



Christchurch City Council

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 9 OCTOBER 2008

AT 9.30AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

Committee: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid,
Bob Shearing, Mike Wall, and Chrissie Williams

General Manager responsible
Michael Theelan
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Terry Moody
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Committee Adviser
Warren Brixton
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- PART A 12. CONSULTATION ON DRAFT REGIONAL POLICY STATEMENT CHAPTERS ON WASTE MINIMISATION AND MANAGEMENT, CONTAMINATED LAND AND HAZARDOUS SUBSTANCES

9. 10. 2008

1. APOLOGIES

2. DEPUTATIONS BY APPOINTMENT

Private Plan Change 28 – Cumnor Terrace



Anderson Lloyd Lawyers have been granted speaking rights in respect of the above Private Plan Change which appears as number 5 on the agenda.

3. LEGAL OPINION ON PRIVATE PLAN CHANGE 22 FROM SIMPSON AND GRIERSON BARRISTERS AND SOLICITORS

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Strategy Support Manager
Authors:	Warren Brixton and Sean Rainey (Committee Advisers)

PURPOSE OF REPORT

1. This report contains a legal opinion from Simpson Grierson Barristers and Solicitors regarding the Council's consideration of private Plan Change 22, relating to the Styx Centre.

FINANCIAL IMPLICATIONS

2. Not applicable.

LEGAL CONSIDERATIONS

3. The legal aspects are contained within the attachment.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

4. Not applicable.

ALIGNMENT WITH STRATEGIES

5. Not applicable.

CONSULTATION FULFILMENT

6. Not applicable.

STAFF RECOMMENDATION

It is recommended that the above information be received by the Committee.

3 Cont'd

BACKGROUND (THE ISSUES)

7. At its meeting of 5 June 2008 the Regulatory and Planning Committee recommended the acceptance of the requested Plan Change No 22 by Calco Investments Limited to rezone 9.21 ha of land at the corner of Radcliffe Road and Main North Road, Styx, from Rural B to Business 2.
8. The recommendation was subject to a Council submission being prepared on the private plan change and such submission being considered by the Committee prior to its lodging.
9. On 7 August 2008, the Committee was supplied with the required Submission Document addressing issues related to:
 - Commercial Distribution
 - Stormwater
 - Waterway Environs, including Styx River
 - Change 1 to the RPS
 - Transport
 - Objectives and Policies
10. As a result of communication from the applicants consultants (Haines Planning Consultants Limited) and accompanying legal advice from the consultants' solicitors (Keith Breman Barrister) as to the ability of the Council to hear and decide on the application, if it had delegated the authority to its officers to lodge a submission. The Committee was supplied with advice on the apparent conflict of interest by the Council's General Manager Regulation and Democracy Services.
11. The various documents received were provided to the Committee at its August meeting.
12. After due consideration of the matter the Committee recommended *"That a decision on Plan Change 22 be deferred until the matters identified by the Committee during the course of the report's consideration have been further investigated and clarified."*
13. This has resulted in further legal advice being obtained from Simpson Grierson, Barristers and Solicitors, attached.

4. CHRISTCHURCH CITY COUNCIL SUBMISSION ON PRIVATELY REQUESTED PLAN CHANGE 22



General Manager responsible:	Michael Theelen , DDI 941-8177
Officer responsible:	David Mountfort
Author:	Scott Blair

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Regulatory and Planning Committee that the Christchurch City Council makes a submission on Plan Change 22 and to recommend the form and matters raised in that submission.

(Note: This report was earlier considered by the Committee at its meeting of 7 august 2008 and deferred until the matter identified by the Committee during the course of the report's consideration had been further investigated and clarified.)

EXECUTIVE SUMMARY

2. On 26 June 2008 the Council resolved to accept the requested plan change by Calco Investments Limited to rezone 9.21 ha of land at the corner of Radcliff Road and Main North Road from Rural 3 to Business 2. At its meeting on 5 June 2008 the Regulatory and Planning Committee meeting preceding the 26 June Council meeting, resolved that any recommended submission on Plan Change 22 be referred to that Committee for approval before it is forwarded to the Council for adoption as the Council's submission.
3. Accordingly, the recommended submission is attached to this report. The submission states that the Council should oppose the Plan Change and request that the Plan change be rejected or changes made to satisfy the Council's concerns.

FINANCIAL IMPLICATIONS

4. There are no immediate financial implications from adopting the submission other than normal costs associated with Council Officers or Consultants progressing the submission in the plan change process on the Council's behalf. Such costs are included in the City Plan annual operating budget.

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

5. Yes

LEGAL CONSIDERATIONS

6. Making this submission will be in accordance with legal advice from Simpson Grierson that it is necessary in order for the Council to seek changes to the Plan Change that it feels are necessary. At the decision making stage changes can only be made to plan changes if they have been sought in a submission. This submission creates 'scope' to seek changes in relation to the matters raised in the submission.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

7. Page 145 City Development ongoing programme of improvements to enhance the planning documents of the City, to ensure an attractive built environment and minimise adverse effects on the environment.

ALIGNMENT WITH STRATEGIES

8. As discussed in the previous report to the Planning and Regulatory Committee of 5 June there is a potential conflict in the Plan Change with the Greater Christchurch Urban Development Strategy and Change 1 to the Regional Policy Statement. The recommended submission addresses these potential conflicts.

4 Cont'd

CONSULTATION FULFILMENT

9. The applicant has carried out some public consultation with Council officers, Transit New Zealand, the Ministry for the Environment (MFE) and has recently undertaken a further public interest group workshop (2 July 2008).

STAFF RECOMMENDATION

It is recommended that the Council adopt the attached Submission on Plan Change 22.

BACKGROUND (THE ISSUES)

10. Calco Investments Limited have made an application by way of a private plan change to rezone 9.21 ha of land at the corner of Radcliff Road and Main North Road from Rural 3 to Business 2. Council has resolved to accept the private plan change. There are a number of issues with the Plan Change that Council may wish to address.
11. Specifically these relate to:
- (i) Commercial Distribution – the effect a new shopping centre will have on existing centres, including the CBD and potential loss of services from these centres.
 - (ii) Stormwater – the quality and quantity of stormwater generated from the site should not lead to adverse effects on the Styx River.
 - (iii) Waterway Environs, including Styx River – the amenity of environs should be protected by sufficient setbacks and landscaping; The “community linkages” should be able to be implemented in a practical manner; Springflow and groundwater flow to the Styx River should not be impeded; and consideration needs to be given to integrating Curtis Drain in terms of restoration and the Northern Main Rail Line in terms of a walkway/cycleway. The right of way to the Council reserve to the south of the subject site also needs to be maintained.
 - (iv) Change 1 to the RPS – the provisions of Change 1 should be retained as publicly notified in order to maintain consistency.
 - (v) Transport – inadequate consideration is given to effects on the wider network including the proposed Northern Arterial; the capacity of the Main North Road/Radcliffe Road intersection; delays from the proposed new signals on Main North Road; access to the site: and movements between the existing Supa Centre and the site.
 - (vi) Objectives and Policies – the Plan Change does not necessarily achieve the objectives and policies of the Christchurch City Plan.
12. When considering a private plan change after public notification, the Council does not have any power to amend it except in response to a submission. It is therefore necessary to lodge a submission to provide scope to deal with any issues that may be of concern to the Council. The Council would have inherent power to decline the application but this may not be the most appropriate response.

THE OBJECTIVES

13. The objective of the submission is to ensure that the Plan Change is consistent with the City Plan and that any adverse effects are able to be avoided, remedied or mitigated.

4 Cont'd

THE OPTIONS

14. It is therefore recommended that Council make a submission on the Plan Change addressing the above issues. The recommended submission is attached. Legal advice is that the Council can only make changes to the Plan Change by way of submission.
- (i) Do nothing, i.e. no submission. It is considered this is not an option as the Council would be unable to have the plan change rejected or seek to make changes to the Plan Change.
 - (ii) Make this submission – this option ensures Council can submit on matters that are of concern to it.
 - (iii) Make this submission with any changes required by the Committee – This option allows the Committee to amend the submission to include any additional issues they may have or alternatively delete any issues that they do not consider relevant.

THE PREFERRED OPTION

15. The preferred option is (ii).



5. PROPOSED PLAN CHANGE 28 – PRIVATE PLAN CHANGE APPLICATION FOR THE REZONING OF LAND AT 320 AND 320A CUMNOR TERRACE (KENNAWAY FARM) BOUNDED BY HEATHCOTE RIVER, TUNNEL ROAD, KENNAWAY ROAD AND LYTTTELTON RAILWAY (AVOCA VALLEY STREAM) FROM FERRYMEAD SPECIAL PURPOSE ZONE (RURAL 2 PROVISIONS) TO BUSINESS 4.

General Manager responsible:	General Manager Strategy and Planning, DDI: 941 8281
Officer responsible:	City Plan Team Leader
Author:	Elizabeth Black, Planner City Plan Team

PURPOSE OF REPORT

1. This report describes an application to the Council for a change to the City Plan and the process which must be followed under the Resource Management Act 1991 (RMA).

EXECUTIVE SUMMARY

2. The application is to rezone approximately 30ha of land bounded by Tunnel Road, Heathcote River, Kennaway Drive and Lyttelton Railway (Avoca Valley Stream) from Special Purpose Ferrymead zone (with underlying Rural 2 provisions) to Business 4 (suburban industrial) (see attached location plan).
3. The purpose of this report is to recommend which of several options under the RMA is to be used in processing the application.
4. In accordance with Schedule 1, Section 25 Council has the option of:
 - (a) Accepting the application as a private application and publicly notifying it for submission and hearing at the cost of the applicant
 - (b) Part Acceptance of plan change
 - (c) Adopting the change as the Council’s own change and accepting the responsibility and costs of processing it
 - (d) Part Adoption of plan change
 - (e) Rejecting the application
 - (f) Processing the application as though it were a resource consent application
5. The Council is obliged to consider this request under the due process set out in the RMA.
6. This report recommends to accept part of the private plan change for notification. The area of non-acceptance is 50m inland from the current top of the Heathcote River Bank (see attachment 2). This area includes road to be stopped, Council owned esplanade reserve, land shown for public use and for Business 4 development by the requested private plan change application.
7. The area within 50m of the river boundary has potential issues in relation to sea level rise and lateral spread (liquefaction). There are also issues in relation to protection of the potential esplanade reserve, including protection of bird habitat (eg Cormorant roosts), urban design and landscape issues. It may allow for the potential to enhance the river margin by gaining a sufficient buffer between the river and industrial areas.

(Note: A full copy of the Request for Plan Change (500 pages) is available on request.)

FINANCIAL IMPLICATIONS OF DECISION

8. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application or partly accept/adopt the application it is possible (and considered likely) that the applicant would challenge this decision in the Environment Court, which would be a costly process for Council regardless of the outcome. Costs cannot be predicted accurately but could be in the vicinity of \$25,000 for this preliminary step.
9. Should the Council accept and notify the change at the expense of the applicant there will be no direct costs to Council as the Council’s costs would be recoverable. However there would be an impost on staff time.

5 Cont'd

10. Should the Council convert the request into a resource consent the applicant may be required to meet the costs of undertaking a resource consent and the costs for the processing of the plan change. The applicant can 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 \$25,000 for this preliminary step.
11. 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 \$100,000.

FINANCIAL IMPLICATIONS OF PRIVATE PLAN CHANGE

Sewage

12. It is apparent that existing sewage infrastructure does not have capacity to receive the sewage from the site. Off-site works to a pump station and upgrades of pipe will be required to allow for future development.
13. This cost is directly attributable to the proposal so cannot be funded from Development Contributions.
14. The solution likely to be adopted is to require the applicant to upgrade the off-site infrastructure as required as a condition of subdivision consent

Drainage

15. The applicant has proposed two separate systems for the management of stormwater runoff. It is proposed to drain the stormwater runoff from roofs directly into the Heathcote river by one stormwater system and the runoff from roads and hard surface areas such as car parks will be captured in detention basins for treatment before discharge into the river.
16. The two systems will involve separate infrastructure for maintenance and ultimate replacement by the Council. Council staff advise that a dual system will be significantly more expensive to maintain than a single system, for little or no discernible benefit. Further, Council staff have advised against accepting the proposed dual system. Therefore the cost of a dual system will be a Council cost consideration.

Sea Level Rise

17. The site borders the Heathcote River on two sides and is located upstream from the Avon/Heathcote Estuary (approx 1300m of river frontage). The river is subject to daily tidal flows. As such, the area bordering the river is currently being eroded.
18. Due to sea level rise, erosion of the banks is likely to accelerate. As the site is a Greenfield site (currently zoned for rural activities) and has little in the way of existing infrastructure or buildings there is an opportunity to obtain a larger area of sufficient distance from the river frontage to allow for natural erosion (managed retreat) or a future soft engineering solution whilst still allowing for ecological values (eg bird habitat) and public access via the esplanade reserve. This method of managing natural hazards is in accordance with the current and proposed New Zealand Coastal Policy Statement.
19. The alternative is to maintain land area by a hard engineering structure such as a "retention sea wall". However, this may not be as effective for the following reasons:
 - (a) Maintenance of the structure would be required by Council which would be an ongoing Council cost
 - (b) The structure is likely to be outflanked at the ends if not tied into other structures
 - (c) The combined effects of sea level rise and river flooding or extreme sea levels may result in failure of the walls resulting in water continuing to erode behind the walls
 - (d) Lost opportunity to allow for natural replacement of lost wetlands and bird habitat as the area is eroded .

Under both scenarios the Council may be expected to meet costs.

5 Cont'd

Liquefaction

20. A report completed in 1999 by Ian McMahon (Geotechnical consultant) has indicated that the area is susceptible to lateral spread and amplified ground shaking. Lateral spread occurs along river corridors due to wet soils. Buildings in this area will need to be engineered to withstand earthquake conditions under the provisions of the Building Act 2004. However, the Building Act will not extend to infrastructure such as roads, water and sewage pipes. Cost of replacement of infrastructure could be a financial consideration.

Traffic

21. Vehicle traffic movements to and from the site are limited to Kennaway Road which has a single connection to Chapmans Road in order to access the wider roading network. The proposal anticipates approximately 5,000 traffic movements per day, however this could be in excess of 10,000 movements per day if the development potential of the site is fully realised. The two major arterial roads which will service this site will be Port Hills Road and to a lesser extent, Garlands Road (State Highway 74A). Council staff have reviewed the application in terms of traffic impacts and anticipate that upgrades may be required for both these roads so as to maintain the current Level of Service. In addition, other local roads, cycleways and footpaths may also require improvement works in order to accommodate the traffic generated by the plan change. No mechanisms have been proposed by the Applicant for future upgrades of the wider transport network, only the immediate intersection of Chapmans and Kennaway Road. The Council will not be able to propose conditions at the time of subdivision, therefore, the private plan change will impose an unknown cost in upgrading the transport network to both the New Zealand Transport Agency and the Council in the future as a direct consequence of the plan change.

DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH 2006-16 LTCCP BUDGETS?

22. Yes, private plan change applications are provided for in the LTCCP budgets.

LEGAL CONSIDERATIONS

23. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed as set out in the RMA. This process includes both a submission and further submission process. The final decision can be appealed.
24. If a plan change is not fully accepted or adopted by Council then the decision can be challenged in the Environment Court within 15 days.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

25. Private Plan Changes are provided for in the District Plans Activity Management Plan.

ALIGNMENT WITH STRATEGIES

26. Yes – The proposed Plan change aligns with the Regional Policy Statement Plan Change 1 and the UDS as a possible growth area for industrial development.

CONSULTATION FULFILMENT

Council Staff:

27. The applicant has carried out some consultation with Council officers, but has not agreed to formally modify the application in regard to all the issues raised. This includes a larger buffer between the Heathcote River and the Business 4 zone for mitigation purposes. The applicant has included a number of more minor modifications to the Plan Change on the request of Council staff.

5 Cont'd

Public:

- 28 It is our understanding that the applicant has carried out public consultation on a previous Business 4 proposal for the site which included a wetland system, boardwalks and viewing platforms and a larger area of open space and the Outline Development Plan has been amended by the applicant since that time. The social impact report included in the application is based on this feedback.

Tangata Whenua:

29. To date no report on possible impacts on cultural values has been provided. The applicant has contacted Te Rūnanga o Ngāi Tahu (TronT) and Mahannui Kurataiao Ltd (MKT), which represents the six Ngai Tahu Runanga within the Christchurch Territory to give effect to Resource Management Act 1991. The applicant has agreed to provide information on impacts of this proposal on Tangata Whenua Values at the hearing. MKT has advised it is satisfied with this process and is content to see the application publicly notified. It will continue to work with the applicant to resolve any issues arising.

Other:

30. Contact has also been made with the Historic Places Trust as the oak trees indicate a site where the old Kennaway Homestead may have stood.
31. Council staff presented this plan change to the Hagley Ferrymead Community Board on 12 May 2008. Comments on subsidence issues and visual effects were noted.
32. Its our understanding the applicant has not contacted Environment Canterbury, Transit New Zealand or the Ministry for the Environment.

STAFF RECOMMENDATION

33. It is recommended that the Planning & Regulatory Committee recommends to the Council to:
- (a) Agree to accept the plan change in part, as indicated on Attachment 2, pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify this part accordingly.
 - (b) That in accordance with Council policy the cost of processing the part of the plan change accepted for notification be at the applicant's expense

BACKGROUND AND DISCUSSION

The application

34. This application seeks to rezone the subject site from Ferrymead Special Purpose Zone (Rural 2 provisions) to Business 4 provisions (Suburban Industrial). This change also seeks to introduce rules on landscape, building reflectivity, construction phase, outdoor advertising, an outline development plan for development of the site and Layer Diagrams which provide details on site development.

RMA Timeframes

35. The application was formally received on 2 August 2007. Further information was requested on how the plan change meets the environmental outcomes anticipated to change to the Ferrymead Special Purpose Zone, the plan change and Section 32 matters, proposal, rule format and the effects on visual effects along Tunnel Road, flooding and drainage and the landscape, ecology, ornithological (birds), trees, noise, contamination, traffic, social impact, stormwater, flooding, climate change and sea level rise, servicing, economics, urban design protocol, on 25 September 2007.

5 Cont'd

36. A response to the information request and a modified plan change (version 2) was received on 10 December 2007. The applicant had not responded to some information requested and a series of meetings were proposed by the applicant and council on the 29th February 2008 to clarify requested information. The application was put on hold until the agreed further information was finalised. A meeting on flood, storm water and sea level rise issues was attended by the applicant and their expert consultants on the 13th March and a meeting on ornithological issues was attended by the applicant and their expert consultant on the 19th March 2008.
37. A modified plan change (version 3) was received on the 9th May 2008. This plan change provided for storm water storage areas instead of open swales and reduced other additional open space areas, such as reducing the proposed 25m setback along the Heathcote River bank to 20m. It introduced provisions in the ODP network plans to credit the detention basins and any landscaping against reserve contributions, other changes also made include introducing more detailed flood/drainage mitigation measures in the Blue Network and deletion of Green Network aims such as including the protection of the riparian margin of the Heathcote River and the aim of increasing bird populations. Assessment matters and reasons for rules was also introduced.
38. Additional Information was sought by Council staff on 10 June 2008 and a response was received on 7 July 2008 with a modified Plan Change (version 4). This version provides clarification for interpretation of rules and the ODP. It introduces new objectives in the Green network shrub (foliage) clear zone for safety purposes and a landscape planting plan. It deletes references to reserve contributions, introduces new rules in terms of building reflectivity, outdoor advertising and subdivisions and changed the assessment matters.
39. Council staff responded to these changes with suggestions for clarification. Version 5 was sent to Council on 15 August 2008. This change included making the Outline Development Plan limited discretionary to relevant matters rather than a controlled activity. Council responded on 5 September with suggestions on clarification of interpretation of the plan change.
40. Under the Resource Management Act 1991 (RMA) the Council is due to make a decision whether to adopt, accept, or reject the application by 29 September 2008. (The 30 working day period specified in Clause 25 of the RMA has been extended to 60 working days pursuant to Section 37 of the RMA due to modifications of plan change listed above.)

Description of proposal and site

41. The site is approximately 30 hectares in area, and is situated in Area A of the Special Purpose (Ferrymead) Zone within a flood management area. It is confined by the Tunnel Road on the east boundary, the Heathcote River on the west and northern boundary and an existing Business 4 development and Avoca Valley Stream on the southern boundary. The Business 5 Zone faces the site from the west side of the Heathcote River. At its south end, the site is adjacent to the existing Business 4 Zone in Kennaway Road. At its north end, it is opposite the Living 2 Zone and to the east Council owned Ferrymead Park. The Living 1 Zone is approximately 100m north of the site across Ferry Road (Woolston), and 300m south east of the site across the existing Business 4 Zone (Heathcote).
42. The site is generally flat and is currently void of structures apart from a residential dwelling, temporary paddocks and a shed over Lyttelton's water well (designated site). Uncontrolled fill to the North (entire top end of the site) and the west of the site has formed a shallow basin to the east where stormwater and floodwater from the Avoca Valley Stream pools. A number of shelter belts cross the site. An area of oak and eucalypts trees is found towards the north of the site. Pines and eucalyptus trees grow along the river bank which is a roosting area mainly for cormorants. It is known that threatened bird species may be found in the area. The lower areas of the site are marshy and support some wetland features. Stockpiles of dirt are located at the south end of the site. A dirt road along side the Heathcote River from Chapmans Road currently provides the main access to the site.

5 Cont'd

Ferrymead Special Purpose Zone and Rural 2 provisions

43. The application site is part of the Ferrymead Special Purpose Zone. This zone includes approximately 194 hectares, it is bounded by the Lyttelton railway line, Heathcote River, Bridle Path Road and Heathcote Village. Most of this area to the south east of Tunnel Road is in Council ownership and has a tourism and recreation function whilst the area to the north-west, subject to the plan change, is in private ownership.
44. As an interim measure, the land as a whole has been zoned Special Purpose (Ferrymead) to indicate that further investigation is required as to the appropriate land uses for the area. As part of this interim measure Rural 2 provisions apply to the subject site under Volume 3, Part 8, Special Purpose Zones Appendix 9.

Private Plan Change Application

45. The private plan change application seeks to rezone the subject land from Special Purpose Ferrymead Zone with Rural 2 provisions to Business 4 (Suburban Industrial). The development of the site may include limited retail and residential office and commercial activities, light industry and service industries. The application states Business 4 is the most appropriate District Plan zoning to apply in the circumstances. The Plan Change request seeks to apply the existing Business 4 Zone provisions and additional rules to mitigate effects. As part of these additional rules the applicant is proposing an Outline Development Plan (ODP) and supporting Layer Diagrams which provides specific ODP rules, objective and aims as well as additional site specific rules and assessment matters.
46. Rules include:
 - (a) Business 4 zoning over the entire site. This includes proposed open space and designations.
 - (b) That any non-conformity with the ODP and layer diagrams is a discretionary activity limited to relevant matters for both subdivision and building consents
 - (c) Site specific landscape rule for development along Tunnel Road. This requires private owners to plant a 10m landscape strip at the Tunnel Road boundary
 - (d) Earthworks and ground preparation works only to be limited between one hour after sunrise and one hour before sunset
 - (e) No advertising in areas opposite living zones to the north
 - (f) If buildings are painted facing Tunnel Road or the Heathcote River then the colours should have a reflectivity of less than 35%
47. The Outline Development Plan and Layer Diagrams include the following:
 - (a) Stormwater detention ponds
 - (b) Expansion of Avoca Valley Stream Channel
 - (c) 10m landscape strip along the length of Tunnel Road to provide for flood events greater than one in five (undertaken in four stages).
 - (d) Public open space which incorporates oak trees and eucalyptus trees
 - (e) A local road running length wise through the site to accommodate traffic and secondary roads or lanes running across the site to act as view corridors.
 - (f) Cycle and pedestrian networks to link Long Street via the barge over the Woolston Cut to the subject site, roads, green spaces and along side the Avoca River Channel
 - (g) A 20m landscaping strip space along Heathcote River which provides for pedestrian access and include enhancement planting.
 - (h) Landscape planting plan to integrate and provide continuity of streetscape, boundary and riparian margins.
 - (i) Mitigation of off street parking through landscaping along road frontages, attractive street lights and street furniture.
 - (j) Shrub clear zone for safety purposes between industrial and esplanade reserve.

5 Cont'd

48. The Plan Change adopts the existing provisions of the Business 4 Zoning including density, site size (500msq), setbacks, landscaping, recession planes, screening, on site residential security, retail areas, parking spaces, traffic generation and advertising along Tunnel Road. Under the City Plan there is currently no maximum height limits for B4 zones. However, under Plan Change 29 the proposed height is 15m with a critical height of 20m. A landscaping strip and setback is required along the main road frontage but not along lanes or secondary roads. The applicant has stated that this along with the rules above and ODP will be adequate to address issues and any effects.

Description of Issues

49. The plan change raises potential merit-based issues including (but not limited to) the following:
- (a) Potential traffic effects on Port Hills Rd and Garlands Road. Vehicle movements have the potential to affect the safety and efficiency of traffic flows on Port Hills Road and the surrounding road network.
 - (b) Potential effects of private ownership of areas required for stormwater detention (10m strip along Tunnel Road) in terms of maintenance.
 - (c) Potential visual amenity effects of advertising and bulk and height of buildings along Tunnel Road.
 - (d) Loss of visual amenity for Long Street and Gould Crescent. residents.
 - (e) Potential loss of rural amenity, views of Port Hills and visual impact of development on river (as an outstanding natural landscape)
 - (f) Potential loss of residential cohesion as all major roads (Ferry, Tunnel and Port Hills Road) leading to the Heathcote residents will be flanked by industrial areas.
 - (g) Potential loss of bird habitat (including threatened species as defined by Department of Conservation).
 - (h) Potential glare and disturbance of cormorant roosting areas along Heathcote River during building construction stage and in terms of night time lighting.
 - (i) Potential urban design issues including Interface between backs of industrial areas and public open space along the Heathcote river in terms of quality of space and crime prevention issues.
 - (j) Potential single cul-de-sac local road over 1km in length to convey approximately 5,000 plus vehicle trips per day, in terms of provisions for emergency services and network connectivity
 - (k) Potential for four retail areas along the length of the road (however, given the location it is assumed that this is unlikely)
 - (l) Potential ongoing maintenance of dual stormwater systems
 - (m) Potential that roading and infrastructure is built in areas highly prone to liquefaction (including lateral spread) without adequate mitigation.
 - (n) Potential contamination of well site.
 - (o) Potential lack of cycle/pedestrian links to south of the site
 - (p) Lack of public transport links.
 - (q) Inadequate sewer outfall
 - (r) Potential European Heritage issues
 - (s) Potential Tangata Whenua values
 - (t) Potential loss and maintenance of banks and 20m esplanade strip due to sea level rise and other natural processes.
 - (u) Filling within a flood plain management area.

Regional Policy Statement Plan Change 1

50. The area has been indicated as a Greenfield industrial site under the proposed Regional Policy Statement Plan Change 1. Therefore the plan change is consistent with this policy.

5 Cont'd

Accept the Private Plan Change in Part

51. Council has the option under section 25 of the Resource Management Act 1991, to accept part of the request. The area within 50m of the river boundary has potential issues in relation to sea level rise and lateral spread (liquefaction). There are also issues in relation to protection of the esplanade reserve, protection of bird habitat (eg cormorant roosts), urban design. It may also potentially allow for enhancing the river margin by gaining sufficient buffer between the river and industrial area which will aid in protection and enhancement of natural landscape values along the river, in accordance with section 6a and 7c of the Resource Management Act.
52. In order to protect the existing natural values in accordance with Council's biodiversity strategy, it is considered that a larger setback is required. In order to provide for potential issues along the river bank, it is proposed to accept the part of the plan change that is not within the 50m of the river bank.
53. The result of the part acceptance will reduce the development area by approximately three hectares.
54. It should be noted that under the current City Plan rules, any excavation, filling or erection of buildings within 30m of the river bank would require a resource consent.

Processing of Private Plan Changes

55. The processing of private plan changes is set out in Clauses 21 -29 of the 1st Schedule to the RMA. In summary this provides:
 - (a) Section 21: Any person may make an application for a change to an operative district plan. The City Plan is operative.
 - (b) Section 22: Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
 - (c) Section 23: Further and additional information may be required. The Council has done this in this case. The applicant can decline further and additional information
 - (d) Section 24: The Council may modify the proposal but only with the consent of the applicant. The applicant has modified the plan change to provide clarity but has refused any major modifications.
 - (e) Section 25: The Council must consider the request, and make a decision to either:
 - (i) Accept the application or accept it in part and proceed to public notification, or
 - (ii) "Adopt" or adopt it in Part as if it were its own proposal, and publicly notify it, or
 - (iii) Reject it; or
 - (iv) Treat it as if it were a resource consent or
 - (v) A combination of reject and accept/adopt in part.
 - (f) Section 26: Where the Council accepts the change it must publicly notify it within four months.
 - (g) Section 27: The applicant may appeal the decision to accept/adopt in part, convert to a resource consent or reject in part under clause 26.
 - (h) Section 28: Applications may be withdrawn.
 - (i) Section 29: Unless rejected or changed to a resource consent, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).

THE OPTIONS

56. The Council's options are:
 - (a) Accept the application, proceed to publicly notify and decide the application at the expense of the applicant
 - (b) Adopt the change at its own and assume the responsibility for putting it through the process outlined in the RMA including all costs
 - (c) Accept in part, proceed to notify and decide part of the application at the expense of the applicant.

5 Cont'd

- (d) Adopt in part, proceed to notify the application and assume responsibility for processing the application outlined in the RMA
- (e) Reject the application
- (f) Treat the plan change as a resource consent

1. Accept the Private Plan Change

57. Under this scenario the private plan change is notified in the form prepared by the applicant. The Council processes the plan change proposal in much the same way as a resource consent application. The applicant bears all of the costs. Accepting the plan change proposal means:
- (a) The applicant decides what is notified. If changes to the proposal are considered necessary an appropriate mechanism needs to be found to provide jurisdictional basis for such amendments.
 - (b) The Council is taking a neutral position in the proposal. The public should perceive that the Council neither supports or opposes the proposal
 - (c) The applicants will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
58. There are potential reasons why the Council may wish to seek changes to the proposal. These are set out in paragraph 21 above.

2. Adopt the Private Plan Change

59. Under this scenario the plan change becomes a public plan change. It is notified, heard and decided the same way as plan change prepared by the Council. The Council bears all of the associated costs. Adopting the plan change proposal would mean:
- (a) The Council can control the proposal that is publicly notified
 - (b) It can be interpreted that the Council generally supports the proposal
 - (c) The Council bears the costs of managing and processing the plan change.
60. In regard to this last point, there is the potential that more officer time and Council financial resources are spent in the plan change adoption process than in the accepted process. These would be resources that are diverted from the investigation and plan change matters that the Council has directed are a priority for the City Plan team. While processing privately requested plan changes are a priority for the City Plan, a rezoning of the land from Rural 3 to Business 2 is not one of the priorities for the team. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action.

3. Accept the Private Plan Change in Part

61. One of the major issues in the plan change is the treatment of the river margin. As set out already, it is considered that a wider buffer area is required on this site than the usual 20 metre esplanade reserve. The applicant has declined to modify the proposal to accommodate this. Therefore, it would be possible to accept the application in part by excluding the land within 50 metres of the river. Consequential amendments would be required to the Outline Development Plan and the layer diagrams. These adjustments can be made prior to the public notification.
62. If the applicant did not accept this, they would have the option of either appealing immediately to the Environment Court, or lodging a submission on the plan change opposing the reduction of the plan change area.

4. Reject the Private Plan Change

63. There are very limited grounds in the Act for rejecting an application. A plan change can be rejected if:
- (a) It is frivolous or vexatious
 - (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years.

5 Cont'd

- (c) The change is not in accordance with sound resource management practice.
 - (d) The change would make the District Plan inconsistent with Part V of the Resource Management Act (other policies or plans, such as Regional Policies or Plans).
 - (e) The District Plan has not been operative for more than two years.
64. The privately requested plan change cannot be said to be frivolous or vexatious. The applicants have made a case for the plan change that warrants consideration in the plan change process.
65. While retail distribution matters have been dealt with by both the Council and the Environment Court within the last two years (Variation 86), a rezoning of this land has not taken place. The retail distribution regime in the City Plan gives a City Plan Policy context for the application and it is not considered necessary to allow time for the regime to 'bed in' before plan changes are considered.
66. The issues outlined in paragraph 21 could conceivably be considered sufficiently serious to be regarded as contrary to sound resource management practice. However they are all matters of merit capable of either being resolved in the course of deciding the application if sufficient jurisdiction exists. In the alternative the application could be declined after hearing if these matters cannot be resolved.
67. While submissions and further submissions on Change 1 to the Regional Policy Statement (RPS) have closed they have not been heard by the Regional Council – hearings of the submissions are expected in August or September of 2008. It is considered that the Change 1 RPS process is not sufficiently advanced for this to be a critical matter in determining whether the requested plan change should be rejected. However, consideration should be given to this matter when determining whether the application should be adopted or accepted.
68. The City Plan has been operative for more than two years. Therefore this can not be considered as grounds to reject the application.

4. Treat the Private Plan Change as a Resource Consent

69. Under this scenario the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. In this case the application relates to the amendment of the planning maps and the imposition of a set of site specific rules which the applicant envisages will allow some flexibility in the management and development of the site should it be rezoned. Without changing the zoning, it is likely that there would be objectives and policies in the plan which would make it extremely difficult to grant a non-complying activity of this magnitude. It is considered, given the nature of the application that it is best addressed as a plan change than a resource consent application.

THE PREFERRED OPTION

70. The preferred option is Option 3. There is no status quo, i.e do nothing option. The application must be considered and either accepted, adopted, rejected or processed as a resource consent. In this case, to manage bank erosion in order to retain a 20m esplanade strip as well as to ensure enough buffer between the industrial area and the river to protect and enhance its natural values it is considered that the Council should only accept the plan change in part. As this area is part of the Ferrymead Special Purpose Zone, which is a plan change which the Council has identified on its City Plan Programme, it could adopt the change and pursue it for itself. However, in its current form, without modification, this option would be difficult to pursue. There do not appear to be sufficient reasons for rejecting it. Therefore the application should be part accepted and that considered on its merits, following public notification and the receipt of submissions.

6. BRIDLE PATH ROAD AREA PLAN CONSULTATION REPORT

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Carolyn Ingles, Liveable City Programme Manager
Author:	Dale Harris, Assistant Policy Planner

PURPOSE OF REPORT

1. The purpose of this report is to update the Regulatory and Planning Committee on the findings of public consultation on the Bridle Path Road Area Plan.

EXECUTIVE SUMMARY

2. In March of this year, the Regulatory and Planning Committee approved the draft Bridle Path Road Area Plan and four development options for consultation. The consultation findings were to be reported back to the Regulatory and Planning Committee in the first instance, prior to presenting the final Plan to the Council for adoption. This report outlines the consultation process and key feedback received; the final Area Plan will be presented to the Committee in November. A full report describing the consultation process and providing details on the findings is appended as Attachment 1.
3. The draft Area Plan identified a preferred option ('Option 2') that would allow for the development of approximately 100-135 sections within the 'low hazard' zone only. The Council preferred Option 2 mainly because it offered the least expensive rockfall mitigation option, thereby minimising the risk to the Council should circumstances arise that required the Council to pay for the mitigation. Development would be in general accordance with LHA zone standards (minimum section size 1,500m²), with higher density (450-550m²) allotments within 90m of Bridle Path Road.

Consultation methods and response rate

4. Public consultation was undertaken with landowners and the Heathcote Valley community by:
 - Sending out introduction letters and copies of the draft Area Plan to landowners and community groups, including the Heathcote Valley Residents Association. A copy of the summary document for consultation, which was also made available to the public, is attached.
 - Holding a public meeting in Heathcote.
 - Meeting with landowners (three landowners took the opportunity to meet with Council staff on-site).
 - Providing copies of the draft Area Plan and summary document at service centres, libraries and on the Council website.
 - Advertising through a media release and a public notice in local newspapers.
 - Providing feedback forms for stakeholders to submit feedback on the plan.
5. A total of 115 feedback forms, emails and letters were received during the consultation period. A breakdown of respondents revealed that few responses came from groups or individuals outside of the Heathcote area, indicating that this is a local rather than metropolitan issue.

Summary of findings

6. A summary of the key feedback received during the consultation process is outlined as follows:
 - (i) **Housing density and building line.** A significant portion of submitters preferred a lower density development than that specified in the preferred option, Option 2. Only two people supported Option 2 as it was. Eighty-six submitters identified a new preferred option, which would enable larger allotments across the site but primarily limit this type of development to the low hazard zone. Overall, a lower density development (around 750m² per section) was preferred, with the development of less than 100 new allotments in total.

- (ii) **Style of development and building controls.** A significant amount of feedback was received on how the development should look and/or be controlled, including controls on: building design and layout, landscaping and planting, and the retention of mature trees.
- (iii) **Traffic, roading and access.** Many people were concerned about the impact that 100 or more new households would have on the amount of traffic on local roads, including Bridle Path Road, the Ferrymead Bridge, and Martindales/Port Hills Roads.
- (v) **Surplus land, reserves and walkways.** Overwhelmingly, submitters requested that any surplus land above the development be acquired by Council as a reserve in order to allow public access, encourage birdlife and vegetation, help prevent rockfall, and improve visual amenity.
- (vi) **Stormwater, flooding and waterways.** The proposed swale and roadway corridor were supported by most, however there was some concern that the proposed option did not adequately address stormwater issues.
- (vii) **Landowner aspirations.** Landowners were generally concerned as to whether the low hazard line represents a suitable building line, as limiting development to this zone 'ignores' existing residential development in the neighbouring 'higher' hazard zones in adjacent subdivisions (eg Morgans Valley). Landowners also expressed a desire to subdivide parts of their land, prior to the co-ordinated development advocated for in the Area Plan.

Implications of the Feedback.

- 7 The tenor of the feedback from the local community is that there is unlikely to be significant resistance to development provided it is at a lower density than proposed in Option 2. The resulting development would mean less and larger sections, reducing the impact on local infrastructure (including community facilities), and providing greater opportunities for open space, planting and walkways. These outcomes are seen by the local community as being more in line with the existing character of this part of the Valley than Option 2 (as presented in the Draft Area Plan).
- 8 However, such a development pattern presents two key challenges. Firstly, a significant reduction in section yield will almost certainly adversely affect the financial feasibility of this development. Secondly, lower densities may be seen as being contrary to the objectives of the Greater Christchurch Urban Development Strategy, and in particular, proposed Plan Change 1 to the Canterbury Regional Policy Statement. In regard to the latter concern, the following should be noted:
 - The subject land is already inside the urban limits, and therefore not affected by the provisions of Proposed Change 1 relating to greenfields development;
 - Greater weight should be given to the City Plan at the present time and this document already provides for several areas of lower density development in and around the Port Hills, including Heathcote Valley;
 - The Consent Order signed by the parties to the original appeals signalled a low density Living HA Zone or some variant of it, although the Council would not be bound by this if some other development scenario were to be promoted through a Plan change.
- 9 As a result of the feedback received from landowners, further geotechnical and landscape assessments have been commissioned to determine if a more appropriate building line and lot density is achievable having particular regard to the objectives and policies of the City Plan. If the geotechnical assessment determines that the risk from rockfall can be mitigated using a bunding system further up-slope than was originally advised by the geotechnical consultant, and the effects on the landscape of such a development were assessed as being acceptable in terms of the City Plan, then there will be a strong resource management case to develop to a higher contour. This would enable lower and/or a greater range of densities to be developed, while keeping the total number of lots at the lower end of what was feasible under Option 2, (less than 100 new dwellings). Preliminary results from these investigations suggest this may be the case.

6 Cont'd

Possible amendments to the Area Plan arising out of the consultation process

- 10 It would be premature for this report to suggest what form and scale development might take on the subject site based solely on the consultation process. There are still several technical issues to be worked through, and final reports on hazard mitigation and landscape effects of development occurring to a higher upper limit have yet to be completed. Also, as the selected option will form the basis of a change to the City Plan, it needs to be underpinned by sound resource management evidence, and be subject to further scrutiny by the public at large when the Plan change is publicly notified next year. Recommendations on the preferred development option will be made to the November meeting of this Committee.

FINANCIAL IMPLICATIONS

11. There are no direct financial implications.

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

12. Not applicable.

LEGAL CONSIDERATIONS

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

13. There are no direct legal considerations.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. Not applicable.

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

15. Not applicable.

ALIGNMENT WITH STRATEGIES

16. Not applicable.

Do the recommendations align with the Council's strategies?

17. Not applicable.

CONSULTATION FULFILMENT

18. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council receive this report for information.

9. 10. 2008

**7. ALCOHOL POLICY AND LIQUOR CONTROL BYLAW SUBCOMMITTEE MINUTES FOR
26 AUGUST 2008**

The minutes of the meeting (attached) are included for the Committee's information.

STAFF RECOMMENDATION

It is recommended that the minutes of the meeting of the Alcohol Policy and Liquor Control Bylaw Subcommittee Minutes for 26 August 2008 be received.

9. 10. 2008

8. ALCOHOL POLICY AND LIQUOR CONTROL BYLAW SUBCOMMITTEE MINUTES FOR 1 SEPTEMBER 2008

The minutes of the meeting (attached) are included for the committee's information.

STAFF RECOMMENDATION

It is recommended that the minutes of the meeting of the Alcohol Policy and Liquor Control Bylaw Subcommittee Minutes for 1 September 2008 be received.

9. 10. 2008

9. SOUTH-WEST AREA PLAN (SWAP) HEARINGS

To be separately circulated.

10. AMENDMENT OF THE CHRISTCHURCH CITY COUNCIL TRAFFIC & PARKING BYLAW 2008



General Manager responsible:	General Manager City Environment, Jane Parfitt; DDI 941 8608, and General Manager Regulation and Democracy Services, Peter Mitchell, DDI 941 8549
Officer responsible:	Transport and Greenspace, Alan Beuzenberg, Legal Services, Chris Gilbert
Author:	Rod Whearty, Patricia Su, Michael Ferigo and Judith Cheyne

PURPOSE OF REPORT

1. To recommend to the Regulatory and Planning Committee to seek the Council's approval to commence a statutory special consultative procedure for the amendment of the Christchurch City Council Traffic & Parking Bylaw 2008 and to appoint a hearings panel to consider the submissions.

EXECUTIVE SUMMARY

2. The Christchurch City Council Traffic & Parking Bylaw 2008 (the Bylaw) was adopted on 19 June 2008 and came into force on 1 July 2008. At the time it was adopted, it was acknowledged that the two schedules of the bylaw (one way streets and special vehicle lanes) included errors that needed to be checked and fixed (the roads which are not clear are identified in the second table in each schedule of the Bylaw). The Council's resolutions on 19 June included: *"Direct staff to undertake an urgent review of the schedules to the Traffic and Parking Bylaw to ensure that they are up to date and correct, including any additions."*
3. This proposal is primarily for the purposes of making amendments to the first and second schedules of the Bylaw to ensure they are up to date and correct (following the review). The proposal also adds other one way streets and special vehicle lanes (cycle lanes and bus lanes) that currently exist and/or have previously been consulted on by the Council, although not using the special consultative procedure. The second table of the first schedule has been removed as it has been confirmed that these streets are currently not one way streets. The format for the second schedule has changed to make it easier to read and has removed streets which were not strictly special vehicles lanes, but related to turning restrictions.
4. In relation to the cycle lanes on roads in Christchurch which are not included in the special vehicle lane schedule of the Bylaw, consultation would have been carried out before these cycle lanes were marked out on the road. However, prior to February 2005 cycle lanes were not recognised as a special vehicle lane in the various transport legislation. It has only been since the Land Transport Rules came into force in February 2005 that "cycle lanes" have been included in the definition of "special vehicle lane".
5. Under the Council's bylaw making powers in the Transport Act 1962, a special vehicle lane can only be created by specifying the road on which the lane is on in a bylaw. To ensure that cycle lanes already marked out on roads around the city can be enforced, these existing cycle lanes need to be specified in the Bylaw, by inclusion in the second schedule of the Bylaw, and following a special consultative procedure for making amendments to the Bylaw.
6. There are also some bus lanes (and cycle lanes), and a one way street, which have been consulted on more recently, and in some cases approved by the Council (but may not yet be marked out), but they were not consulted on under a special consultative procedure for the purpose of an amendment to the Bylaw. It was not clear to the relevant staff at the time that a special consultative procedure was required, and that a resolution could not simply be made by Council, which is what the 1991 Bylaw specified. These roads also need to be added to the Bylaw schedules and included in this special consultative procedure proposal.
7. There are also two minor errors in the Bylaw, relating to an amendment to clause 11 to clarify that the penalty if the offence goes to court is \$500, and a minor change to the reference to "parking provisions", and to amend clause 14(b) to include words which were inadvertently left out. These matters could probably be amended by using section 156(2) of the Local Government Act 2002 (which provides that editorial changes and amendments of minor effect may be made by ordinary resolution publicly notified). However, as this special consultative procedure is being carried out to amend the Bylaw it is appropriate to also include these matters in the consultation proposal, so that there is no argument in the future as to their amendment.

8. **Attachment A** is a statement of proposal (including the draft Amendment Bylaw and the proposed new Schedules (and a marked up version of the **Attachment B** First Schedule, so the changes are clear)) and **Attachment C** is a summary of information, as required under the Local Government Act 2002, both for formal approval by the Council.
9. The process for making the amendments is as follows:
 - The Regulatory and Planning Committee recommends to the Council that it should resolve that the Amendment Bylaw is the most appropriate way to address the perceived problems, it is in the most appropriate form, and that there are no inconsistencies with the New Zealand Bill of Rights Act (See recommendations below);
 - The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (See recommendations below);
 - The special consultative procedure will be from 10 November 2008 to 11 December 2008;
 - If any submitters wish to be heard the hearings will take place during early February 2009; and
 - The Council will then receive a report from the hearings panel to consider the recommendations of the panel, and adopt the Amendment Bylaw, and the amendments will become part of the 2008 Bylaw.

FINANCIAL IMPLICATIONS

10. The financial implication in this instance is the cost of running the special consultative procedure. However, if the consultation did not take place the existing special vehicle lanes and one way streets that are not included in the bylaw could not be enforced and the Council may lose some revenue it might otherwise collect.

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

11. Not affected by the proposed changes.

LEGAL CONSIDERATIONS/SECTION 155 OF THE LOCAL GOVERNMENT ACT 2002

12. Section 155 of the Act requires the Council to determine whether the making or amending of a bylaw is *"the most appropriate way to address the perceived problem"*. The Council is also required to determine whether the bylaw is in the most appropriate form and that there are no inconsistencies with the New Zealand Bill of Rights Act 1990 (NZBORA).

Appropriate way to address problem

13. The Council has previously determined that a bylaw is necessary to create one way streets and special vehicle lanes (which address the problems of traffic flow and safety for cyclists in the district) and it approved the continuation of the previous bylaw schedules when it adopted the Bylaw on 19 June 2008 (subject to the errors in those schedules being reviewed). This process now proposes amended schedules, based on the original streets included in the Bylaw schedules, and adds various bus and cycle lanes to the schedules which have previously been consulted on by the Council but were not consulted on using the special consultative procedure. Some cycle lanes were marked on roads in the city before they were even recognised in the Land Transport Rules as a "special vehicle lane" in those rules (the rules came into force on 27 February 2005).
14. At that time the Council did not need to include them in the special vehicle lanes schedule of the former bylaw. If the Council wants the existing lanes to be enforced by the Council and the Police then it must ratify them through this process of adding them to the Bylaw. (In the future, any cycle lanes, bus lanes, or other special vehicle lanes or one way streets that are proposed will be consulted on using the special consultative procedure from the start of the process.)

9. 10. 2008

15. There does not appear to be an alternative option to address these issues, other than to use the powers provided for in the transport legislation. The Council cannot simply erect signs or mark out cycle lanes under the Land Transport Rules, without a power provided for in an Act or a bylaw first.

Appropriate form of bylaw

16. The form in which the proposed schedules of the Bylaw have been drafted, and the minor Bylaw amendments, is considered appropriate. The level of detail that should be provided in the wording for the schedules has been carefully considered. It is recommended that the bylaw wording only specify the road where the special vehicle lane will be, and the approximate location in the road. This approach is supported by section 334(2) of the Local Government Act 1974, case law, and on analysis of the form of other Councils' bylaws.
17. Section 334(2) states: *"For the purposes of any resolution or bylaw of the council, anything constructed or provided under the authority of the council shall be deemed to be sufficiently described if the road in which it is constructed or provided and its approximate locality in that road are specified in the bylaw or resolution."* It is not clear whether this provision only applies to section 334(1) (which relates to the erection of monuments, etc, and provision of facilities on roads) or to **any** resolution or bylaw of the Council relating to roads, including those made under the Transport Act 1962. There does not appear to be any case law on the wording in section 334(2), but the principle is relevant to special vehicle lane wording.
18. If a greater level of detail were specified then if any changes were made to the road in the future, which required the alteration of the special vehicle lane, then each time that happened, the bylaw would need to be amended. There have been numerous judgments stating that for a bylaw to be valid, it must be 'certain', which means it must contain adequate information so that people know what they have to do to obey the bylaw.
19. On one hand, specific detail in a bylaw may make the bylaw completely certain. However, in relation to identifying special vehicle lanes, if what is ultimately marked on the road does not agree with the written description in the bylaw, then that will result in uncertainty, and may provide a loophole to anyone in an enforcement situation. There will be a need, as time goes on and other features of the road change (eg kerb and channelling), to change the cycle lane – this may mean it no longer meets an exact written description in a bylaw, but in these cases its general location on the road is still the same. For this reason, a more general description in the bylaw coupled with the marking on the road is believed to provide the best certainty for the bylaw, and for enforcement of the bylaw.
20. Once the Council has made the decision to have a special vehicle lane on a road, the Traffic Control Devices Rule specifies how the Council must then mark the lane and, in some cases, install signs, and where the signs must be placed (this is already recognised in clause 13 of the bylaw by stating the clause is subject to the erection of the prescribed signs). One of the purposes stated in the Traffic Control Devices Rule is that it is to ensure that Road Controlling Authorities have regard to safe practice in the design and installation of traffic control devices. The markings used, and types of symbols etc are not things which it would appear elected members can have any influence over, or the public should be submitting on, under a special consultative procedure. The Council's role is to make the decision as to which roads a special vehicle lane should be on, its general locality on the road, and also to decide whether it should be a 24 hour special vehicle lane or not (all of these matters will also be guided to some extent by traffic engineering principles).
21. It is proposed to include in the bylaw schedule a statement that "The exact location of any road or traffic lane restricted to specific classes of vehicles, for example, special vehicle lanes, will be marked and signed as prescribed by the Land Transport Traffic Control Devices Rule 2004 (or any other applicable legislation) and, where they are not prescribed, will be decided by traffic engineering staff applying best practice guidelines". This appropriately and reasonably leaves the discretion for these matters up to staff, and makes it clear how the bylaw and the resulting markings on the road are linked.

10 Cont'd

New Zealand Bill of Rights Act 1990

22. The only provision of the NZBORA which has a bearing on the amendment to this bylaw is section 18, which provides that everyone lawfully in New Zealand has the right to freedom of movement. Creating one way streets and special vehicle lanes provide a limitation on this right, but are considered to be reasonable restrictions in a free and democratic society, in accordance with section 5 of the NZBORA. Persons can still move around the city, and in fact creating cycle lanes in particular may uphold another indirect right under the NZBORA: freedom from discrimination (cycle lanes may provide a safe option for those who cannot drive cars because of a disability or age). Therefore there are no inconsistencies between the draft amended bylaw and the NZBORA.

Legal requirements of a special consultative procedure

23. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:

“(a) as the case may be,—

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

24. The Act also requires the Council to determine the form of the summary of information. Section 89(c) requires that it be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*" Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken.

25. Due to the fact that the proposed Amendment Bylaw deal with roads throughout the Christchurch City Council district, it is proposed that the summary of information be published through the local newspaper/s, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

26. Yes.

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

27. Yes.

ALIGNMENT WITH STRATEGIES

28. This proposal aligns with both the Metro Strategy 2006-2012 and Cycling Strategy.

CONSULTATION FULFILMENT

29. Internal consultation has taken place between relevant units. The statutory special consultative procedure will follow the adoption of the recommendations of this report.

10 Cont'd

STAFF RECOMMENDATION

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

- (a) Resolve that the draft Christchurch City Council Traffic & Parking Amendment Bylaw 2009 is the most appropriate way to provide for one-way streets, and special vehicle lanes (which address traffic flow and safety for cyclists in the district), and that the minor amendments to clauses 11 and 14 of the Bylaw are necessary for clarity.
- (b) Resolve that there are no inconsistencies between the draft Christchurch City Council Traffic and Parking Amendment Bylaw 2009 and the New Zealand Bill of Rights Act 1990, and that the draft Amendment Bylaw is in the most appropriate form.
- (c) Resolve that the attached Statement of Proposal (which includes the draft Amendment Bylaw) and the Summary of Information be adopted for consultation and made available for public inspection at all Council service centres, Council libraries and on the Council's website, and that the Summary of Information be published in a newspaper having a wide circulation in the Council's district.
- (d) Appoint a hearings panel to consider submissions.

10 Cont'd

BACKGROUND (THE ISSUES)

Schedules

30. During the Traffic and Parking Bylaw review, it was acknowledged that the two schedules of the bylaw (one way streets and special vehicle lanes) included errors that needed to be checked and fixed. Unfortunately, this was not able to be undertaken as part of the Bylaw review in 2008 as it was not included in the original consultation. Some of the errors that were identified in the existing First Schedule for the one way streets included the following:
- Resolutions were made for a street to be one way but the subsequent intention was for it to be retained as a two way street, however, the resolution was never rescinded;
 - Incorrect street names were used to identify the one way street or the extent of the one way street;
 - Physical works were undertaken to alter the status of some one way streets however, the bylaw was not amended to remove the streets from the schedule.
31. The checking process for the schedule, carried out by a consultant on behalf of the Council, has involved:
- Checking that the one way streets listed in the First Schedule are correct;
 - Amending any errors;
 - Ensuring that the schedule reflects what is on site on the road;
 - Obtaining information from Land Information New Zealand on the street names, to ensure the correct street name references are used.
32. As a result the second table to the First Schedule (which included the streets which, at the time of making the bylaw, did not appear to be one way streets) has been removed and various streets have been added to the First Schedule, as well as other minor amendments to the wording made. In addition, there is also a street which had been consulted on, and approved to be made into a one way street which is awaiting construction. It is recommended that this one way street be added to the Bylaw and consulted on further through this process. The relevant road and where in the process it is at, is as follows:
- Hanmer Street in a northerly direction from Gilby Street to Avonside Drive – approved by Hagley/Ferrymead Community Board on 12 December 2007 to proceed to final design, tender and construction.
33. A similar check and review process has been carried out by the consultant for the Second Schedule regarding roads and traffic lanes restricted to specific classes of vehicles (special vehicle lanes). However, in order to ensure that the proposed Second Schedule contains adequate information on the locations of roads or traffic lanes which are restricted to specific classes of vehicles, and is easy to read, a table format has been chosen. The table allows easy identification of sections of roads which are restricted to a specific class of vehicles. It should be noted that the current Second Schedule lists some roads which are related to turning restrictions rather than special vehicle lanes. These have been removed from the proposed Second Schedule.
34. The new bus lanes which are to be added to the Second Schedule of the bylaw are on Papanui Road, Colombo Street (South) and Queenspark Road. These bus priority routes and bus lanes were recently approved by the Council on 15 May 2008 (for Papanui Road and Colombo Street) and 12 June 2008 (Queenspark).

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35. Extensive consultation on these new bus lanes was carried out between 15 October 2007 and 21 December 2007. Approximately 10,000 generic brochures and 41,500 route specific brochures were printed and distributed to key stakeholders during the consultation period. A broad range of techniques and media were utilised during the course of the consultation. These included, seminars/workshops, static displays, advertising on billboards, buses, etc, and information was also provided through the Council's Customer Call Centre, web site, and Have Your Say. The Council received a total of 881 submissions on the three Bus Priority routes during the course of the consultation.
36. The cycle lanes which are being added to the schedule have been installed primarily over the last two decades with the majority having been installed in the last decade, following Councils commitment to consistently invest as part of its adoption of its first Cycle Strategy in 1996. The consultation undertaken prior to the installation of a cycle lane has been in line with the Council standards in consultation processes of the time. Over the years the consultation processes have continued to be developed with clearer communication, brochures and community input and clearer reporting paths that have improved to more consistently achieve the current best practices. The generic process used is documented within the 'Local Capital Project Development' flow chart and involves many stages where both community and Community Board input is gained before recommendations are made to the Council for resolution. Current practice has been in place several years prior to cycle lanes having a legal status in the Land Transport Rules (February 2005) and so the process and level of consultation has been very robust.
37. There are also some cycle lanes which have already been consulted on, prior to 1 July 2008 when the new bylaw came into effect, but are still going through the "approval" process. It is also recommended that these lanes be added to the bylaw at this stage, and consulted on further through this process, rather than as a separate special consultative procedure. The relevant roads and lanes, and where in the process they are at, are as follows:
- Hansons Lane - has been to the Riccarton/Wigram Community Board and the Council (now awaiting construction, which will not occur until this SCP is completed)
 - St Martins Road – has been to the Spreydon/Heathcote Community Board and was before the Council on 11 September 2008 (now awaiting construction, which will not occur until this SCP is completed)
 - Ensors Road (extension of St Martins Road – combined with that project) – has been to Spreydon/Heathcote Community Board and was before the Council on 11 September 2008 (now awaiting construction, which will not occur until this SCP is completed)
 - Harman Street – was before the Spreydon/Heathcote Community Board on 19 August 2008 and is going to the Council on 16 October 2008
 - Bridge Street – is going to the Burwood/Pegasus Community Board on 15 September 2008
 - Blighs Road (Idris Road - Wairakei Road) – is going to the Fendalton/Waimairi Community Board on 16 September 2008.

Other minor amendments

38. Clause 11 sets out the penalties for parking offences but requires amendment for clarification purposes. Following the making of the Bylaw it appeared that it was not clear from that clause alone what the maximum penalty was if the Council did not issue an infringement notice but prosecuted the matter by way of an information and summons. There was also some comment that the words "breaches any of the parking provisions" were not clear as to whether this included a breach of a Council resolution made under the Bylaw. While there is a strong argument that the maximum fine is \$500, it is recommended that new clause (1)(b) be inserted to remove any doubt as to the matter. Similarly, while the Bylaw was drafted using a plain English approach, it is recommended that new subclause (2) be inserted to remove any doubt as to what is meant by a "breach of any parking provisions".
39. Clause 14, dealing with turning restrictions also needs clarification. The proposal is to amend clause 14(1)(b) by inserting the words "are prohibited" after the words "classes of vehicles". While the meaning of subclause (1)(b) is largely clear when reading it together with subclause (1)(a), the insertion of the words "are prohibited" puts the meaning of the clause beyond doubt.

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THE OBJECTIVES

40. To correct and update the first and second schedules of the Traffic and Parking Bylaw 2008, and make other minor amendments to the Bylaw by way of a special consultative procedure.

THE OPTIONS

41. The options for the Council are to either amend the bylaw or not (or possibly defer the amendment of the bylaw). If the Council did not make these amendments then it (and the Police) would only be able to enforce the one-way streets and special vehicle lanes that are in the first table of each schedule.

THE PREFERRED OPTION

42. Commence the special consultative procedure to make the recommended amendments to the Bylaw.

11. ENFORCEMENT ISSUES ARISING FROM THE 2008 BYLAW REVIEWS



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Legal Services Manager
Author:	Vivienne Wilson, Solicitor, Legal Services Unit

PURPOSE OF REPORT

1. To advise the Council in relation to its resolution of 19 June 2008:
 - Requesting staff to prepare advice for the Council on implications of, and possible advocacy for, an infringement regime which is provided for but not yet enabled through the Local Government Act 2002
 - To make recommendations to Local Government New Zealand and Land Transport New Zealand to seek a change to the Land Transport Rule: Traffic Control Devices 2004 to vary the signage requirement regarding certain offences.

EXECUTIVE SUMMARY*Infringement Regime Under the Local Government Act 2002*

2. The Local Government Act 2002 (LGA 02) contains an infringement regime that would enable infringement offences to be enforced using infringement notices as opposed to a summary proceeding. An infringement offence is defined as an offence specified as such in regulations made under section 259(a). Breaches of bylaws may be prescribed as infringement offences in any such regulations.
3. The Council has consistently submitted that the infringement regime under the LGA 02 should be brought into force. To date, no regulations have been made under section 259. However, it is still open to the Council, at any time, to make a submission addressed to both the Minister of Justice and the Minister of Local Government asking that regulations be made prescribing that breaches of specific Christchurch City Council bylaws are infringement offences for the purposes of the LGA 02. This approach has been adopted in relation to breaches of navigation bylaws under the Local Government Act 1974, and 11 sets of regulations have been made under corresponding provisions.

Signage Requirement under the Traffic Control Devices Rule

4. The requirement for signage comes from section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004. These sections provide that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign. The effect of this section is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the LGA 02, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.
5. This has consequences for offences against the Christchurch City Council Traffic and Parking Bylaw 2008 (parking on grass berms or verges, and heavy vehicles parking on residential areas).
6. In order to seek a change to the Traffic Control Devices Rule 2004, the Council will need to make a submission to the New Zealand Transport Agency (as of 1 August 2008 Land Transport New Zealand and Transit New Zealand were merged into the New Zealand Transport Agency). An amendment to the Traffic Control Devices Rule 2004 is currently in the policy development phase, so there will be an opportunity, in due course, for the Council to make a submission in the context of a formal consultation on the Rule. However, it is not clear when the draft Rule will be put out for consultation.

11 Cont'd

7. Another way of approaching these specific issues would be to propose amendments to the Land Transport Road User Rule 2004. A draft amendment to the Land Transport Road User Rule has been published (no. 61001/4), with submissions to be made by 16 October 2008. The effect of the proposed amendment will be that unless the Council indicates otherwise by means of signs or markings, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area. The reference to "a grassed area or other cultivation" appears to cover both grass berms and grass verges. This restriction will apply in urban traffic areas. An urban traffic area is an area which is subject to a speed limit of 50km/h. This parking restriction will be able to be enforced by the Council's parking enforcement officers. This report recommends that the Committee requests that a submission be prepared on the yellow draft of the Road User Amendment (Rule 61001/4):
 - (a) in support of the proposed clause 6.2 in relation to the parking on grass verges and berms; and
 - (b) proposes an amendment to the Road User Rule 2004 to insert a new provision that the parking of heavy motor vehicles is prohibited in residential areas.
8. It will then be open to the Council to subsequently propose an amendment to the Traffic Control Devices Rule 2004 if the first submission is unsuccessful.

FINANCIAL IMPLICATIONS

9. There are no financial implications arising out of this report.

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

10. N/A

LEGAL CONSIDERATIONS

Infringement Regime Under the Local Government Act 2002

11. Subpart 3 of Part 9 of the LGA 02 contains an infringement regime that would enable infringement offences to be enforced using infringement notices as opposed to a summary proceeding. An infringement offence is defined as an offence specified as such in regulations made under section 259(a). Section 259(a) provides that the Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations for prescribing breaches of bylaws that are infringement offences under the LGA 02. At present no regulations have been made under section 259 of the LGA 02 and therefore it is not possible to use this easier and more practical regime to enforce breaches of the Council's bylaws.
12. By comparison, the Building Act 2004 contains a similar infringement offence regime. As of 1 July 2008, the Building (Infringement Offences, Fees, and Forms) Regulations 2007 came into force which enable certain building offences to be enforced using an infringement notice procedure. (Examples of these offences include failing to comply with the requirement that building work must be carried out in accordance with a building consent, for which the infringement fine is \$750, or failing to comply with a notice to fix for which the infringement fine is \$1,000.) The Transport Act 1962 also allows for the enforcement of parking offences (where those parking offences are breaches of a bylaw made under the Transport Act 1962) using an infringement notice regime.
13. Another example of an infringement regime in relation to bylaws are the provisions relating to navigation bylaws made by regional councils under section 684B of the Local Government Act 1974 (the LGA 74). Section 699A of the LGA 74 enables regulations specifying which breaches of navigation bylaws are infringement offences for the purposes of section 699A. There are currently 11 sets of regulations in force prescribing breaches of specific bylaws as infringement offences. For example the Local Government (Infringement Fees for Offences: Hawke's Bay Regional Navigation and Safety Bylaws) Regulations 2003 or the Local Government (Infringement Fees for Offences—Environment Canterbury Navigation Safety Bylaws) Regulations 2005.

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14. However, in the absence of a general infringement offence regime for bylaw offences, the Council must use its traditional enforcement tools set out in the LGA 02 such as prosecutions (by laying an information in the District Court), injunctions, and removal of works/things (and recovery of costs). Most of these actions result in a higher cost to the Council than if it were given the power to issue infringement notices. There are also other alternatives to the means provided in the LGA 02, for example, cancelling or suspending permits/licences or using other means of persuasion for compliance, such as policies/strategies - eg if we want to encourage people to not leave glass bottles on the street then providing more rubbish/recycling bins on the street may help.
15. Over the last four years, the Council has consistently and constantly made submissions to the relevant body advocating for the introduction of regulations to bring the infringement regime into effect. Recent examples are: the submissions on the last Local Government Amendment Bill, the Ministry of Economic Development's review of regulatory frameworks and the LGNZ Roadshow, with the most recent one being the submission to the Local Government Commission. (In this respect the Local Government Commission recently released its summary report on the Review of the Local Government Act 2002 and the Local Electoral Act 2001. In the summary report the Commission stated that "*In response to a number of submissions on the subject, we also recommend that regulations be made under section 259 as soon as practicable to prescribe breaches of bylaws that are infringement offences along with associated infringement fees.*")
16. It is always open to the Council to make further unsolicited submissions to the Local Government Commission or the Law Commission on the issue. However, given the approach of the Government in relation to navigation bylaws (ie that each bylaw is the subject of its own regulation), the best approach appears to be to make a submission addressed to both the Minister of Local Government and the Minister of Justice requesting that the Governor-General make regulations specific to Christchurch City Council prescribing that breaches of particular Christchurch City Council bylaws are to be treated as infringement offences. In the submission, the Council would need to address which clauses of which Bylaw should be subject to the infringement offence regime and the suggested infringement fees (which must not exceed \$1,000).
17. Examples of breaches of Christchurch City Council Bylaws could include breaches of the following clauses in the following Bylaws:

Christchurch City Council Traffic and Parking Bylaw 2008

19. Use of Construction Machinery or Equipment
20. Use of Waste-taker Bins, Receptacles or Any Other Object
21. Motorhomes and Immobilised Vehicles
22. Using the Road for Storage
23. Working on Vehicles

Christchurch City Council Parks and Reserves Bylaw 2008

6. Behaviour in Reserves
7. Animals
8. Vehicles, Other Traffic, Mechanical Devices and Vessels
9. Fires
10. Camping
11. Tents, Booths etc
12. Aircraft
13. Sports and Games
14. Botanic Gardens
15. Rawhiti Golf Course

Christchurch City Council Marine and River Facilities Bylaw 2008

4. Use of Marine and River Facilities by Commercial and Charter Operators
5. Use of Wharves and Jetties
6. Obstruction of Marine and River Facilities

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Signage Requirement Under the Traffic Control Devices Rule 2004

18. The Council resolved on 19 June 2008 to make recommendations to Local Government New Zealand and Land Transport New Zealand to seek a change to the Land Transport Rule: Traffic Control Devices 2004 to vary the signage requirement regarding certain offences.
19. This resolution relates to the requirement in section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition on a road by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign. The effect of this Rule is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the LGA 02, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.
20. This has consequences for offences against the Christchurch City Council Traffic and Parking Bylaw 2008 being
 - Clause 9 Parking on grass berms or verges
 - Clause 10 Heavy vehicles parking on residential streets.
21. At present, clause 9 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be. Clause 10 provides for the Council to specify by resolution any road or part of a road in a residential area which may not be used by heavy motor vehicles for the purposes of stopping, standing, or parking for the time period or periods for which the restriction applies. Clause 10 is subject to the Council erecting the prescribed signs.
22. In order to seek a change to the Traffic Control Devices Rule 2004, the Council will need to make a submission to the New Zealand Transport Agency. (As of 1 August 2008 Land Transport New Zealand and Transit New Zealand were merged into the New Zealand Transport Agency). The website of the New Zealand Transport Agency states that a Traffic Control Devices Amendment (Rule 54002/2) is in the "Blue phase". This Rule is intended to implement Road Safety 2010 safety intervention recommendations including results from trials, such as road markings before pedestrian crossings, and requirements for the placement of signs and the frequency for changing speed limits.
23. The Council is not prevented from making a submission to the New Zealand Transport Agency at any time. However, it is more likely that proper consideration would be given to a submission in the context of the formal consultation process for rule-making. The New Zealand Transport Agency notes that there are five stages of rule-making which are:
 - Blue phase: policy development, which may include a discussion paper on policy proposals.
 - Red phase (optional): Draft of the legislative provisions sent to registered interest groups.
 - Yellow phase: Public consultation (advertised in public notice columns of the major metropolitan and regional newspapers and distributed widely).
 - Green phase (optional): Draft of Rule released for final comment if there's a long delay or major changes after the yellow draft was released.
 - White phase: This is the draft which is sent to the Ministry of Transport for government scrutiny. The Ministry and other departments and agencies may make changes before the Rule is submitted to Cabinet and then to the Minister to sign.
24. Given that there is a proposal to amend the Traffic Control Devices Rule 2004 and this is in the policy development phase, one option is to wait until this draft Rule comes out for consultation (ie the yellow phase). In terms of a possible submission, there are various options. These are:

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- Option 1: Propose a broad amendment to section 4(2) of the Traffic Control Devices Rule 2004 to exempt bylaws relating to parking on grass verges and berms and the parking of heavy motor vehicles in residential areas:
 - Option 2: Propose an amendment to section 12 of the Traffic Control Devices Rule 2004 to exempt bylaws relating to parking on grass verges and berms and the parking of heavy motor vehicles in residential areas:
 - Option 3: Option 2 plus an added provision that before the Council issues an infringement notice, the Council must issue a warning notice to the registered owner of the vehicle:
25. In deciding whether to make a submission to propose a Rule change, the Council first needs to consider whether any other non-regulatory options are available to deal with parking on grass berms and verges and the parking of heavy vehicles in residential areas, which may obviate the need for such restrictions. Options for dealing with parking on grass berms and verges include landscaping changes (eg using rocks, boulders, planting vegetation or trees on the grassed areas to deter parking), fencing or creating larger footpaths. It is always open to the Council to erect signage in areas where such parking is considered a problem. There are however, limited measures that can be done to deter heavy vehicles parking in residential areas as the roads still need to cater for rubbish trucks, emergency service vehicles and sometimes buses.
26. It is open to the Council to propose a wide-ranging amendment to section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 which deals broadly with the requirements of signage (ie Option 1). However, given that the Council is concerned about the signage requirements for parking of vehicles on grass berms and verges and the parking of heavy vehicles in residential areas, the Council could propose that a clause be inserted in Part 12 of the Traffic Control Devices Rule 2004 which exempts these matters from signage (ie Option 2). It is suggested that of these two options, the amendment to section 12 is the better option because it deals specifically with parking signs and the Council's concerns relate to parking issues.
27. Given that the Council would be proposing quite a broad amendment to the Traffic Control Devices Rule 2004, it may also want to consider softening the proposal by providing that before any infringement notice is issued, the Council must issue a warning notice to the registered owner of the vehicle (ie Option 3).
28. However, another way of dealing with issue is to propose an amendment to the Land Transport Road User Rule 2004. With respect to grass verges and berms, clauses 2.13 and 2.14 of the Road User Rule 2004 currently prohibit the driving of motor vehicles along a footpath and driving a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road. Clause 6.2 of the Road User Rule 2004 states that unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a road-way when it is reasonably practicable to do so on the road margin. Road margin is defined as including any uncultivated margin of a road adjacent to but not forming part of either the roadway or the footpath (if any). Clause 6.14 of the Road User Rule 2004 provides that a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a footpath or on a cycle path. There is no signage requirement in the Traffic Control Devices Rule 2004 for this clause.
29. A draft amendment to the Land Transport Road User Rule has been published (no. 61001/4), with submissions to be made by **16 October 2008**. The New Zealand Transport Agency are proposing that the rule will come into force on 1 July 2009.
30. The proposed changes to the rule include an amended rule, clause 6.2 which deals with parking of vehicles off the roadway. The proposed clause as amended provides as follows:
- 6.2 Parking vehicles off roadway**
- “(1) *Except as provided in subclause (2), unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a roadway when it is reasonably practicable to do so on the road margin.*
- “(2) *Unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area.*

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31. The draft also proposes inserting a new definition of urban traffic area in clause 1.6 of the rule which is as follows:

“urban traffic area has the same meaning as in Part 2 of Land Transport Rule: Setting of Speed Limits 2003”.

32. In the accompanying Overview Document published by the New Zealand Transport Agency, it states as follows:

Reason for proposed change In many areas, parking on grass berms and other roadside cultivation not only damages the surface but it may affect underground services. Parking in these areas can prevent pedestrians and mobility device users from accessing roads and footpaths if there is no other path, and, it creates a hazard for other motorists if the vehicle is parked on a bend or other location where visibility is limited. Drivers who park off the road on the grass often claim that they are allowing the free movement of traffic on the roadway and are reducing the risk of their vehicle being hit by another vehicle. In many urban roads parking on the road does slow traffic along the road, and this is not an undesirable outcome for the safety of all road users and the concerns of local residents about speeding vehicles.

Currently, clause 2.14 of the Rule states “A driver must not drive a motor vehicle on a lawn, garden or other cultivation that is adjacent to, or forms part of, a road”. This creates a ‘moving’ offence. Parking enforcement officers are not able to enforce ‘moving’ offences and the proposed change would enable them to do so. A previous proposal to make a similar change affecting all roads led to comments suggesting the issue is largely an urban problem and should be directed at urban areas. Submissions in support of the earlier proposal indicated local authorities are having difficulty in defining their restrictions relating to parking on grass verges and are concerned about the current need for extensive sign installation to give effect to their bylaws. The proposal, therefore, would put in place uniform, nationally defined requirements for road users (which could be varied in specific cases by signs and markings). It would also address the concerns of road controlling authorities about the cost of installing and maintaining signs and markings and visual intrusion of these signs and markings.

33. The effect of the proposed amendment will be that unless the Council indicates otherwise by means of signs or markings, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area. The reference to ‘a grassed area or other cultivation’ appears to cover both grass berms and grass verges. This restriction will apply in urban traffic areas. An urban traffic area is an area which is subject to a speed limit of 50km/h. This parking restriction will be able to be enforced by the Council’s parking enforcement officers.
34. Because this draft Rule is out for consultation now, it is suggested that the Council first makes a submission supporting the proposed clause 6.2 **as well as** proposing that a new clause be inserted to prohibit the parking of heavy motor vehicles in residential areas.
35. It will then be open to the Council to subsequently propose an amendment to the Traffic Control Devices Rule 2004 if this submission is unsuccessful.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

36. Not applicable.

ALIGNMENT WITH STRATEGIES

37. This proposal aligns with the vision and policies as set out in the Council’s Parking Strategy 2003. One of the visions that the Parking Strategy 2003 provides is that parking will be provided and managed to minimise its impact on the natural and physical environment and support the sustainable use of resources. Removing the need for signage relating to the prohibition of parking on grass berms and verges and the prohibition of heavy motor vehicles parking in residential areas will minimise the visual impact on the environment and support Christchurch’s Garden City values.

11 Cont'd

Do the recommendations align with the Council's strategies?

38. Yes.

CONSULTATION FULFILMENT

39. This matter has been discussed with the Inspections and Enforcement Unit and the Transport and Greenspace Unit (who usually provide input on any submission on the Land Transport Rules).

STAFF RECOMMENDATION

That the Committee recommend to the Council that it:

- (i) Notes that the Local Government Act 2002 contains an infringement regime that would enable infringement offences (such as breaches of Council bylaws) to be enforced using infringement notices as opposed to a summary proceeding.
- (ii) Requests that a submission be prepared to the Minister of Local Government and the Minister of Justice seeking that regulations are promulgated to provide that breaches of Council bylaws are infringement offences under the Local Government Act 2002 and may be enforced by issuing an infringement notice.
- (iii) Requests that a submission be prepared on the yellow draft of the Road User Amendment (Rule 61001/4),
 - (a) In support of the proposed clause 6.2 in relation to the parking on grass verges and berms; and
 - (b) Proposes an amendment to the Road User Rule 2004 to insert a new provision that the parking of heavy motor vehicles is prohibited in residential areas.
- (iv) Subsequently requests that if its submission is unsuccessful on the Land Transport Road User Rule, a submission be prepared on the yellow draft of the Traffic Control Devices Amendment (Rule 54002/2) when it comes out for consultation. The submission would incorporate either of the following options:
 - (a) Option 1 (ie a broad amendment to section 4(2) of the Traffic Control Devices Rule 2004 to exempt bylaws relating to the parking of heavy motor vehicles in residential areas); or
 - (b) Options 2 and 3 (ie proposing an amendment to section 12 of the Traffic Control Devices Rule 2004 to exempt bylaws relating to the parking of heavy motor vehicles in residential areas, and an added provision that before the Council issues an infringement notice, the Council must issue a warning notice to the registered owner of the vehicle).

12. CONSULTATION ON DRAFT REGIONAL POLICY STATEMENT CHAPTERS ON WASTE MINIMISATION AND MANAGEMENT, CONTAMINATED LAND AND HAZARDOUS SUBSTANCES



General Manager responsible:	General Manager – Strategy and Planning Group, 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 provide the Committee with an overview of the issues arising in draft chapters of the Canterbury Regional Policy Statement (CRPS), currently being reviewed by Environment Canterbury (ECan), and to gain the Committee's support on recommendations for feedback to ECan with regard to the draft chapters on Waste Minimisation and Management, Contaminated Land and Hazardous Substances.
2. This is a non-statutory process which allows for consultation at an early stage of the review. It will replace the ECan seminars and workshops previously held for the Council. Instead, over the next few months, the Committee will be provided with a number of draft CRPS chapters, a Committee report and staff recommendations for feedback to ECan. The formal Resource Management Act (RMA) consultation process will take place next year when the entire draft CRPS is completed and notified as a proposed policy statement.
3. Comments were provided by Tony Moore (Sustainability Advisor- Healthy Environment Unit) who reviewed the Waste Minimisation and Management draft chapter, and Klaus Prusas (Environmental Projects Advisor Inspection and Enforcement Unit) who reviewed the Contaminated Land and Hazardous Substances draft chapters.

EXECUTIVE SUMMARY

4. The CRPS provides an overview of the resource management issues for the region and is prepared to meet RMA 1991 requirements. The policies it contains affect the way the Council manages its City Plan as the Council will have to give effect to the CRPS (as required under section 75 of the RMA).
5. The CRPS became operative in 1998 and is required to be reviewed within ten years of it becoming operative. ECan is leading the review of the CRPS and is consulting with all Canterbury territorial authorities throughout the review process.
6. This review is a separate process to the preparation of Proposed Change No. 1, which introduces a new Chapter 12A (Development of Greater Christchurch). Chapter 12A sets out land use distribution, particularly for areas available for urban development, the household densities for various areas and other key components for consolidated and integrated urban development. It also identifies land which is to remain rural for resource protection and enhancement and other reasons.
7. ECan began discussions over the review of the CRPS with District Councils in late 2006. ECan has consulted with Territorial Authority Officers on the review process, Issues and Options papers and draft chapters of each CRPS chapter. Discussions have taken place (and will continue to) at the Officer level through workshops and meetings and at the Councillor level through Council meetings, committee meetings and seminars.
8. The current CRPS consists of 14 Chapters which discuss various regional issues (e.g. water, soil and landscape) and provide objectives, policies and methods with regards to these issues. During the review process, it was decided that some issues would be better dealt with in new chapters (e.g. contaminated land which was previously dealt with in Chapter 7 Soils and Land Use) or better dealt with in conjunction with other issues (e.g. the proposed Settlement Chapter will also have transport provisions as well as deal with issues regarding versatile soils).
9. The three draft chapters attached (see Attachments 1, 2 and 3) discuss solid waste management (Waste Minimisation and Management), management of contaminated land (Contaminated Land) and the management of hazardous substances (Hazardous Substances). The Council's comments and recommendations are also found in each chapter.

12 Cont'd

10. The "Waste Minimisation and Management" Chapter (see Attachment 1) is a rewrite of the current Chapter 18 Solid and Hazardous Waste Management (which concerns managing the adverse effects of waste disposal). In its review of the current chapter, ECan highlights the many changes that have occurred in waste management practises and public behaviour since the CRPS was prepared. For example, the number of municipal landfills has decreased from 65 in 1996 to three currently in operation, and kerbside collection of recyclables is now available to about 90% of households in the region. However, the amount of residual waste produced per person continues to increase mainly due to increasing consumption.
11. In line with current thinking, which aims towards reducing the generation of waste that begins at the manufacturing stage, the proposed chapter places greater emphasis on waste reduction, the promotion of a hierarchy of waste management ('5Rs'- Waste reduction, reusing, recycling, recovering and when all reusable resources have been recovered, the item enters the waste stream as residual waste) and ensuring that adverse environmental effects are minimised.
12. In general the Council is supportive of the draft Waste Minimisation and Management Chapter. However it is unclear as to what wastes (eg household wastes are different from business wastes which are different from construction activity wastes) the chapter is dealing with as there is no definition provided in the chapter. A definition to define clearly what wastes are being dealt with in the chapter would be helpful. Although the chapter discusses integrated waste management, the Council is of the opinion that waste minimisation should also be integrated and made explicit throughout the chapter. Detailed comments on the draft Waste Minimisation and Management Chapter are located throughout Attachment 1.
13. The current CRPS Chapter 7 Soils and Land use deals with four issues; land degradation, loss of versatile soils, soil contamination and land use effects on water quantity and quality. Although a policy framework for the management of contaminated sites is provided for in this current Chapter, it has not been effective in dealing with the issue of contaminated land as land is contaminated usually as a result of an activity (eg hazardous substance use/spill and landfills). In line with the 2005 amendment to the RMA, Regional Councils now have the additional functions to investigate, identify and monitor contaminated land and Territorial Authorities (TAs) have the additional function to control the effects of the use of contaminated land.
14. Soil contamination issues will therefore be dealt with in the draft Contaminated Land Chapter (See Attachment 2). The current issue statement in Chapter 7 does not fully describe the extent of issues facing the *management* of contaminated land. The draft Chapter proposes two issues. The first issue deals with the management of contaminated land (lack of knowledge, historical contamination and different ways contaminated land is dealt with regionally). The second issue deals with use, storage and transport of hazardous substances and is linked to the Hazardous Substances draft chapter.
15. The Council has provided feedback in regards to its contaminated land management practises to ECan during the review process, however the Council is also involved in an internal review of its own contaminated land management processes. This review is planned for completion by the end of 2008 after which the Council will be in a better position to provide robust feedback to ECan. The draft chapter on Contaminated Land however does not take into account the Council management practises already in place. The draft chapter also does not sufficiently acknowledge the regional differences between TA contaminated land management practises. The Council is of the opinion that these are issues that need to be acknowledged within the draft Chapter as has been done with the draft Hazardous Substances Chapter. Detailed comments on the draft Contaminated Land Chapter are located on the last page of Attachment 2.
16. Presently, the CRPS policies relating to hazardous substances management are found in Chapter 17 Hazardous Substances, which seeks to prevent or mitigate the adverse effects of hazardous substances and Chapter 18 Solid and Hazardous Waste Management which deals with disposal of waste hazardous substances. There have been many changes at the national (the Hazardous Substances and New Organisms Act 1996 (HSNO) came into full effect in 2006 and the National Strategy for improving the Workability of Hazardous Substance Provisions of HSNO) and regional (Canterbury Hazardous Waste Management Strategy 2006) levels since the CRPS became operative.

12 Cont'd

17. It is unclear as to how effective the current Chapters have been in reducing the adverse effects of hazardous substances in the environment. A number of issues have been highlighted during the CRPS review process including the lack of clarity in the role of ECan and TAs with regard to hazardous substances, the lack of integration of hazardous substance management between legislations and organisations, and the substance focused approach in which a single activity may need two consents as both ECan and Council control different substances.
18. The draft Hazardous Substances Chapter (see Attachment 3) attempts to recognise these issues and provide some guidance for TAs. Council has provided feedback at various stages of the chapter review process and in general the draft Hazardous Substance chapter has taken into account the concerns expressed by CCC with regard to the role of the Regional Council and TAs in hazardous substance management.
19. The CCC is generally supportive of the draft Hazardous Substances chapter as ECan has acknowledged the role of TAs in hazardous substances management as it applies to controlling land use for the purpose of preventing and mitigating the effects of storage, transport and disposal of hazardous substances. However the Council has concerns with regards to the practicality of achieving some of the policies (e.g. Policy 7 requires information sharing between a number of different agencies which may all collect and store data differently). These issues may need to be discussed with ECan and may need to be acknowledged within the draft chapter. Detailed comments on the draft Hazardous Substances Chapter are located on the last page of Attachment 3.

FINANCIAL IMPLICATIONS

20. The CRPS could result in additional resources being required to amend planning documents in order to give effect to the CPRS. Giving effect to the final CRPS will be achieved through a variety of mechanisms including the Christchurch City Plan and Banks Peninsula District Plan and the LTCCP.

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

21. The cost of preparing and participating in the CRPS review is covered by existing unit budgets.

LEGAL CONSIDERATIONS

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

22. The RMA provides for the Regional Council (ECan) to prepare Regional Policy Statements and review them. The Council is participating in the ECan consultation process in the preparation of the proposed Chapters. The Council will also have the opportunity to influence and shape the proposed CRPS through the formal submission process which is scheduled for mid 2009.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

23. The chapters supports several of the LTCCP objectives that aim to manage and minimise Christchurch and Banks Peninsula's residual waste and to investigate or respond to situations that might affect human health or safety.

ALIGNMENT WITH STRATEGIES

24. The recommendations supports work being done for the Christchurch City Council Contaminated Land Management Project and supports the Council's Sustainability Policy 2008, and Waste Management Plan -Towards Zero Waste 2006.

Do the recommendations align with the Council's strategies?

25. As above.

CONSULTATION FULFILMENT

26. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council provides feedback to Environment Canterbury on the draft chapters as set out in Attachment 1 to 3.