Act 1996, and the Bylaws the better approach is for the Council simply to delegate all its powers under each instrument by way of exception. In other words, the Council delegates to its staff all of its powers under those instruments except those that it wishes to reserve for itself.
9. In delegating by exception the Council will generally reserve for itself powers to determine policy, to set fees, and to hear and determine objections. In other words the Council will retain for itself powers which properly fall within the realm of governance. This approach has already been adopted by the Council in respect of its numerous powers under the Building Act 2004. It appears to work very well.
10. The delegation of routine administrative powers by way of exception and directly to the Chief Executive has, in the authors' view, two very important advantages.

5 Cont'd

11. Firstly it will help to define the boundary between matters of governance and matters of management. The Council will retain those powers which it considers properly fall within the ambit of governance. It will not delegate them. Conversely it will delegate all routine administrative powers, the exercise of which are properly a function of management, to the Chief Executive. It should then be his decision, in the interests of good management, as to who should exercise those powers. He can then sub-delegate those powers accordingly.
12. Secondly it will enable the Council to operate in a more effective and efficient manner. Provided that the Council does not unduly restrict the sub-delegation of its powers the Chief Executive will be free to sub-delegate them to such persons from time to time as he sees fit and in a timely manner as circumstances may demand. The Council will not then be burdened with having to make decisions of a management nature every time it becomes necessary to reassign a particular power to a different person.

FINANCIAL IMPLICATIONS

13. The delegations recommended below will assist the Council's Inspections and Enforcement Unit in carrying out its functions within existing budgetary provisions.

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

14. Yes

LEGAL CONSIDERATIONS

15. Clause 32(1) of the Seventh Schedule of the Local Government Act 2002 authorises the Council to delegate all of the powers listed in the staff recommendation to any officer of the Council. This includes the Chief Executive. In doing so it may impose any conditions, limitations or prohibitions on any such delegation.
16. Clause 32(3) of the Seventh Schedule would authorise the Chief Executive to sub-delegate any of the powers listed in the staff recommendation to any subcommittee or any person subject to any conditions, limitations or prohibitions that the Council may have imposed in making the original delegation to him.
17. Clause 32(6) of the Seventh Schedule requires the Council to consider whether or not to delegate to a community board if the delegation would enable the board to best achieve its role. This is obviously a decision for the Council itself to make. However it is the authors' view that because the powers in question are of a routine administrative nature it is quite unlikely that delegating them to community boards would enable the boards to best achieve their roles. It is also noted that the Council has resolved to review the delegations to Community Boards by 30 June 2008.

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

18. Yes. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. As below.

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

20. Yes. They are intended to support and enhance the delivery of the Council's regulatory services.

5 Cont'd

ALIGNMENT WITH STRATEGIES

21. Yes

Do the recommendations align with the Council's strategies?

22. Yes

CONSULTATION FULFILMENT

23. Yes

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Delegate to its Chief Executive all of its powers under the Dog Control Act 1996 other than the powers under:
 - (i) section 6(2)(b) (to make grants)
 - (ii) section 7 (to appoint joint committees for the purposes of the Act)
 - (iii) section 10 (to adopt policy on dogs)
 - (iii) section 16(2) (to enter into an agreement with any other territorial authority in respect of dog control services)
 - (iv) section 20 (to make bylaws)
 - (v) section 22 (to hear and determine an objection to a classification as a probationary owner)
 - (vi) section 23 (to terminate a probationary owner classification)
 - (vii) section 26 (to hear and determine an objection to the disqualification of an owner)
 - (viii) section 31 (to hear and determine an objection to a classification of a dog as dangerous)
 - (ix) sections 33B and 33D (to hear and determine an objection to a classification of a dog as menacing)
 - (x) sections 37 and 68 (to set fees)
 - (xi) section 55(3) (to determine an objection to a notice issued under section 55(1) in respect of a barking dog)
 - (xii) section 67 (to enter into an agreement with another territorial authority for the provision of pound facilities)
- (b) Delegate to its Chief Executive its powers to institute any prosecution for an offence against the Dog Control Act 1996, together with the power to make any decision pertaining to any such prosecution.
- (c) Delegate to its Chief Executive all of its powers under the Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007 except the power to set fees under the provisions of those bylaws.
- (d) Delegate to its Chief Executive its powers to institute any prosecution for an offence against the Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007, together with the power to make any decision pertaining to any such prosecution.
- (e) Delegate to its Chief Executive its powers under section 139 of the Animal Welfare Act 1999.
- (f) Delegate to its Chief Executive all of its powers under sections 171 (General powers of entry), 172 (Power of entry for enforcement purposes) and 173 (Power of entry in cases of emergency) of the Local Government Act 2002.

5 Cont'd

BACKGROUND (THE ISSUES)

Dog Control Act 1996

25. The 26th of February 2004 was the last time the Council undertook a revision of the delegations it had made to its officers of its powers under the Dog Control Act 1996 ("the Act") and its powers under its bylaws in relation to the control of dogs. Since then Parliament has enacted the Dog Control Amendment Act 2004 and the Dog Control Amendment Act 2006. Each of these enactments has conferred upon the Council new powers which should, in the interests of administrative efficiency, be delegated to staff.
26. The Dog Control Amendment Act 2004 conferred on the Council several new powers of a minor nature. These included amended powers to require a dog owner to make a dog available for verification that it has been implanted with a functioning micro-chip transponder (section 36A(3)) and the power to release a dog impounded under section 72A (section 72A authorises the seizure and impounding of a dog which has been unlawfully removed from the custody of a territorial authority, a police officer, a dog control officer, or a dog ranger).
27. The Dog Control Amendment Act 2004 also created several new offences. They are offences by probationary dog owners under sections 23A(2) and 24(5).
28. The Dog Control Amendment Act 2006 also conferred upon the Council a number of new powers. These include the power to require a dog which is registered with it to be neutered, where that dog was earlier classified by another territorial authority as menacing but which was not required by that other territorial authority to be neutered (section 33EB), the power to classify a dog as dangerous or menacing where the owner of the dog has been convicted of certain offences in relation to that dog but in respect of which the Court has not made a destruction order (section 33ED), and the power to dispose of a dog seized under section 15 (that is, where the dog was not provided with sufficient food, water or shelter) or seized under section 33EC (a menacing dog which has not been neutered) (section 71A).
29. The Dog Control Amendment Act 2006 also creates two new offences. They are failing to neuter a menacing dog (section 33EC) and falsely notifying the death of a dog (section 41A).
30. Since the 2004 review the Council has become responsible for administering the Banks Peninsula Dog Control Bylaw 2004. This bylaw still applies in the area which was formerly the district of the Banks Peninsula District Council. There are no specific powers given to the Council by this bylaw. However it does create a number of offences.
31. As the two amendments to the Act and the Banks Peninsula Dog Control Bylaw contain offence provisions the Council should delegate to the Chief Executive the power to undertake prosecutions for those offences. It should be noted however that such a delegation is not necessary where action in respect of any such offence is taken by a Dog Control Officer by way of an infringement offence notice.
32. If the Council makes the delegations set out in paragraphs (a), and (b) of the staff recommendation above those delegations will encompass all of the new powers referred to in the earlier paragraphs of this section of this report.

Trade Waste Bylaw

33. On 1 January 2007 the Christchurch City Council Trade Waste Bylaw 2006 came into force. It revoked the Christchurch City Council Trade Wastes Bylaw 2000. The new Bylaw confers on the Council a number of powers, which can be classified into two classes; those which fall within the ambit of governance and those which fall within the ambit of management. Under the bylaw the chief executive already has certain powers – to review any decision of an authorised officer (clause 6.1- authorised officers have power to enter premises and determine the characteristics of a discharge), and determine and prescribe the manner or time in which any forms are drafted or utilized, and flow metering, monitoring, sampling, or analysis is to be undertaken (clause 6.9).

5 Cont'd

34. The powers in the Bylaw which fall within the ambit of governance are the powers to set fees referred to in clauses 3.2 and 6.3.
35. The powers which are management powers are those in clause 2.1.2 (Council may physically prevent discharge to the sewerage system), clauses 3.2-3.6, and 4.1, 4.3, 5.1 (various powers in relation to an application for a consent from Council and the setting of conditions), clauses 3.7 and 3.8 (right to review a consent and require an application for consent to be made), clause 3.9 (suspension or cancellation of the right to discharge), clause 5.2 (relating to meters that measure discharges), clauses 5.3 and 5.4 (sampling and monitoring – although the Chief executive already has those powers by virtue of clause 6.9), and clause 6.5 (transfer a consent to another person or renew a consent).
36. There were delegations under the Trade Waste Bylaw 2000, which related to the power to grant consents and review them etc, and enforce the bylaw. Effectively, from the clauses above, there will be two new delegations made under the 2006 Bylaw, compared to those made by Council under the 2000 Bylaw. They are the power to physically prevent discharge to the sewerage system (cl 2.1.2), and the powers relating to meters that measure discharges (power to require a meter and approve its position, and the method of installation) (cl 5.2), but these are considered to be appropriate management matters.

Licensed Waste Handling Facilities Bylaw

37. On 1 October 2007 the Christchurch City Licensed Waste Handling Facilities Bylaw 2007 came into force and revoked the Christchurch City Licensed Waste Handling Facilities Bylaw 2005. This Bylaw is relatively short and provides for the licensing of operators for Waste Handling Facilities. The granting of, and administration of, such licences is a management matter, and should be delegated to the Chief Executive. This proposed delegation is new, as no delegations had ever been made under the 2005 bylaw, but these powers are also considered to be an appropriate management function.
38. The power to set the fees for the licences is however, a governance issue. This Bylaw sets out the licence fee in Schedule A of the Bylaw. The only way the fee can therefore be changed is by way of amending Schedule A of the Bylaw through the special consultative procedure (which the Council can do as part of its fees and charges setting carried out annually).

Fire Safety Bylaw

39. On 15 October 2007 the Christchurch City Urban Fire Safety Bylaw 2007 came into force. This bylaw confers on the Council a number of powers. Again, those powers may be classified into two classes, those which fall within the ambit of governance and those which fall within the ambit of management.
40. Those which are considered to fall within the ambit of governance are the powers to set fees. Clause 7(3) authorises the Council to charge an application fee for an exemption from a prohibition on lighting fires in the open air imposed by the Council under clause 6 for fire safety reasons. Clause 10 authorises the Council to charge an application fee for exemptions from the general restrictions, imposed by clause 8, on fires in the open air.
41. Those powers which are considered to fall within the ambit of management are the powers under clause 6 to prohibit the lighting of fires in the open air at times when there is likely to be high fire risk, the power under clause 7 to grant exemptions from a prohibition under clause 6, and the power under clause 10 to grant exemptions from some of the general restrictions prescribed in clause 8 on the lighting of fires in the open air. It is essential that the Council delegate the power under clause 6 as there must be a mechanism in place which will allow this power to be exercised at short notice should the circumstances require.

5 Cont'd

Other powers

42. There is one statutory power in relation to animals which has not been delegated to staff in the past and which, in the interests of administrative efficiency, should be. This is the power, under section 139 of the Animal Welfare Act 1999, to destroy, in certain circumstances, impounded animals that are diseased, injured or sick. While not really an issue in the past it may well be in the future now that the Council is responsible for administering the Banks Peninsula District Council Stock Control Bylaw (which, although it is proposed this Bylaw be revoked from 1 July 2008, there are new provisions on stock control to be inserted into the new Traffic and Parking Bylaw).
43. Section 171 of the Local Government Act 2002 provides the Council with a general power of entry on to any land or building (except a dwellinghouse) for the purpose of doing anything that the Council is authorised to do under that Act or any other Act. It also sets out requirements as to the giving of notice of such entry.
44. Section 173 of the Local Government Act 2002 provides the Council with a power of entry on to any land or building (including a dwellinghouse) without giving prior notice in cases of sudden emergency.
45. The powers of entry under sections 171 and 173 have been delegated in the past but only in relation to certain specific functions of the Council, for example its functions under the Building Act 2004. It is recommended that the Council delegate generally these powers of entry to the Chief Executive who may then sub-delegate them as circumstances require. It is important that the Council be able to act quickly when circumstances require, particularly in cases of emergency. These powers of entry are clearly routine administrative powers the exercise of which is a function of Council staff at the direction of management.

THE OBJECTIVES

46. The objective in requesting that the Council delegate the abovementioned powers is to enable the Council to execute its regulatory functions in a timely and efficient manner.

THE OPTIONS

47. Three options are identified:
 - (a) Option 1 is to make the delegations and authorisations referred to in the staff recommendation above.
 - (b) Option 2 is to make some of the delegations and authorisations referred to above.
 - (c) Option 3 is to not make any of the delegations and authorisations referred to above.
48. It is considered that Option 1 will best enable the Council to exercise the regulatory powers which are listed in the staff recommendation in an efficient and timely manner. In formulating this option the powers under consideration have been categorised into two classes, those which fall within the ambit of governance and which should properly be reserved for the Council itself and those which fall within the ambit of management and which should properly be exercised by way of delegation. Care has been taken to ensure that the powers in respect of which delegations are now sought are not powers which fall within the former category.
49. It is considered that Option 2, depending upon the extent that it is taken, would not enable the Council to exercise all of the regulatory powers concerned efficiently and effectively. It may also possibly lead to some blurring of the respective governance and management functions of Council.
50. Option 3 is simply not practicable if the Council wishes to be able to exercise the powers concerned in an efficient and effective manner.

THE PREFERRED OPTION

51. That the Council make the delegations and authorisations sought in the section of this report headed "Staff Recommendation" (paragraph 24)

8. 5. 2008

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6. LEGISLATION SUBCOMMITTEE ESTABLISHMENT

To be circulated separately.

SECTION 2 - BYLAWS

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

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| General Manager responsible: | General Manager Regulation and Democracy Services, DDI 941-8549 |
| Officer responsible: | Legal Services Manager DDI 941 8561 |
| Author: | Judith Cheyne, Solicitor |

PURPOSE OF REPORT

1. To recommend to the Committee that it recommend to Council that it confirm the automatic revocation on 1 July 2008, under section 293(3) of the Local Government Act 2002, of the:
 - Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996.
 - Banks Peninsula Public Swimming Pools Bylaw 1972.
 - Christchurch City Bylaw No 103 (1979) Public Swimming Pools (together, "the Bylaws").

EXECUTIVE SUMMARY

2. A review was undertaken of the Bylaws, to ascertain whether the provisions of the Bylaws were still current or needed amendment.
3. The purpose of the Bylaws was:
 - To set the process for the licensing of shooting galleries and the issuing of permits for amusement devices.
 - To regulate public bathing and impose controls over public baths.
4. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have bylaws covering amusement devices and nuisances. The control of amusement devices is covered by the provisions of the Amusement Devices Regulations 1978.
5. The two Swimming Pools Bylaws are very similar, but the provisions of both bylaws are now covered either by the terms and conditions of use on persons entering the particular public swimming pools or other Council policies, or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
6. It was determined that there is no need to re-enact the Bylaws or make new bylaws with the same provisions because the harm the Bylaws were originally introduced to deal with is now addressed in other ways.
7. The Bylaws were made or had effect under now repealed provisions of the Local Government Act 1974, and are therefore subject to section 293(3) of the Local Government Act 2002, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.
8. On 28 February 2008 the Council resolved:
 - (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.

7 Cont'd

- (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within 1 month of the date of publishing the notice.
 - (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).
9. The public notice was published in the following papers on the following dates:
- the Press on 8 March 2008
 - the Star on 7 March 2008
 - the Akaroa Mail on 7 March 2008.
10. As at 9 April 2008, there have been no comments received in relation to the intention to allow these bylaws to automatically revoke. Staff therefore recommend that the Council confirm its decision.

FINANCIAL IMPLICATIONS

11. There are no financial constraints to the automatic revocation of the Bylaws.

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

12. Not applicable.

LEGAL CONSIDERATIONS

13. Under the Local Government Act 2002, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974 will be automatically revoked on 1 July 2008. There is no need to review such bylaws under section 158.
14. The Amusement Devices and Public Swimming Pools Bylaws were made under now repealed provisions of the Local Government Act 1974 (sections 684(1)(30), (33), and (33A) – section 686 was also relevant). Because these were the authorising powers for making the Bylaw, and not just the procedural provisions for making the Bylaw and they have been repealed, this means they are bylaws deemed to be made under the LGA02 by section 293(1), and are subject to section 293(3).
15. The powers embodied in the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 are a duplication of provisions contained in the Amusement Device Regulations 1978. The provisions in the two Public Swimming Pools Bylaws are now covered either by the conditions of use on persons entering the particular public swimming pools or other Council policies (the normal operating procedures), or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
16. As the Bylaws provisions are not considered necessary (they would be unlikely to pass the first test in section 155 of the LGA02, that a bylaw must be the most appropriate way of addressing the perceived problem) they should therefore be revoked, and allowing them to be revoked on 1 July 2008 by the operation of section 293(3) appears to be the appropriate course of action in this case.

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

17. As above.

7 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

19. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. Yes.

CONSULTATION FULFILMENT

21. The public notice was published to ascertain the views of the public before the Council confirmed its decision to allow the Bylaws to be automatically revoked in accordance with section 293, but no comments were received.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council that it resolve to confirm its intention and allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be automatically revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002.

8. TIMETABLE AND PROCESS FOR UPCOMING BYLAW REVIEWS

| | |
|-------------------------------------|---|
| General Manager responsible: | General Manager Strategy and Planning, DDI 941-8122 |
| Officer responsible: | Programme Manager Strong Communities |
| Author: | Alan Bywater, Programme Manager Strong Communities |

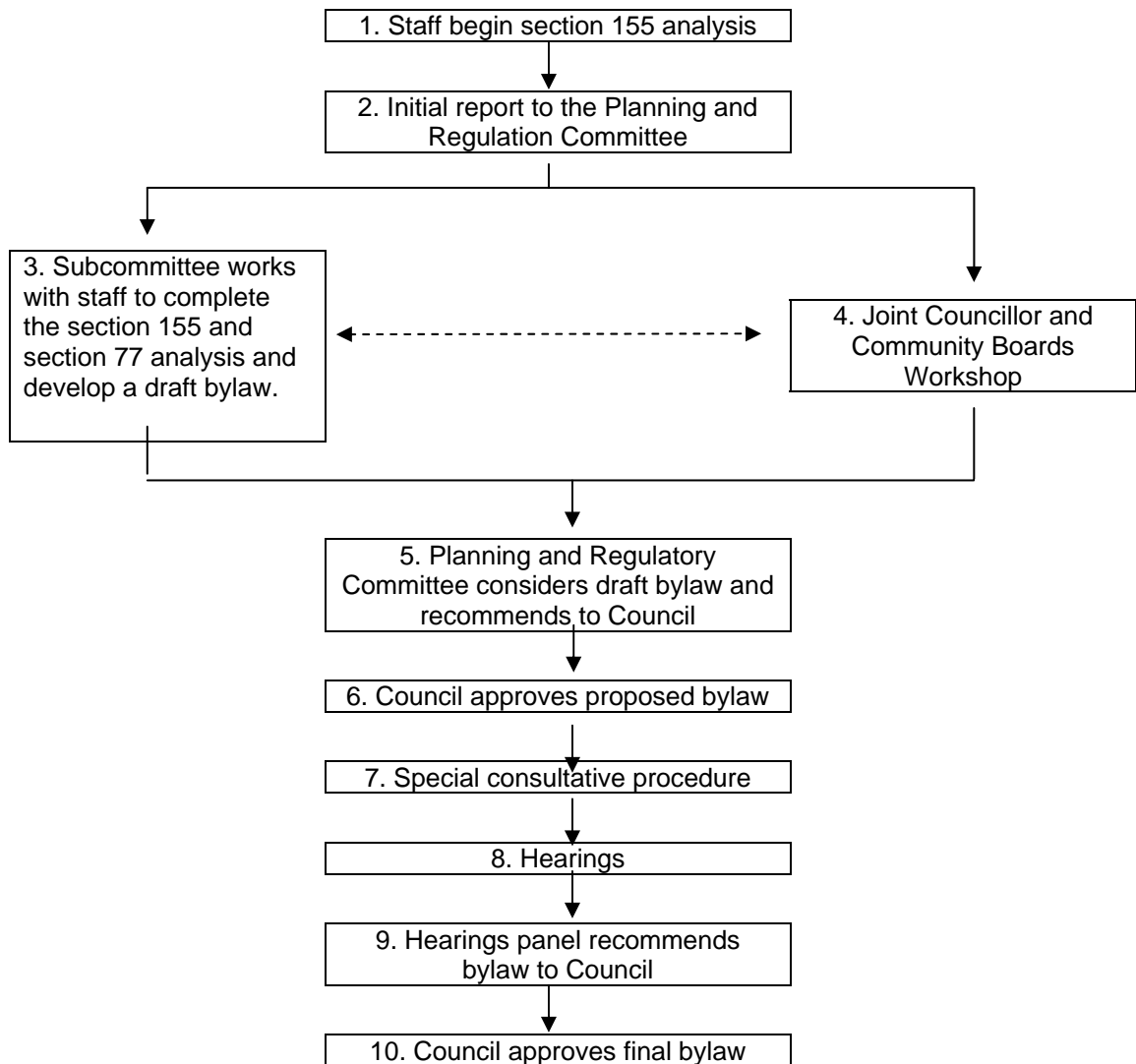
PURPOSE OF REPORT

1. To recommend the process and timing of the review of the next set of bylaws (namely the Refuse Bylaw, Liquor Control Bylaw and the Brothels Location and Signage Bylaw), as well as a review of the Alcohol policy and consideration of other mechanisms to address alcohol related behavioural problems.

EXECUTIVE SUMMARY

2. At its January 2008 meeting the Planning and Regulatory Committee recommended a timetable for the bylaw reviews that needed to be completed prior to 30 June 2008. The timing of reviews for those bylaws that did not need to be reviewed by 30 June 2008 was parked with the intention of considering it at a later date. The bylaws that need to be reviewed by 30 June 2008 have now all at least reached their consultation phases and it is appropriate to revisit the timeline for the subsequent bylaw reviews.
3. For the bylaw reviews that have taken place during the first half of 2008 the time available to get through the required process has been very tight and opportunities for elected members (both councillors and community board members) to provide considered input to the reviews prior to a proposed bylaw being determined in each case has been less than ideal. With the subsequent bylaw reviews there is a little more time available, **although in each case there are still time and other constraints**. This additional time should allow for a different process to be used that allows greater input from elected members at an earlier stage.
4. To enable greater input by councillors and community board members this process includes firstly establishing a subcommittee of the Planning and Regulatory Committee and secondly undertaking joint councillors and community boards workshops to help shape the development of a draft bylaw in each case for consideration by the Planning and Regulatory Committee (note this is at an earlier stage in the process than has been the case with the bylaws reviewed earlier in 2008).
5. The proposed process for review of the Refuse Bylaw and the Brothels Signage and Location bylaws can be summarised as follows:

8 Cont'd



6. It is anticipated that staff will work with the proposed subcommittee to further consider the section 155 analysis (essentially determining whether a bylaw is the most appropriate way to address the issues identified), develop options about how the issues could be addressed through a bylaw and to develop a draft bylaw to be considered by the Planning and Regulatory Committee and eventually the Council.
7. During this period in which the subcommittee is working a joint workshop of the councillors and community boards will be held to gain feedback on the analysis being carried out and to identify any issues or problems with the way the bylaw might work in various areas of the city. The subcommittee will be able to consider the feedback from the wider elected member group in completing its work and in recommending a draft bylaw to the Planning and Regulatory Committee.
8. For the Refuse Bylaw and the Brothels Location and Signage Bylaw timelines based on the process outlined above have been developed as Appendix A. It should be noted that the Subcommittee will need to begin working with staff on the Refuse Bylaw review very quickly following today's Planning and Regulatory Committee meeting.

8 Cont'd

9. The Liquor Control Bylaw provides one of a number of mechanisms the Council has at its disposal to influence liquor related issues. Other mechanisms being the Alcohol Policy (Attachment 1) , other policies, liquor licensing, the City Plan and non-regulatory interventions. These all interact with one another to some degree. As a consequence it will be a much more effective process to really influence the liquor issues and many of the negative behaviours associated with liquor to consider these various tools together rather than separately. In many ways the Alcohol Policy provides the overall direction to which the other tools can be aligned. Consequently it is appropriate to review the Alcohol Policy first and the Liquor Control Bylaw subsequently (as well as any of the other tools considered useful). A process and timeline for these reviews has been prepared as Appendix B.
10. In this process the Subcommittee will work with staff to more clearly identify the liquor related issues to be addressed, explore the best mechanisms to address these issues (including the section 155 assessment and consideration of options for the existing Liquor Control Bylaw) and engage with key stakeholders. A combined workshop with councillors and community board members will also take place to ensure that the key issues have been identified and the questions to raise with key stakeholders have been clarified.
11. The Subcommittee will need to consider how best to engage with key stakeholders at an early stage in the process i.e. whether to adopt a staff led approach, a governance led approach or a stakeholder led approach.
12. This work by the Subcommittee will result in a draft Alcohol Policy (as the central direction setting guide for liquor issues). This will be recommended to the Planning and Regulatory Committee and then follow a Council and consultation process. The Subcommittee's work will also form the basis of the Liquor Control Bylaw review to follow closely behind the Alcohol Policy, as well as considering any other measures (both regulatory and non-regulatory) the Council might adopt to address the liquor related issues identified.
13. The Committee should consider the composition of the subcommittee including if and what form community boards should be represented on it. As there is a need to get the subcommittee working on both the Refuse Bylaw and the liquor related issues in the short-term, there is a need for the Committee to resolve the composition of the subcommittee at this meeting.
14. The proposed terms of reference of the Subcommittee are as follows:

To work with staff to carry out the initial review of the Refuse and Brothels Location and Signage Bylaw and to present draft bylaws to the Planning and Regulatory Committee for consideration.

To work with staff to carry out the initial review of the Alcohol Policy, Liquor Control Bylaw and consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems and make recommendations to the Planning and Regulatory Committee.

FINANCIAL IMPLICATIONS

15. The work to review these bylaws and associated other processes largely involves staff and elected member time which is already budgeted for. There are clearly opportunity costs involved with staff and elected members working on these projects not being available to carry out other work, however given the statutory timeframes and operational necessity associated with these bylaw reviews there is little option other than to carry out the work. With regards the other liquor related areas there is no driver from a statutory timeframe but councillors have indicated that this work is a priority to address the liquor related behaviours in the city and reviewing them in a coordinated way with the Liquor Control Bylaw makes good sense.

8 Cont'd

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

16. Budgets to coordinate the review of bylaws are provided for within the City Development Activity in the LTCCP. An allowance for staff time contribution to policy and planning processes is built in to the other activities in the LTCCP.

LEGAL CONSIDERATIONS

17. The Local Government Act 2002 requires the review of bylaws within specified timeframes. The statutory timeframe to review the Refuse Bylaw is 30 June 2008 however as it was made under clauses on the LGA 74 that remain in force it does not automatically revoke on this date. Rather it remains active for a further two years before automatically revoking. There are operational considerations surrounding the new kerbside collection system that mean the bylaw needs to be reviewed before the new kerbside collection system commences operation.
18. The Liquor control Bylaw and the Brothels Location and Signage Bylaw were both made under the LGA 2002 and must be reviewed by 30 June 2009.

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

19. See notes above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

21. Yes, supports - % of residents satisfied with the way the Council involves the public in decision making and % of residents satisfied that the Council makes decisions in the best interests of Christchurch.

ALIGNMENT WITH STRATEGIES

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

Do the recommendations align with the Council's strategies?

23. As above.

CONSULTATION FULFILMENT

24. Not applicable to this report. Clearly, consultation is an important part of the process to review bylaws. It should be noted that consultation on the LTCCP will dominate the Council's and public's capacity for consultation in the first half of 2009. For this reason as much of the consultation as possible for these bylaws should be completed before the end of 2008.

8 Cont'd

STAFF RECOMMENDATION

It is recommended that the Committee:

- (a) Endorse the process and timeline attached as Appendix A for the review of the Refuse Bylaw, Brothels Location and Signage Bylaw.
- (b) Endorse the process and timeline attached as Appendix B for review of the Alcohol Policy, Liquor Control Bylaw and to consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems.
- (c) Appoint a subcommittee with the following terms of reference:

To work with staff to carry out the initial review of the Refuse and Brothels Location and Signage Bylaw and to present draft bylaws to the Planning and Regulatory Committee for consideration.

To work with staff to carry out the initial review of the Alcohol Policy and Liquor Control Bylaw, and consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems and make recommendations to the Planning and Regulatory Committee.

- (d) Determine the composition of the subcommittee and appoint the necessary committee members to it.

SECTION 3 - WORKSHOP

9. WORK PROGRAMME FOR COMMITTEE/WORKSHOP TIMETABLE

This matter is a standing item on the agenda, the programme and timetable to be developed as time progresses.